THE THEORIES, CONCEPTS AND PRACTICES OF DEMOCRACY

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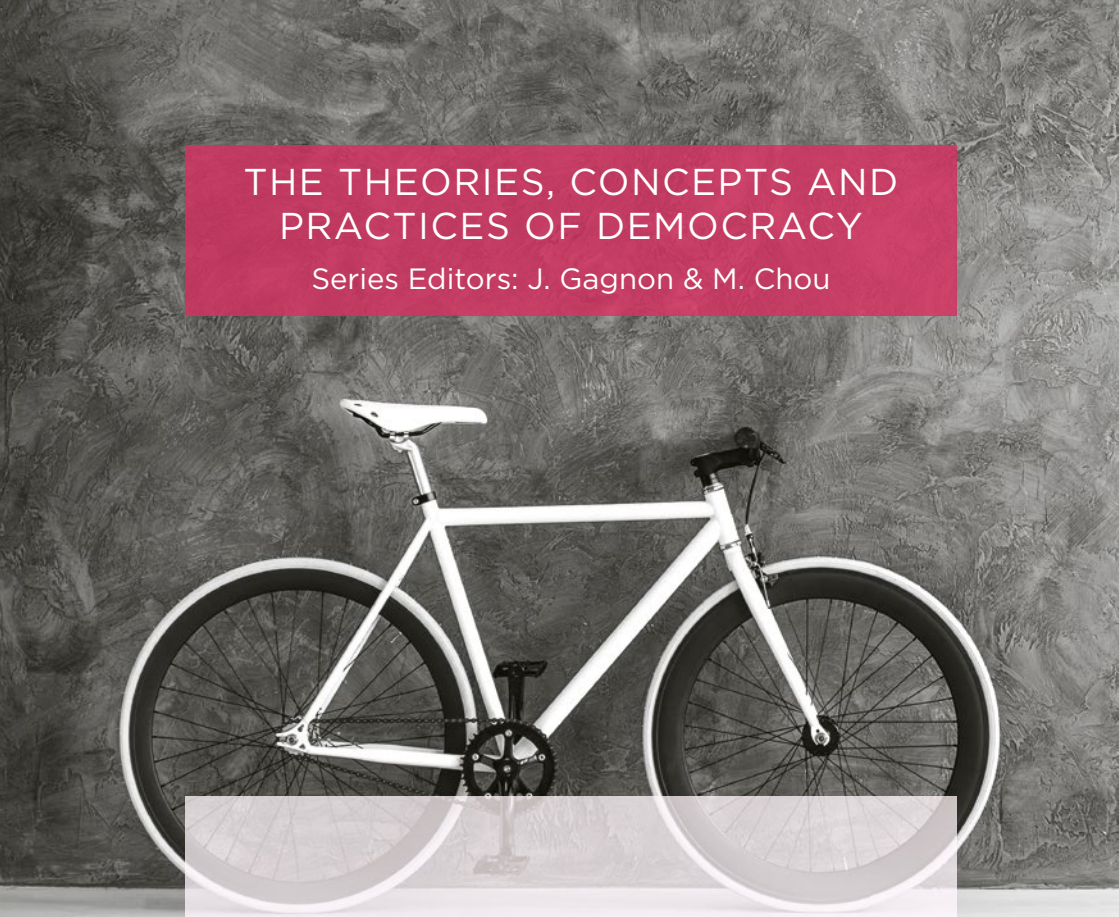

DEMOCRACY IN EUROPE

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*

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–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.

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Hertie School of Governance, Germany

Daniel Innerarity

Democracy in Europe

A Political Philosophy of the EU

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Daniel Innerarity
University of the Basque Country
Donostia, Spain

Translated by
Sandra Kingery
Lycoming College
Williamsport, PA, USA

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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

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CHAPTER 1

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.

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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).

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PART I

Legitimacy Problems in Europe

CHAPTER 2

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

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nurtured by the fact that our concept of legitimacy stems from the categorical framework of the nation state, while new institutions barely meet the criteria of legitimacy and democracy to which we used to be accustomed. As long as matters of integration were rather distant and acceptably effective, the suspicion of a lack of legitimacy did not lead to mobilization. But the economic crisis has become a crisis of Europe to the extent that it has revealed a lack of political ability.

After the euro crisis, there is a need to fully address the question of what can legitimize the European project, its transnational foundations, and its ability to be configured as a political actor that fulfills the expectations that justify its existence. However, we should begin by accepting that legitimacy today probably signifies something quite different from legitimacy in the "golden age" of the nation state (Hurrelmann et al. 2007, 232). It is not very realistic to think about transposing the categories of democracy in the nation state to processes like European integration and, even less, to global governance. I am not suggesting we should be less strict on this level than on other levels, lowering standards and accepting in the transnational realm what we would find unjustifiable in the national arena. Instead, it is a question of understanding that we are facing diverse polities that respond to diverse functional necessities, which means that their legitimacy should also be tackled with other very different concepts than those that served as justification for the states. The Hobbesian question *"quis judicavit?"* is now transformed into "Who governs when no one governs?" (Favre 2003). If the question of legitimacy is settled by indicating a sovereign power, a genealogy, and a delimited space, the question of the legitimacy of processes like European integration should be resolved in the realm of realities and processes that are characterized by shared power, the realization of certain functions, and network-like structures.

It is true that we can hardly say policies are democratic if they are not carried out following public debates or by transparent decision-making processes. However, the fact that modern democracy took shape within the nation state does not mean that it cannot appear in other formats or under very diverse conditions. It is true that there is no international organization—even though the EU is not international in the strict sense—that is more democratic, and it is even true that we can talk about the EU's "democratic surplus" in relation to international institutions (Lord 2012, 71). But, in any case, judgments about the EU's democraticity should begin by understanding its nature and complexity. The EU is in part government and in part governance. Thus, demands for the "complete"

democratization of the EU by the transfer of the democratic characteristics of the nation states only make sense for its governmental side. This in no way impedes having its governance aspects develop through rigorous criteria of legitimacy. The latitude of action that states retain supranationally carries with it a decrease in the standards of democraticity, but not necessarily in the standards of legitimacy.

In the transnational sphere, "there is little room for democracy … but a lot of space for legitimacy" (Willke 2007, 127). At this level, the question of legitimacy has more to do with requirements for justice than with requirements for democracy (Neyer 2010; Kochenov et al. 2015), which does not mean lowering these normative demands but specifying them in a way that is more suitable to the nature of the problems that are in play. The emphasis on justice also has the advantage of being less connected to the nation state than to democracy. It points to a conception of legitimacy more interested in content than in procedures although, as we shall see, this distinction continues to be problematic. Restricting the realm of justice to the relationships inside the states has, in fact, the effect of legitimizing the inequality that exists between the states, as if any inequality beyond the states were apolitical and natural (Wilkinson 2015, 118).

The true European deficit consists of excessive reliance on national politics that have not internalized the consequences of European and global interdependence (Maduro 2012). The question of the legitimacy of the European Union cannot be answered outside of the context of the possibilities and responsibilities made available by a particular form of transnationality.

1 "We Few": European Elitism

The canonic formula for democracy is expressed in the authority with which the Constitution of the United States or the Charter of the United Nations is established: "We the People". There is no expression that better synthesizes the democratic ideals of self-government and the foundation of all political legitimacy. In contrast, the history of European integration and, particularly its loss of direction during the current crisis, seems to have preferred the expression "We Few" that Shakespeare placed in the mouth of Henry V to refer to the reduced number of soldiers he had available for the Battle of Agincourt against the enormous French army, rallying them with a glory they would not have to share with a crowd.

The process of European integration is marked from the beginning by an aristocratic conception. There is a general explanation for this elitism: the unions of states are always the result of decisions of the elites and the EU has not been an exception in this regard (Haller 2008). There are at least three concrete reasons for this elitism: in the first place, after the experience of Nazism and the Second World War, the promoters of European integration were suspicious of the idea of popular sovereignty on principle; this is the reason why the Union has always had a structure that limited sovereign powers. In the second place, those same founders had a great distrust of rivalry and ideological conflicts and deep faith in the leadership of the technocrats when it came to advancing international cooperation (Haas 2004 [1958]). Thirdly, the agenda of questions that were to be the purpose of integration included a series of topics that were very distant from the people's day-to-day concerns. These issues lacked electoral salience or the capacity for political mobilization. The Europe of the beginning of the twenty-first century is very different. The configuration of societies is poles apart from where it was after the totalitarian experience, there is less confidence in technology and the topics under consideration have an immediate impact on citizen's daily lives. All these circumstances explain why the demands for re-legitimation have increased and why there are more objects of legitimation to be addressed than in the past (Hurrelmann et al. 2007, 232).

But the current reality, or at least the social perception of that reality, is that Europe is distant, technocratic, and bureaucratic. Europe seems to be in the hands of market forces and the machination of the elite, who are beyond democratic control. The Europe of Offices, as Haas famously called it, is sustained by the belief that technology, planning, and the labor movement advance integration further than the political system, although Haas himself later recognized that he had underestimated the politicians and the states. Governance arrived in the 1980s (Majone 1998; Scharpf 1999), which gave a certain amount of legitimacy to the experts and the corresponding comitology. There are those who defend European governance as an administrative, not a constitutional, matter (Lindseth 2010). They also, on the other extreme, denounce integration as an elitist process (Haller 2008), as an aristocratic bureaucracy directed "from the arrogance of institutions" (Vaubel 2001). In the European Union, there would be verification of the idea posited by Schumpeter (1942) or Dahl (1972) that the greatest democracy to which we can aspire is a competitive oligarchy, or at most, the "elite pluralism" of which David Coen spoke (1997).

The EU is procedurally democratic, but in substantive terms, it would be closer to enlightened despotism than to genuine democracy. One example of this is the fact that the election of the EC president has more in common with the election of a pope than with an open struggle between political candidates (Hix 2008, 78). The oligo-bureaucratic character of European decision-making seems to configure it as a benevolent democracy, in which executive power dominates, from an apolitical conception of integration. It once again confirms the "iron law of oligarchy" (Michel 1969), according to which large-scale organization reduces the responsibility of those who are elected with respect to the electors. In any case, it is true that until now the displacement of competencies toward the European level has taken place through public debates that are less inclusive of civil society than national debates. This new arrangement has allowed executives to increase their influence on political decisions, affording less control to their national parliaments and civil society. European integration, whether intentionally or inevitably, is a matter for the elites. Executive license is assured on the margins of social control, and the nature of the topics that are in play does not allow social actors to mobilize European public opinion with an alternative message.

Although the values of democracy point toward greater transparency and inclusion, the development of globalization has made politics more opaque and more dependent on experts than ever. This is especially obvious in the current institutional organization of the European Union where decisions are adopted without sufficient transnational legitimacy but outside of the reach of national legitimation. Many of the political decisions that are made at the European level demand immediate validity within the member states without procedures of democratic ratification at that level. Legislative control of intergovernmental decisions has been even further weakened by the fact that intergovernmental politics often occurs in contexts that are not legally binding and, therefore, not subject to domestic ratification (Schäfer 2006). We have not managed to stabilize the influence that decisions at the European level have on the domestic plane. These decisions may appear arbitrary, authoritative, and lacking in control; at the same time, there is the paradox that the influence of the nation states on European institutions has expanded, to the extent that the principle that has guided institutional reforms of the European Union is now the protection of state rights (Dehousse 2005). In this way, the political preponderance of national governments in European decision-making agencies is consolidated and so is the influence that executives are granted

in decision-making procedures. It is not the EU that reduces our spaces for decisions but, as paradoxical as it may seem, the states.

Focusing on the dramatic decisions adopted to address the euro crisis, a split has arisen between the ability to act and democratic authorization, between those who are capable but not accountable and those who are accountable but not capable, an asymmetry of power and legitimacy, of authorization and effective power (Zürn 1998, 17). All of that has a lot to do with the increasingly underscored difference between responsiveness and responsibility, between what citizens expect from their governments and what governments are obliged to do or, if one prefers, between the ability of governments to explain their decisions and the ability of citizens to understand them. That is the dilemma politicians tend to reference: they know what they need to do, but they do not know how they are going to be reelected if they do it.

The technocratic and executive component is strengthened at the expense of parliamentary deliberation. We are living a type of "Saint-Simonian moment" in European structuring by virtue of the technological complexity of the solutions and that confers extraordinary power on the experts. In fact, effective measures are decided, not in national parliaments, but in epistemic communities or institutions that are only indirectly or partially democratic. Let us think about the imposition of "technocratic" governments (Italy), austerity measurements "adopted" by certain member states in 2012 or the affirmation by Christine Lagarde, Managing Director of the IMF, that democracy has in fact been revealed to be an obstacle for handling the crisis. There is a type of "decisional outsourcing" in the EU that corresponds to the asymmetry between functional demands and Europe's ability to satisfy them. The states have turned into "decision takers", they are no longer "decision makers" (Eriksen 2009, 157). These circumstances seem to support Thomas Nagel (2005, 147) when he affirms that questions of justice beyond the borders can only be resolved by effective but illegitimate institutions. The shortage of parliamentarian control, the lack of transparency, representation, and accountability lead to public protests and disillusionment. It is not surprising that the EU appears to be a project of the elite when they increasingly perceive public opinion and national voters as the principal obstacle for the process of integration, and even believe that large reforms can only be undertaken when there are no elections on the horizon.

This distance is not only a question of institutional design but, especially, a social phenomenon that nurtures the tension between cosmopolitan

elites and territorialized masses. Europe is a matter for the elite; the nation is a matter for those who feel threatened (Münch 2001, 294). European integration is a project that upper levels of society understand and support better than the public at large. The average person has more to fear from globalization and feels unprotected outside of the nation state. This cannot continue in this way for long without posing a threat to European cohesion. The contrast between nationalized voters and bureaucratically decisive policies is fatal for the European Union. It is inconceivable to have democratic politics in the twenty-first century without the explicit backing of the people. It is also not possible to make strategic decisions without a vision that implies institutional leadership and the effectiveness of public policies. This will be one of our principal debates when it comes to resolving the European crisis. There are, in this crisis, informal hegemonies ("German Europe", for example), forms of domination and unjustifiable asymmetries, of course, but we should not interpret them with traditional categories. The problems to which I am referring are problems generated by interdependence and not the typical problem of domination. In any case, we are no longer facing the typical conflict between the elites and the masses, which was the crux of democratic emancipation, but a horizontal and lateral struggle that must be resolved by inclusion and cooperation, building what is communal with criteria of justice.

2 Rethinking Legitimacy

Democratic legitimacy has been approached, according to Lincoln's famous formulation, as government of the people, by the people and for the people. This tension has been enunciated with different terms and has generally been presented as a dilemma and even as an incompatibility: between participation and effectiveness, between process and results, between democracy and effectiveness, between participation and authority (Dahl 1994), between public inputs and policy outputs (Scharpf 1970, 1997a), between the acceptable and the correct, between *demos* and *cratos*. It is a question of the fundamental types of legitimation upon which our institutions and political practices rest: legitimacy that comes from popular support or acceptance of decisions because of the democratic procedures through which the people assert themselves (input legitimacy) or the legitimacy that governments sanction to the extent that they assure public goods and resolve societies' problems (output legitimacy).

Many ideological debates have been polarized around these two types of legitimation; some claim that we must put into play criteria like checks and balances, judicial responsibility or deliberation rather than popular participation (Banchoff and Smith 1999; Héritier 1999; Grant and Keohane 2005), while others protest by condemning the weakening criteria for democraticity that this would entail. They insist that "we should not lower our democratic standards just because it is difficult to meet them outside of the nation state" (Kohler-Koch 2001, 8). Even though this is not the place to develop this debate as thoroughly as it deserves, I do believe that the right-left axis is now being overlaid by another axis that confronts, in the broad sense, populists and technocrats; both these categories include left and right versions. The new ideological spectrum can be explained around various combinations of these four criteria. What we have is basically technocrats from the right and the left and populists from the right and the left, giving rise to alliances and antagonisms that cannot be understood based on classic ideological polarization. In the concrete case of the European Union, one can affirm that this *"technocratic-populist gap"* establishes a division of territory according to which "technocrats dominate policy making while populists dominate politics" (Zielonka 2014, 45).

The *White Paper on European Governance* (2001) attempted to connect the increase in effectiveness and democratization as objectives of European politics. This may be more of a desire than a reality, and the truth may be that we find ourselves in the dilemma noted by Scharpf where the European Union lacks the input conditions of democracy, while member states are incapable of producing the political results to which their populations have the right (Scharpf 1999). In the end, it is a drama that generally rends our political systems, since they see how the input dimensions of democracy were reduced and at the same time, they were not capable of deploying compensatory output dimensions, which are only partially within their reach and depend more on global factors.

From the point of view of strict democraticity, the political system is justified more by its inputs than by its outputs, but the problem is not resolved by establishing a type of primacy between both dimensions of political justification, particularly in a polity as complex as the European Union. On the one hand, it is true that low levels of input legitimacy can have a negative impact on the acceptance of government decisions (Quintener et al. 2011, 399), but it is simplistic to assume that better procedures necessarily assure better results. Output legitimacy places the

obligation for the common good of the leaders above the common sense of those being led, but it is difficult to think that one can realize good decisions without any participation by those affected. There are forms of benevolent paternalism that could respond to the demands of legitimation through results, but there are also decisions that fulfill all the requirements of popular legitimation without being effective or just. "The results of politics are not democratic, but the way they are carried out is" (Offe 2005, 264), or, at least, the results must not contradict the principles of a legitimate government.

For the nation states, the balance between effectiveness and democratic acceptance can generally be resolved in favor of the latter; for transnational institutions, effectiveness is decisive even if only because of the fact that those institutions have been configured precisely to resolve problems that are not within the reach of the nation states and to correct their ineffectiveness (Preuss 1995, 61). In fact, the transfer of sovereignty toward European institutions was justified by the claim that they were better able to resolve certain problems. Any political system, but particularly those that represent a functional novelty, must respond to the expectation that we live in "societies that resolve problems" (Scharpf 1997b). The EU is an institution that was specifically created to resolve problems, a functional association whose legitimacy is connected to its performance. It is fundamentally a democracy of the stakeholders, government *for* the people. This pressing need to legitimize itself through effectiveness is what is expressed in Durao Barroso's call for the "Europe of results" or Tony Blair's motto "Europe has to deliver", but it also has a social democratic version: the demand to provide a European equivalent to the welfare state, which Habermas called *"wohlfahrtsstaatliche Ersatzprogrammatik"*. In all these cases, the goal of legitimacy expects to achieve more by obtaining results than by democratizing procedures.

It may be that the democratic deficit is not so much the lack of live democracy in the European arena as citizens' perceptions that the Union does not resolve their primary problems. People have a very utilitarian relationship with the EU (Mau 2005; Nissen 2006). In the case of international institutions, legitimacy by results is, according to the polls, more valued than democratic standards, and the protests have more to do with negative results than with democratic procedures (Nölke 2007).

To address the question of the EU's legitimacy, we would have to understand its institutional specificity and the expectations on which it is founded and with which it should nurture its renovation. It is inevitable

that the balance of legitimacy should at present shift to the law and toward expert knowledge, to the detriment of participation. We should not scorn the "technocratic" element of political processes, particularly in European integration. Technocratic competence is essential to good politics, and a failure to address it tends to activate a desperate call for effectiveness as the last hope for salvation. The ineffectiveness of many European policies has devastating effects on the legitimacy and stability of the EU. There has not been sufficient attention paid to suboptimal performance, which threatens the EU more than other weaknesses.

Of course, functional legitimacy is instrumental, but this type of legitimacy is especially pertinent when we are addressing a type of politics that, because of its novelty, must struggle to achieve direct popular support. Effectiveness is important for systemic stability because it affords the new political system the time necessary to develop loyalty and legitimacy. Why not think about legitimacy in dynamic rather than ancestral terms, as a process rather than a static qualification? David Held claims that achieving legitimacy through results is conditional and unstable (1987, 238). This approach presupposes a world of certain stability and a politics with identical tasks throughout time. But what if volatility were normal and we were transitioning toward a world that is more unstable, in terms of legitimacy as well? This could be the case because of transformations that require continual reconsiderations of the terms of legitimacy as well as the fact that the requirements that societies make of their government institutions change.

It is true that purely functional, apolitical justifications of international institutions and the European Union are insufficient (Zürn and Ecker-Ehrhardt 2013). It is not acceptable that the elite from a few countries, rejecting national and global public opinions, determine the national politics of other countries. However, the incidence of international political decisions in domestic spheres is not always an unjust interference, but an ever more present reality that requires legitimacy. It should not be impugned as something unjustifiable, but accepted as something that can and should be justified. The idea of legitimacy means two things: that political authority is doing what it should do and that the people regard it in that way, in other words, it signifies correctness and acceptability. We must maintain this distinction so we do not confuse legitimacy with stability or subjugation, which often do not obey any criteria other than habitual obedience, the fear of punishment, or cost-benefit analysis.

In the age of politics beyond national borders, of interdependence and networks, functional legitimacy is called upon to acquire greater importance regarding territorial representation. For this affirmation to not suppose an abandonment of the principles that rule our democratic societies, the emphasis on functionality demands a differentiation of levels and issues because it cannot have the same weight on immediate affairs as it does on global problems or in the temporal register of urgency as in constitutional measures. The existence of principles that are under discussion and not easily compatible is a part of our political condition, but we must know how to adequately organize around the problem that is being addressed and the circumstances that condition it.

It is true that legitimacy in terms of results is not sufficient, that the quality of decisions is not the only thing that matters, and that, for that reason, the demand for participation and control in contemporary democracies is intensified. However, there is in our political culture a Rousseauian idealization of parliamentarian democracy that has a very mechanical vision of legitimacy according to which our representatives do nothing but immediately translate into legislative decisions the collective interests formulated by voters who know what they want prior to any process of deliberative formation of the political will. The limits of legitimacy by results has a lot to do with the fact that efficacy does not dissolve the political question about what the society values as truly effective; the question of what "deliver" means or what we accept as "results" is eminently political, something that cannot be resolved in the last instance but through political decisions and according to democratic logic. Moreover, effectiveness is not enough to assure acceptance, even if it is only because of the fact that its regulations and assignations will always have unequal redistributive consequences (Schmitter 2006, 164). There are no politically neutral technocratic questions; they all put into play normative matters that reasonably divide the parties and the electorate.

Applying all this to the European Union, what we get is a map of legitimacy in which efficacy and democracy interfere with preferred ideas of integration. We could classify the visions of Europe into federal, technocratic and intergovernmental. Within those categories, legitimacy follows a logic of analogy, complementarity or derivation, and various weights are assigned to aspects of input and output legitimacy (Hurrelmann et al. 2007, 236). The following chart attempts to present the possibilities:

	Input legitimacy	*Output legitimacy*
Federal integration	High	Medium
Technocratic integration	Low	High
Intergovernmental integration	High	Medium

1. When the *federalist* type approach thinks of the EU as something similar to a state, they tend to think that the legitimacy of its institutions should be considered analogous to the legitimacy of the states. Therefore, they follow the logic of the constitution and quasi-national language and symbolism. The fundamental goal of this way of seeing integration is to essentially satisfy an *input* legitimacy, understood as a still incomplete aspiration.

2. From an interpretation of integration that is rather *technocratic* or *expertocratic*, the priorities of legitimacy are inverted. We could take Giandomenico Majone and his almost exclusive emphasis on output structure as a representative of this way of thinking. Given that the EU's regulatory competencies are better exercised in institutions, such as the Commission, that are non-majoritarian and independent of electoral pressure, European institutions are legitimate to the extent to which they can achieve what is not within reach of the member states, acting as an "independent fourth branch of government" (Majone 1998).

3. *Intergovernmentalism* conceives of the balance between input and output in a manner similar to the federalists; both groups view popular legitimacy as central, but they establish both features on different levels, in the (current) nation states or the (future) European society. For intergovernmentalism, legitimacy follows a derivative logic because it is the member states that provide legitimacy to the EU and regulate this provision in agreement with a criterion of national democracy. The legitimacy of the EU is founded on the fact that it can be controlled by the states, and it is this control that gives the measure of derived legitimacy. Input legitimacy is provided by the states and their electorates, while output legitimacy is due, at a later and secondary moment, to the success of European politics. The vetoes, the strengthening of the Council and the national parliaments, the subsidiary nature or the national control of constitutionality depend on this conception.

Now, once we have considered this distinction between input and output, could we do without it, like the metaphor of the thrown-away ladder that Wittgenstein proposed? What if there were not two exclusive

categories, but two sides to a single reality that end up corresponding to a single demand?

This is important, in the first place, because, even though I have used this contrast to consider some useful references in the dense space of legitimacy, there are other dimensions that should not be ignored if we want the map to be complete. There is, for example, throughput (procedural) legitimacy, to which we appeal when we call upon the integration of national parliaments, the deliberative quality of decisions, levels of transparency or access to information (Wimmel 2009). On the other hand, the success of the category of accountability is due to emphasizing input legitimacy without limiting the ability to resolve EU problems. This output element champions transparency, legal supervision and good administrative procedures without participatory requirements that could endanger the efficacy of decisions. To complete this cartography of legitimacy, we would also have to add the fact that there are decisions that are considered legitimate, not because they are the result of democratic processes, but because they have been adopted by institutions that are considered authorized for it, like courts, central banks or regulatory institutions. We consider many of their decisions correct, not so much because of criteria of effectiveness but because of criteria of equity or justice.

We could also soften the contrast if we complemented it with another similar distinction: the distinction between *acceptability* (which would highlight the quality of decisions) and *acceptance* (that measures the true empirical support of the decisions among citizens) (Lauth et al. 2000). The first has a hypothetical character, as if it were a conditioned promise that should finally be able to be verified; the second is not always legitimate, as the phenomenon of populism reveals. As if that were not enough, all of it should include the value of "time", since *acceptability* allows political agents to have the future at their disposal (anticipating and even governing, even if it is only for a brief period of time, against the fluctuations of public opinion and short-term thinking, without the pressures of public opinion), but *acceptance* puts an end point on the availability of the future (it temporally limits the delegation conceded to those who govern, putting an end to it with a procedure of verifying and reporting back). Stated in another fashion: there is no legitimate democracy without the possibility of governing outside of popular will (before knowing it and even, under certain conditions, against it), but still less when this distance is an unqualified license for the authorities to do whatever they want at any time. As much delegation and anticipation as is necessary, as much

verification as possible: that could be the formula for a practice of government that does not want to be politically contradictory or democratically unjustifiable.

But we can still think about surmounting the always too coarse contrast between democracy and effectiveness conceptually. We could do so in such a way that, to follow the metaphor, we would have to use Wittgenstein's ladder again. Our political systems would be poorly conceived if they continuously forced us to exchange effectiveness for democracy, to choose between competence and participation. The force with which the technocracy-populism axis has appeared on the current ideological landscape bears witness to the fact that we have not framed matters successfully. Could there be some way of simultaneously conceiving of and resolving *input* and *output* legitimacies? Yes, I propose bearing in mind that the *popular demand for results* summarizes the two legitimacies to a large extent. This focus is not technocratic, but it has an input element. It includes the expectations that people make of it, but it does not grant a license to populism because it also embraces a demand for results. What is accepted as positive results is a question that should be resolved by democratic procedures, but this verification is hard to carry out without a debate that includes argumentation about the objective assessments of those results. This is a functional argument: If we want to be effective, we cannot do without democratic legitimacy in the first place in order to endow policies and institutions with the authority and validity that the (alleged) expertise of technocrats cannot possibly substitute for through "output legitimacy".

If the concept of sovereignty tries to respond to the question of why sovereigns do what they do, today it would be more of a question of what we expect from politics and what politics can guarantee (Vobruba 2009). In this way, the problem of the foundation of power loses its ancestral absolutism. The place for a hypothetical macro-subject is now occupied by the people; where there was previously hierarchical superiority, there are now expectations and interests. Results, yes, but required and assessed in that way by the people, who must have access to all the instruments necessary to verify the fulfillment of those expectations, to convert that which is justifiable into justified.

3 Executive Deficit: The *Cratos* of Democracy

The dominant theory when it comes to interpreting the current state of integration and the European crisis is that we are principally facing a problem of "deparliamentarization" or "executive dominance", which leads to a "short-circuit of the democratic processes of representation and accountability" (Rittberger 2005; Börzel and Spungk 2007). If that were fully true, we would have entered into an era of "post-parliamentary governance" (Andersen and Burns 1996). These critiques are very pertinent, but they also have their limitations, which I will now address.

In the first place, the thesis of deparliamentarization must be confronted with the following question: compared with what? The process of European integration suggests an inverse relationship: integration is not the cause of deparliamentarization but rather the beneficiary of a preexisting transformation of national systems in a more executive direction (Lindseth 2010, 202). The primacy of the executive is not new or a property of the EU; instead, it dates back to the 1920s, when certain constitutional changes were initiated (some that saved democracy and others that corrupted it), at a time when we needed unprecedented social and economic intervention by the states. This transformed the old balance of the liberal state, which would generate an executive and technocratic sphere that needed to be provided with a new legitimacy (Lindseth 2010). Apart from that, this growth in executive power and the weakening of democratic deliberation is something general in democracies; it is due to the increase in global regulatory regimes, on the one hand, and the privatization of many public services, on the other, which makes democratic scrutiny of domestic legislative institutions difficult.

But we must also keep the other side of the coin in mind, specifically, the executive weakness of the Union that we try to correct, both at times of crisis, but also in general. The compound, complex nature of the EU largely explains this weakness. In a non-hierarchical structure, power is shared among different institutions, in such a way that each one has the same veto power. In this type of context, with the low cohesion that always corresponds to compound polities, the balances that must be respected when it comes to adopting any decision can lead to consolidating a certain inability to decide. "A nondecision might be a necessary price to pay to avoid a bad decision" (Fabbrini 2007, 150). The traditional ineffectiveness of the European Union has a lot to do with its complexity and complexity provides protection against abrupt change for the worse.

European decision making is not the typical majoritarian process that is employed at the heart of the states but a negotiation that is focused on consensus, which frequently exposes its limitations when that consensus cannot be obtained or is politically dysfunctional. The limitations of negotiation tactics mean that rather than those most interested in a decision, those who are less interested often prevail. That leads to the logjam that results from common forms of decision making that favor minority groups and create a "joint-decision trap", as Fritz Scharpf (1985) formulated it years ago.

In any case, a complex democracy also needs to be capable of making a decision. The problem, therefore, is how to correct the weakness of the *cratos*, its poor effectiveness and even inefficacy, without subverting the complex nature of the EU. We should not lose sight of the fact that elevating its decision-making capabilities can have divisive effects. That which stabilizes weakens, and vice versa. The compound character of the EU stabilizes it and facilitates its survival, but the external challenges it confronts are putting its unity to a permanent test, as was revealed during the euro crisis. The objective that needs to be achieved is the institutionalization of as much strength, efficacy and rapidity of decision making as is compatible with continued cohesion. The problem is to determine how widespread authority should be so that government does not become ineffective and impossible, how to make sure the benefits of diversity do not become inconveniences when it comes to making decisions.

During the euro crisis, it became particularly obvious that Europe is suffering, in addition to other more well-known weaknesses, from a true executive deficit. It was on the verge of transforming a democratic deficit into a "democratic default" (Majone 2012). It is not an unprecedented possibility in the history of European integration. It has already frequently been the case that disparities about who is responsible for what lead to blockades and empty spaces of action that are finally occupied by the European Court of Justice or the European Central Bank to compensate deficient institutionalization. One of our principal challenges consists of improving European decision-making without consolidating the exceptionality that is in the end fatal for democracy, but without forgetting that indecision may hurt it more, giving way to unjustified impositions and informal hegemonies.

This executive deficit is even more damaging if we keep in mind the economy's global acceleration. The time needed to accomplish a major overhaul of the Treaties governing the European Union can safely be

estimated as ranging between five and ten years. Yet in order to produce a viable response to emergency situations in financial markets, one often has a day or two. Sometimes it is a matter of hours: Brussels' decisions on how to appease financial markets must be out at 2 am Sunday night, that is, before the Tokyo stock exchange opens. Yet still: those making such decisions must be capable of being held democratically accountable or at least be able to claim legitimacy on the basis of a fiduciary mission democratically granted to them. The solution to this problem might be that policies become more proactive, anticipating and paying attention to seemingly remote possibilities (remote both in time and in probability) in order to be prepared—the opposite of what was the case in the financial market crisis of September 2008.

To the necessity of legitimacy we add the necessity, no less urgent, of a European executive authority. There is a democratic deficit when there is a lack of *demos* and also a lack of *cratos*. "The democratic problem of the Union is also one of effectiveness. A democracy that cannot effectively govern is no democracy. There is no self-government without government" (Maduro 2012). Widespread democratic frustration produces a self-government impeded by exterior circumstances as one that does not govern because of its own inability. In fact, within the high degree of European dissatisfaction, the highest level of concern is not the democratic nature of Union but the efficacy of its actions. According to the *Eurobarometer*, 57 percent of those polled do not trust the European Union. But, while 45 percent (versus 44 percent) are not satisfied with the workings of democracy in the Union, 58 percent (versus 33 percent) believe the Union is ineffective. What most affects the social approval of an institution is its incapacity when it comes to solving urgent problems, its weakness rather than its imposition. Just and democratic executive action is a goal that any organized society requires, but particularly an institution like the EU whose justification has been and continues to be the conquering of spaces of influence that its member states cannot reach.

4 The Deficit of Intelligibility

The framing of the current crisis of legitimacy would not be complete if we did not include an intelligibility deficit. We talk a lot about the democratic deficit, but I believe Europe's most profound problem is its *cognitive deficit,* our lack of comprehension about what the European Union represents. It is hard for us to understand that we are seeing one of the largest

political innovations of our recent history, a true laboratory for testing a new formulation of identity, power or citizenship in the context of globalization. The crisis that is behind the constitutional failure, behind the unfortunate management of the euro crisis or generalized disaffection in the face of the possibility of moving toward integration is fundamentally due to a deficient comprehension of what we are and what we are doing. This may be considered philosophical excess, but we could say that the problem is the lack of a good theory about Europe. The deficit to which I am referring is not a lack of communication that could be resolved with better marketing. It is a lack of comprehension and conviction (among its citizens and those who govern) about the originality, subtlety, meaning and complexity of the European structure. That explains the fears of the citizens and the weak ambitions of a large part of its leaders. The fact is that ideas about the EU are full of misunderstandings that leave it at the mercy of superficial public opinion: like a scale of supplementary power, like a strategy to survive in the face of globalization that is only perceived as a threat, like a political shape upon which the model of the nation state is projected, and so on. This is how it is often the case that some countries seem very Europeanist, in essence because they appreciate the subsidies they have received, while others see Europe as a threat and stop perceiving the opportunities it affords. Both sides have a mistaken perception of what Europe represents and, until this mistake is resolved, support for the European political project will continue to be weak or superficial.

In the current situation, we cannot progress toward necessary integration with any confidence in the support of inhabitants who do not understand the structure of Europe. These are people who have been bombarded for years with protectionist speeches and who are now being served an image of Europe as a disciplinary agent at the service of the markets, without remembering the responsibilities we share and the mutual advantages of which we are beneficiaries. Appealing to a sovereign people or resorting to the criticism of our leaders is intellectually and politically very convenient. It makes us feel morally irreproachable as a member of the innocent crowd. We should, however, be reminded that there would be no populist leaders if there were not populist peoples.

The current crisis of legitimacy should be understood as the contrast between new practices and old ideas, a contrast that makes it difficult for the people to understand what to expect of the EU, what type of legitimacy and what responsibilities are in play, the limits of action of jointly held government. This is the breeding ground upon which populism and

disillusionment are nurtured. It is fundamental for the functioning of democracy that the people grasp the political issues that are at stake in each case. As Walter Bagehot said in the nineteenth century: "When you put before the mass of mankind the question, 'Will you be governed by a king, or will you be governed by a Constitution?' the inquiry comes out thus in their minds—'Will you be governed in a way you understand, or will you be governed in a way you do not understand?'" (Bagehot 1873, 61). This general principle is also very specifically applicable to the European structure.

It is important to understand how institutions function, but also, in a normative sense, to properly assess the course of things. It is essential that our respect for the unusualness of an entity as complex as the EU not be used as an excuse for lowering the democratic standards with which we want to live. Intelligibility has, therefore, not only a descriptive dimension, but a normative one. Understanding is not a neutral word, a mere realization of how a particular reality functions, but a comprehension of it in accordance with a series of values that imply acceptance and criticism, a horizon of justification, something that makes sense, that can be known and recognized.

We will only be able to escape the current crisis with new meanings, and that requires a conceptual leap that allows us to understand and explain the advantages and the responsibilities of interdependence. Only a comprehension of the usefulness of the European project will allow us to overcome the "demoscopic fear" (Habermas 2012) that grips our leaders and explains the populist drift of our societies and the reasons why the short term is given priority in political decisions. We must understand the extent to which the EU constitutes an instrument to alleviate the negative effects of globalization and bring back to the European level some of the abilities lost on the state level. The EU must be capable of showing that it adds value to the mere juxtaposition of national states.

The truth is that a state is sovereign in the negative sense when it is immune to exterior interventions regardless of whether or not it has the resources needed to put its immunity to the service of the ends it has proposed. But there is a positive sense to sovereignty, which is not only an absence of outside interferences, but the ability to act: one could be unimpeded from the outside and still be incapable. What member states do is precisely transform their negative sovereignty into positive sovereignty or, better yet, replace sovereignty with power: the limitations they accept

allow them to enjoy the advantages of communality and its possibilities of expanded action.

It is unquestionable that there is a conflict between the normative principles of democracy and the effectiveness of politics to resolve some collective problems of particular importance. Supranational institutions are not part of the problem, but part of the solution, no matter how difficult. Not all obligations we have been assigning to the state can currently be carried out within the state and with the instruments of state sovereignty; the sooner we recognize this, the sooner we can think and work on a new political configuration where there is a balance between democracy, legitimacy and functionality. Seen from this perspective, the EU offers unprecedented possibilities to respond to the challenges of interdependence in a deterritorialized world (Eriksen and Fossum 2007, 25–26; Maduro 2003, 75). This must be understood if anything is to be understood.

In some way, this deficit of intelligibility is also a political deficit, if by political we understand the articulation of the political game. A society that understands what is settled and that can participate in the formation of political will plays a substantial role in this. The EU political system struggles in this regard because it is hard to read it with the categories of antagonism to which we are accustomed on the national level. There is without a doubt a political deficit that deserves greater consideration (Dehousse 1995). Enough attention has already been drawn to the difficulty of finding one's bearings within the European political space regarding the categories of right- and left-wing. It is also complicated to assert at this level the power sharing that lays the foundations for the ability to "throw the rascals out" that Popper enthroned as a principle of democratic logic (1962, I, 124).

There has been an entire debate about the possibilities of EU politicization, about its limits and its risks (Hix and Bartolini 2006; Magnette and Papadopoulus 2008). It is unquestionable that the election of the president of the Commission by the European Parliament, for example, will make the electoral participation of citizens more comprehensible and interesting. I would simply like to draw attention to the fact that the politicization of the EU's modes of decision making must bear EU structural peculiarities in mind. Many of the proposals exaggerate the force of right- and left-wing ideological axes because that is how it has been in the domestic sphere. Aside from the fact that even at this level, the identification between politics and parties has lost the plausibility it had in post-war Europe, its transfer to the European level is not plausible or desirable

(Wiesner et al. 2011, 13). Many of the allegations in favor of the partisan politicization of the Union have a very Schmittian conception of politics, as if there could be no politics if the contrast between friend and enemy were tempered, as if there could be no power sharing without antagonism and no difference without conflict. Politicizing is not the same as recovering political categories from other ages and at other levels. These categories are connected to the hegemony of the nation state and the classic ideological antagonism of the right and left. Politicizing means situating decisions within a political framework that belongs to a society that I like to call post-heroic, where categories such as contingency, deliberation, the weighing of alternatives, and criticism are emphasized (Innerarity 2012). The necessary politicization does not attempt to reconstruct on a European scale an antagonism that even on the domestic level no longer seems intelligible when resorting to simplistic old categories.

We need to situate the Union's obvious problems of communication within this context. Obviously, the EU is a particularly complex political system, but complexity does not necessarily mean incomprehensibility. This is the first challenge to EU communications. Its political actors and its institutions face the challenging task of making it intelligible without unnecessarily simplifying its complexity. For this reason, analogies to the nation state should be employed with extreme caution, because it may well be the case that people fully understand something that is not what should be understood. What must be understood is not a mere supplement of the states nor the reconstruction of statehood on a European scale, but a "compound polity" where elements of intergovernmentality and transnationality are articulated in an unprecedented fashion.

The second challenge of intelligibility requires that we understand that it is not so much a problem of information as of meaning. In fact, there is more and more information available and there is, especially, more transparency about the Union's short-term costs for everyone. But our leaders barely address the long-term advantages, which are thus scarcely recognized by societies.

The third requirement for communication consists of carrying it out without the elitist attitude that tends to characterize it, as if it were a type of popularizing with which, perhaps involuntarily, the distance between the experts who know and the ignorant masses—a distance we specifically wanted to overcome—is reconfigured. In a democratic society, the politics of communication must be mindful that it is an act whose recipients ultimately wield authority and, therefore, it is a bidirectional relationship.

Perhaps it is true that we should be more modest and replace the proliferation of viewpoints with an improvement in explanations.

What Europe needs is to know itself and to renew its consistency. We cannot make progress with political integration if we do not openly address the question of the nature of Europe, if we avoid the deepest questions about what it is and what it can become. Without this clarification, it is obvious that the politics of communication at the heart of the Union will not be effective, especially in a mature society where there are less and less things that can be done without providing convincing justifications. As Julia Kristeva (2000) stated, Europe not only has to be useful, but it also has to make sense. Understanding Europe is the first step to giving it meaning and affording it a direction, showing citizens what should receive their assent after a public debate. It is possible that this clarification may be considered pointless for a while, but it now seems unavoidable to have an idea of Europe that explains its distinctiveness and the possibilities it contains.

5 Conclusion: A Complex Legitimacy

It is not that the EU only allows a "limited democracy" (Hix 2008, 4), but that it constitutes a complex democracy; it is not a question of transforming a semi-despotic system into a partially democratic one, but of articulating democracy and complexity in a way that corresponds with the type of political entity that the EU is. Europe will continue to have conflicts about its democratic legitimacy; the question of what to consider legitimate and democratic regarding the level of desirable integration will continue to be controversial. The habitual national debate is complicated here because it becomes mixed up with the question of the ways in which we should understand democracy and legitimacy to promote the type of polity that we understand the EU to be and that we want it to become. We are circling around dynamic concepts, which is why we have no choice but to keep the discussion open and to continue modifying our position as we discover diverse challenges and difficulties. This is the reason why it is better to avoid abstract *models* and focus our attention on the *procedures* that take into account the variables that are in play and the range of possible effects of our decisions.

That is why the whole legitimization of the European Union should be based on a combination of different criteria of legitimacy according to the dimension of the system that is in play. In some areas, competence will be

more important than participation; in others, public opinion should correct the unilaterality of the experts, and so on. Therefore, the legitimacy of the EU can only consist of a combination of different strategies, which is not easy and creates specific problems. In many cases, the supranational, technocratic and intergovernmental strategies have implications that contradict each other and are, in the end, incompatible. For example, strengthening the European Parliament means weakening the independent regulatory capacity of the Commission and national control over common policies (Hurrelmann et al. 2007). If we have agreed that there is constitutional pluralism, we should also think about legitimacy in a plural fashion. We must move to a division of labor regarding European legitimacy, without entrusting everything to a single variable, among other reasons because acceptance, results, participation, competence, intelligibility and trust are vectors of legitimacy that are strongly interconnected among themselves.

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CHAPTER 3

Whose Deficit? The European Democracy and Its Democracies

The European Union is a political entity that is profoundly controversial, especially regarding questions of democracy. There are people who do not consider it sufficiently democratic because it differs from the nation states, while others attribute its lack of democracy to the fact that it resembles the states too much. Some people think it is not yet as democratic as its member states, and others believe its lack of democraticness is caused by excessive state control. This is essentially the way the discussion is divided between intergovernmentalists and federalists. However, if we presume that the thesis of the democratic deficit is correct, we still need to determine whose deficit it is, who is responsible for it and who suffers because of it: is this, strictly speaking, a EU question or does it depend on the member states? The failure to clarify these questions leads to complaints that address the wrong audience and criticisms pointing in the wrong direction, as if we were unaware of the nature of our problems and, as logically follows, do not know who should take responsibility for their lack of resolution.

I would like to examine the question from a less common point of view that suggests that the democratic deficit can be primarily attributed to the member states, which have not managed to fulfill the promises of integration. Here I am following Christian Joerges's hypothesis, which suggests paying less attention to the EU's democratic deficit and more to the "structural democratic deficit" of its member states (Joerges 2014). Many

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people have criticized the fact that the process of European integration has led to problems of democratic legitimacy within the nation states, but little has been made of the reality that integration was responding to specific problems of democratic legitimacy that *already existed* within the member states (and largely continue to exist, sometimes even more extensively). The member states on their own were unable to guarantee certain common goods that the citizens of a democratic community have the right to expect. The failure or weakness of supranational institutions when confronting supranational problems may signify that we are not achieving some of the objectives that characterize us as democratic societies. Because Europe is a "demoi-cracy" (Nicolaïdis 2013), which implies that its member states and its common institutions should be so also; our democratic standards would not be satisfied if either of those levels were not democratic, but neither would our standards be met if the interaction between the two levels were not fully democratic.

In contrast with those who believe the EU is not sufficiently democratic because it has been unable to recreate on a European scale the democracy that supposedly functions in its member states, I invite them to consider that the democratic deficit arose because the states have not managed to democratize their interdependence. The configuration of transnational institutions is not the cause but the response, more or less appropriate, to the deficits of the national democracies.

1 Democratic Continuum

There are some responses to the euro crisis where the solutions themselves have turned into problems. The imposition of technocratic governments would be the most pointed example of a profound erosion of democratic legitimacy. I do not mean to assess here whether these proposals were appropriate, but only to call attention to the fact that this criticism, which is generally pertinent, has created an unspoken undercurrent that establishes an unproductive contrast between the responsibilities of the EU and the nation states. Dominant discourse has resorted to a classical antinomy between opaque elites and the democratic peoples, the system against the real world. This excessive simplification of the situation suggests that the people know exactly what should be done and how, while our politicians do not know how to provide solutions and cannot do so; it suggests that what is missing at the European level functions perfectly well at the level of the member states.

This contrast is implicitly sustained in the conception of a Europe with member states that satisfy criteria of democraticness that remain unfulfilled on the European level; the cause of this failure would be the interference of European bureaucracy in the pacific democratic community of the member states. Let us suppose, although it is a lot to presume, that the nations are democratic or that, at the very least, we know how democratic institutions are created and developed within the framework of the nation state. What happens, then, when we talk about institutions beyond nations, such as the European Union or truly international institutions? In these arenas, is it possible and desirable for decisions to be made democratically or must we throw up our hands in the face of the impossibility of such a task? Most importantly, what happens when these arenas beyond the nation state are making increasingly important decisions? Are these transnational institutions responsible for the fact that the states have had to create them to achieve certain ends and have been unable to provide them with a democratic reality that corresponds to their nature?

From the conceptual point of view, I believe that this contraposition between Europe and its member states is not very productive; when we insist upon it, we fail to comprehend that the quality of our democratic life is no longer judged within any one of these planes but through their continuous interaction. This regressive movement toward that which is known was solidified in the German Constitutional Court's decisions on the Maastricht Treaty (1993) and on Lisbon (2009), when they used the national democracy as a model to assess the legitimacy of the European Union, as if they did not appreciate the institutional novelty of the Union. They demanded national control of European integration without taking into account the other side of the coin: achieving and safeguarding democracy now requires institutions that are capable of acting beyond the nation state.

Political practice has made use of this contrast between the EU and its member states to point fingers at a guilty party that is responsible for states not doing well or wanting to do something, while preferring others take the responsibility. Here I am referring to the all too common "blaming" of Brussels, which functions as a very useful excuse in many different ways. Domestic pressures are not always any more fair than international conditioning and sometimes national elites are the ones who make use of sovereignist language to avoid demands of justice that are vindicated in broader contexts than those of their electorates. At the same time, many governments call for international commitments to escape parliamentary oversight

and avoid having to justify themselves internally, thus increasing their political autonomy. On many occasions, there is this "reverse agency" (Bohman 2007, 70) according to which national governments, instead of exercising the control they should, use transnational or international organizations to avoid domestic controls. A good deal of what has been strongly denounced as "executive federalism" is due to the control the bureaucracies of member states have hidden from parliaments by transferring decisions to the EU level, where they do not have to contend with political controls like the ones found in the constitutional system (Oeter 2010). Lastly, we could add to this brief etiology of European discomfort the fact that some of the failures that we attribute to the EU have to do with member state deficiencies when it comes to exercising the options they have to control their governments' participation when making Europe-wide decisions.

One of the most striking deficits of European governance is the limited scrutiny that national parliaments afford European affairs. Studies reveal that only seven member states had floor debates regarding the Commission's *Annual Growth Survey* on national budgets, and only two-thirds of the states discussed the findings at a committee level (Heftler and Wessels 2013). Countries with positive fiscal perspectives debated the report more extensively. From 2011 to 2012, for example, Estonia, Finland, Denmark, Germany, Sweden and Austria had the greatest number of committee meetings ex ante to debate the euro summits and European Council summits. Cyprus, Greece and Ireland are among the states that did not hold debates; in other words, discussion was absent in the states that most needed it.

This situation means that no one should be surprised that identification with the European integration process has weakened, since the EU is accused of failing to meet the democratic demands which, it seems, its member states satisfy perfectly. Both on the right and on the left, there is a general regression toward a safe space, whether in regard to national identity or social protection. Depending on our ideological point of view, we will be more concerned about one issue or the other, but in any case, a return to the old references and a general rejection of any form of political experimentation seems to be imposed.

The logic of integration invites us to think differently and set comfortable contrasts aside. I am proposing that we consider the existence of a democratic continuum, labeling Europe's situation as a "contiguous democracy". In the face of those who speak of a democratic deficit in

common institutions and in contrast to those who maintain that the states have a "democratic disconnect" (Lindseth 2010), which would be the place of democratic and constitutional legitimacy, we would instead talk about a "continuum of legitimacy". From this point of view, if the European Union has some deficit, then the states have it as well, and vice versa, even if it is to a different degree and with different results. The question of EU democratic legitimacy is now inseparable from the legitimacy of the member states; crises and transformations, successes and deficits are shared on both political planes.

It is not possible for national democracies to be flawless and, at the same time, for supranational institutions to be a space of domination. This has both an empirical sense (the confirmation that there are similar successes and problems on all planes, as I will attempt to remind us below) and a normative sense (it is of no use to construct a national democracy while harming the possibilities of democracy at a transnational level, and neither is it useful to elaborate a transnational community on the basis of undermining national democracies).

When one lives in an environment of deep interdependence and even more so if one is immersed in a process of political integration, "democracy in a single country" ends up making democracy in that country nonviable. "It is indeed unlikely in an interdependent world with various new forms of nondemocratic authority that democracy can exist solely at one level, whether national, global or transnational" (Bohman 2007, 11). We are not facing a zero sum game but instead the task of filling a chasm that has opened at our feet: "the policy-making capacities of the Union have not been strengthened nearly as much as capabilities at the level of member states have declined" (Scharpf 1994, 219). That is why it is a mistake to view the strengthening of European or international institutions as a threat to democracy; it is a question of not losing sight of the objective for which such institutions were put in play, pushing their development in agreement with the nature of the issues that need to be managed and understanding the interaction between diverse institutional planes that are part of a complex order, no level of which is now able to function independently of the others.

The *boutade* that affirms that the EU would not be accepted in the EU because it does not fulfill the required democratic standards makes as little sense as affirming that the current member states should be considered unconstitutional for not fulfilling the conditions of organized sovereign statehood. Let us recognize that both levels of government have a problem

with democratic governance: the states *no longer* satisfy our expectations and the Union *does not yet* satisfy them. We will clarify this question when identifying what each of them is in a position to offer. For that, we should allow democracy—its concept and its practices—to articulate greater complexity. If we do not do so, we will be handing more and more types of human interactions over to other political configurations where there is less respect for democratic values.

2 The Inter-democratic Deficit of Member States

My thesis in this regard is that Europe's principal democratic deficit resides within its member states, which placed the process of integration in motion in order to rectify that situation, and that the euro crisis has been aggravated in a specific fashion, primarily because its management has been placed in the hands of intergovernmental logic. I would suggest that we invert our habitual point of view: in the European Union, democracy is difficult, while in the member states, considering the current circumstances of trans-nationalization and interdependence, democracy is *no longer* fully realizable. There are some scholars of European integration who have already suggested something along these lines. According to this less common view, the EU is doing nothing but responding to and augmenting some of the democratic problems that are already in existence within the member states (Erikson and Fossum 2000, 5; Nicolaïdis 2013). The central problem of legitimacy currently resides "in the democratic constitutional state's inadequate adaptation to international social and economic interdependence. The so-called democratic deficit of the EU is thus, first of all, a problem of the nation state, not of the European Union" (Neyer 2011, 170). Therefore, rather than demanding the democratization of the Union (applying known concepts and units of measure), the states would do well to consider Europe as an opportunity to compensate the democratic deficits of the nation states (Joerges 2010, 294).

In the first place, are we not asking the EU for types of democratic legitimacy—transparency, participation, parliamentary control, accountability—that the member states are in fact in no condition to provide? And accusations of bureaucratization, distance and elitism are leveled at the nation states as well. In the US, the bureaucracy in Washington attracts no less hatred and anger than we see focused on the bureaucracy in Brussels. Perhaps we are searching the EU for things that not even the nation states are able to provide: unequivocal identities, homogeneity, a particularly

intense sense of solidarity, unified public opinion, to name a few. If we are to a large extent lacking these credentials within the states, if our societies are fragmented, plural and conflictive, how can we be surprised that there is not a fully fledged European *demos*?

Much of the EU's "democratic deficit" develops out of the idealization of national democracies, as if they enjoyed a compact and unquestionable *demos*, made ideal decisions, had no need for delegation or complexity, enjoyed parliaments that monitored their executives effectively, and so on. All the deficiencies that are attributed to the EU democracy are also present, to a greater or lesser extent, within the democracies that make it up, and even those that enjoy a significant historical reputation.

Let us examine one of those platitudes: criticism of the European Parliament's lack of power compared with the "de-parliamentarization of decisions", which is now a general property of all the European democracies, such as presidentialization or the strengthening of executive power to the detriment of legislative power (Poguntke and Webb 2005). The dominance of the executive over the legislative characterizes all these democracies; it is not a distinctive problem of the EU. Most legislative initiatives arise in the ministries, not in Parliament. Generally, it is not the case that Parliament controls the government; instead, the government makes use of their majority in Parliament to push governmental activity. The idea that Parliament holds a central role has become an exercise in nostalgia that has little to do with the way in which contemporary democracies actually function.

In parliamentary systems, the division of powers between the legislative and executive branches is nothing more than a fiction. What truly happens is that a different dualism is established for each of them, between the government and the majority that supports it, on the one hand, and the opposition, on the other. "What is remarkable about legislatures is not their power to say no to government but rather their reluctance to employ that power" (Norton 1998, 192). The expectation that the parliamentary majority that supports a government will refuse draft legislation is based on an idealized conception of parliamentarianism that is not consistent with the transformation these institutions have undergone in contemporary democratic societies. In current parliamentary systems, "support for a government of one's own becomes the most important task of the governing parliamentary majority" (Patzelt 2000, 23).

I do not mean this to be an empty consolation that suggests that if the European Union is not very democratic, we should focus on how the

member states are much worse. The true European deficit is what I propose calling an "inter-democratic" deficit, which consists of the fact that member states, trapped in a dense network of interdependencies, are not capable of providing their citizens some of the goods without which a democracy stops being one.

Issues that must be decided do not coincide with the scope of the instruments through which the legitimacy and democratic control of those decisions are carried out. A chasm has appeared between open flows and delimited democratic responsibilities. In any case, it is worth keeping sight of the fact that this gap is not exclusive to the European Union but is found in any political system that now experiences the maddening incongruence between political territoriality and the globality of other social systems (especially the economic-financial system). The EU is itself an instrument that can fight this disparity, and we would not gain anything if we, feigning ignorance of this special characteristic, insisted on giving the EU instruments of conventional statehood or judged its democratic legitimacy based on those categories.

Habermas defines the democratic deficit of the nation state in a specific and very plausible way (2011). Nation states, so the argument goes, are no longer in a position to accomplish what their constituencies expect from democratic rule. The erosion of their power is due to both growing interdependence and the dynamics of globalization. Both are compelling reasons to cooperate transnationally and to transfer competences to supranational institutions. As long as this transfer does not damage democratic procedures, it can rescue democratic constitutionalism. The Union represents this potential. The European project can be reconstructed as a rescue of democratic constitutionalism, which is respectful of the democratic credentials of its member states while, at the same time, institutionalizing supranational rule. The peoples of Europe can understand this supranationalism as a democratic requirement because it enables them to accomplish what their nation states are unable to achieve. Once more, Habermas operates within the construct of co-originality in order to reconcile what is usually understood as a dichotomy or antagonism.

Growing interdependence means that member states suffer ever-greater democratic deficits since many of their decisions have extraterritorial effects. This deficit stems from a lack of sufficient reflection about those effects given that the only frame of reference is their self-interest, not the interest of their neighbors. European law and the whole integration process should be understood as a democratization of this phenomenon, as a

compensatory procedure that guarantees that extraterritorial effects are taken into account when member states make decisions. The European process of constitutionalization can be understood to be complementary to the constitutionalism of the nation states, with the goal of reducing or legitimizing negative externalities that are derived from the operations of national political systems; in other words, integrating into their policy considerations that, which in virtue of growing interdependence, is a de facto reality.

The states are increasingly more incapable of democratic action because they cannot include everyone affected by their decisions in the electoral process and, on the flip side, citizens cannot influence the behavior of those who are making decisions in their name (Joerges 2007, 317). This is the principal democratic deficit that the European Union should rectify. Extraterritorial effects and the burdens that one state imposes on others cannot be justified by recourse to domestic democratic procedures and require another type of legitimacy. That is why we can affirm that the fact that national actors keep outside interests in mind may improve the representation of *true* domestic interests, since they are no longer circumscribed by the state arena either. In this sense, we might think that the EU helps strengthen the democratic authority of the member states, to the extent to which it can serve as a measure to manage externalities in an efficient fashion. It is no exaggeration to affirm, from this perspective, that the institution of democracy at the supranational level is the best way of assuring democracy on the national level (Mancini 1998; Morgan 2005), that the European Union is a condition that allows member states to continue being strictly democratic (Neyer 2012, 9).

3 Democratizing Interdependence

Treaties clearly establish that democracy is not only a principle that governs member states but a structural property of the EU itself. According to the Lisbon Treaty, it is clear that the need for the democracy of integration is not entirely filled by the member states. There is a generalized agreement that "a supranational community in which autonomous power is exercised, that determines the life of citizens and the legislation that is valid for them, in a democratic era needs a democratic structure" (Böckenförde 1999, 91). We need to establish what sense of democracy is adequate for a *polity* like the European Union, which should, in my

opinion, be determined in relation to the possibilities of democratizing the interdependence between member states.

The causes for the democratic problem of Europe do not need to be sought in the conduct of Europeans alone or in errors committed by their leaders (which have taken place, without a doubt). Instead, we should look to the difficulty of governing in a context that is partially unprecedented and which, given the transnational interaction among diverse social realms (particularly the economy), has exposed us to a series of effects whose causes lie beyond the decision-making realm of each one separately. States can only manage these situations by sharing their political resources. This volatility affects the member states, the EU and other regions and states in the world. Inevitably, there are tasks that can only be carried out—and then only with extraordinary difficulty—by international organizations such as the International Monetary Fund, the World Bank, the World Trade Organization, but also NATO in the military realm or the International Conferences and Protocols. These institutions, by affecting people's standard of living and conditioning the states' range of possibilities, erode the principle of sovereignty and the concepts of democratic legitimacy or democratic justification that were associated with the nation state.

The first question regarding the democraticness of the EU should be presented comparatively. Any questions about whether the EU is sufficiently democratic, legitimate or efficient should be answered, in the first place, with: compared to what? (Dinan 2012, 33). What is surprising is that, given its complexity, the EU is so democratic. The EU is the most democratic of international organizations, and its methodology is more democratic than any diplomatic procedure (Neyer 2012, 5). This is true in the first place because the European Union is made up of democratic states, which is not the case with certain international organizations where some autocratic regimes are represented. There is no supranational institution that can bear comparison.

The democratic credentials of the Union also reside within its very nature and function. I am not only referencing the way European integration consolidated the transition toward democracy in Germany, Italy, Greece, Portugal, and Spain or recently did so with Central and Eastern European countries (Zielonka 2007). I am also addressing the extent to which European integration has improved the democracies of member states (Schmidt 2006).

However, the question of the democraticness of the Union, in the end, should not be presented in comparison with other political entities or in virtue of their internal functioning, but in relationship to the specific benefits we can expect from it. It is probably true that its political system is more transparent than the national systems (Moravcsik 2002) and the democratic credentials of the states leave a lot to be desired (Mény 2003), but it makes no sense to affirm that the democratic deficit is justified because the EU is based on a confederate agreement whose democratic status depends on the democratic member states (Majone 1999, 21). First off, those who present this hypothesis may do so with resignation or with satisfaction, but they do not offer theoretical ambition or a pragmatic timeline for implementation. The question of EU democracy depends on there being democratic contributions to the task we have assigned it, which I have summarized here in the governance of interdependence. Democracy in Europe must be conceived, carried out and judged based on this objective. Additionally, from this perspective, European norms should be envisaged as a concrete alternative to national regulations that are not sufficiently democratic; specifically, to all regulations that have transnational effects but in which only nations participate.

Europe requires and presupposes at the same time the possibility of carrying out an enormous democratic innovation. That is why, even though I understand the rhetoric that pushes the idea of Europe as an "unfinished democracy" (Eriksen 2009), I believe this way of speaking has a nostalgic bias, as if suggesting that all other democracies are finished, that they have already reached their prime. In the end, "incomplete democracy" is a redundancy or, depending on intention, an expression that blames the EU and indirectly approves of national democracies beyond what seems reasonable. In any case, this way of speaking reveals the yardstick we are using and does not allow us to detach ourselves from it. If we want to make the European Union more democratic, we will need to invent new paradigms, rules and institutions, rather than trying to duplicate national prescriptions.

Extending democratically organized responsibility beyond the spaces that have been manageable until now will depend, in the first place, on adapting democratic ideals to new conditions, in the same way that our ancestors invented the idea of representation that allowed them to transform associative democracy from villages or city states into national democracies. Until the eighteenth century, the dominant idea was that there could only be democracy in local communities. The next democratic

transformation—and the EU is a formidable experiment along these lines—consists of making it compatible with the reality of globalized spaces. In any case, it is a good idea to measure the intensity of our deceptions against the scope of the objectives and consider the value of our failures against the audacity of our ambitions.

I propose approaching things from the opposite point of view and conceiving of Europe as the solution to the crisis of democracy. (This is neither a devout desire nor a provocation, even though it has elements of a prosecutable framework or a counterintuitive proposal.) One of Tocqueville's merits was his ability to invert the dominant vision of the time, in which it seemed that Europe was the model for America. At that time, there were two views of America: the British view, which was shared by the royalists, that viewed the US as a country that was frustrated and so deeply divided that it would fall apart one day, and the tradition of Condorcet, the *Idéologues*, La Fayette and Tocqueville himself, that instead saw America as a foreshadowing of the future of Europe. American federalism seemed to demonstrate that democratic self-government was possible on the continental scale, a true refutation of the prejudice that suggested that the extended territories could only be governed despotically. Therefore, perhaps today we should think that European democracy, instead of being measured by its national democracies, should be conceived of as an experiment through which the model of transnational democracy could become the model that the nation states democracies should see themselves.

If we conceive of the European Union as a project to legitimately govern the interdependencies between post-sovereign states, then it makes sense to talk less about democratizing the EU and more about "Europeanizing democracy" (Schmalz-Bruns 2002). Why not examine whether some aspects of European construction that we do not believe fulfill the criteria of a democratic state—heterogeneity of the *demos*, complex sovereignty, indirect self-determination—could have a certain exemplariness for established democracies? At the same time, the European Union starts us down a very promising path toward understanding and developing democratic legitimacy of transnational organizations and global governance (Bogdandy 2011). If this is the case, then rather than looking at the EU as an institution that should be constituted as a state, we should see the states moving toward the EU. Instead of thinking that it is the states that make Europe, it is Europe that is remaking the states and situating them within the new global horizon.

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PART II

The Complexity of the European Democracy

CHAPTER 4

What Should Be Democratized? The Peculiarity of Democracy in Europe

What are the criteria to judge the democratic quality of the European Union? Who vouches for it? Is it possible to reconcile our democratic criteria with the intense, extensive complexity of a polity such as the European Union?

In order to answer these questions appropriately, it is helpful to begin with the acknowledgement that we do not have an acceptable theory of democracy for anything more complex than nation states. That is why we must develop a political taxonomy that does not sacrifice the complexity of the European Union to the comfort of our well-established concepts. If we do not take into account the EU's principal democratic innovations—which I have summarized here as the pluralization of democratic criteria, the indeterminacy of power and the replacement of territoriality with functional differentiation—it is not possible to criticize its democratic weaknesses. As I will show, this lack of attention to the integration process is what makes certain attempts to exert national control over the democraticity of Communitarian decisions questionable.

1 Lost in Translation

If poetry, as Robert Frost affirmed, is what is lost when a poem is translated to another language, we could say that the difficulty of the European jigsaw puzzle consists of moving from one level to another without losing

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the normative horizon of democracy or sacrificing the specificity of each institutional plane. It does not seem to be an easy task, judging by the amount of invasive extrapolations that are at the heart of our conceptual and pragmatic difficulties when it comes to finding the proper format for democracy in Europe.

It is common practice, both for scientists and laypeople, to begin with the known in order to better understand what is unknown or new. Comparisons generally help us evaluate different realities. But this exercise can end badly, both intellectually and in practice, when the comparison refers to things that have very different natures and, rather than proceeding by analogy, we do so through assimilation or extrapolation. Many of the difficulties that arise when attempting to understand the novelty of the European Union are due precisely to the fact that many of the concepts that are applied to the study of European integration come from disciplines like law or political science that are still basically tied to the conceptual universe of the nation state. In the field of European constitutionalism, it is difficult to avoid a "touch of stateness" (Shaw and Wiener 1998, 65). Sociology is also a child of the nation state, and its analysis has accompanied the emergence and development of modern statehood and social integration. Political philosophy, on the other hand, is not as conditioned by this state tradition (which does not free it from committing other errors, of course), and perhaps because of that, its focus helps enrich European studies with new concepts.

Official exhortations to respect the specific characteristics of the process of European integration have not protected us from these translation errors. Luhmann warned years ago against the error of extending our social categories to the European or global plane (1997, 145), and Weiler sounded an alert about "problems of translation" (1999, 270). In Beck and Grande's opinion, the reason we struggle to understand the European Union is precisely because we analyze it with concepts that stem from a world of states (2004, 10). The "analogical fallacy" (Majone 2009) is the cause of a lot of our theoretical perplexity and our practical inability to democratically govern a political reality that is notably different from the nation state.

An appeal to European "oddity" is not freed from this conceptual framework either; the more the peculiarity of the Union is referenced, the more we are led to believe that the nation state remains the dominant conceptual framework and the end game for our normative expectations. In this way, we fail to take advantage of an opportunity to understand the

extent to which European integration is an answer to the challenges of a more integrated world and not a reaction against those new realities. Affirming that the European Union is a reality *sui generis* affords it the charm of being unclassifiable. The problem is that it does not allow us to escape from the categorical framework of statehood, because what we are saying in the end is that the European Union is not a state. A negative definition of the Union assures the dominance of the categories that have been denied. In fact, our current debates are polarized between those who conceive of the Union as a federal state and those who defend a federation of states; in both cases, statehood continues to be the dominant category. In any case, calling the European Union an institution *sui generis* does not resolve much, because one would have to say whether it is a *sui generis* state or a *sui generis* international institution (Kumm 2011, 115–116).

Many of the misunderstandings related to European integration stem from these "translation errors". The first challenge we have to face is of a cognitive nature and consists of conceiving of European integration without state categories. This is because the debate about democracy in Europe has been polarized by the intergovernmentalists and federalists, among whom there is a background agreement, a tacit template, according to which the nation state is the basic point of reference. Intergovernmentalism does not sufficiently explain the dynamics of European integration, but most transnationalism does nothing but replicate the concepts of the nation state on the European scale. Both perspectives are equally state-centric because they either view member states as the principal protagonists or they aim to have Europe become a state.

The analogy with the nation state is mistaken both if we talk about the nation state as the model to which the Union should aspire or as the reality from which it cannot distance itself. Of course the EU is made up of states, but its nature is incorrectly interpreted whenever it is reduced—conceptually or in practice—to a mere aggregate of states. The fact that the EU is not strictly speaking a state does not mean that it is limited to mediating between states and that it receives its legitimacy from that mediation. The basic error is conceiving of the European Union as the mere projection of the categories of nation states on another scale or as the reorganization of already existing spaces, instead of the configuration of a new space and a different political entity.

The EU represents one more evolution in the movement that goes from territorial forms of differentiation belonging to the nation states toward the functional differentiation of the contemporary world. Its

hybrid structure is connected to this process. The EU has come to the assistance of states that were incapable of fulfilling certain functions, and it has afforded its citizens many opportunities; but this change in scale cannot be carried out without modifying some things to which we were accustomed. In spite of that fact, the European Union is not a substitute or a mere defensive correction or a prosthesis for the states. The functional equivalents are merely analogous; they do not perfectly replace what came before. We will have to modify our democratic expectations in one way or another.

If we conceive of European integration properly, we will be positioned to propose suitable solutions for its obvious weaknesses. We will be able to avoid, first off, the error that stems from an improper categorical translation. For example, a large portion (although not all, of course) of what is called the EU's "democratic deficit" originates precisely in an improper projection of the national model onto the European plane. It is not so much that there are particular deficits in the European Union but that it is impossible to create a political entity in the twenty-first century based on existing nation states following the paradigm of modern democratic statehood. In any case, we must always distinguish democratic weaknesses that need to be corrected from those that arise out of the contrast between the state format of democracy and new transnational spaces.

Those who vindicate constitutional moments or opportunities for democratization of the European Union are implying that they conceive of a Europe "ready for Hegel" (Schwengel 1999, 68), as if the democratic concept and practice of nation states were the only possibilities, examples that should be mimicked in other areas with greater interdependence and complexity.

When it is specifically affirmed, for example, that Europe does not have the conditions to allow a true democracy or to develop effective redistribution, what conditions are we referencing? The conditions of the nation state? Statehood, even if it is only in an implicit and involuntary fashion, continues to be the reference point to which we aspire. One example of unnecessary translation is, for example, bemoaning [as Majone does (2009, 23)] that no "Europeanization of the masses" has taken place in the way it did in the nineteenth century during the processes of constructing the nation states (some of which were, incidentally, very weak).

However, the fact that some proposed solutions are even more unsatisfactory than the problems detected proves that those who are unsatisfied are not always right. The protests point in the right direction—transparency,

participation, democratic control—but they are mistaken when they do not manage to conceive of other forms of legitimacy that could work for spaces and decisions that are no longer in the realm of the nation state, and it is very unlikely that they will return to that known territory. Some of the proposals to improve democracy in the European Union—awarding more power to the European Parliament, restricting state vetoes in the Council of Ministers or making the European Commission responsible before the electorate (we will not address the appropriateness of these proposals here)—do not do justice to the complexity of the EU and reveal that they are truly thinking with state categories and projecting them onto the European level. This translation is not always inconvenient, but it should be carried out thoughtfully, not automatically, respecting the peculiarities of the European structure and the diversity of values that are in play in its delicate balance.

We will only be capable of resolving these political dilemmas if we manage to liberate the categories of social and political thinking from their state format, without ignoring their current persistence. Representative democracy should be reinterpreted to understand, describe and value the European Union. To elaborate a concept of democracy applicable to Europe—a *"Europafähigen Demokratiekonzept"* (Benz 1998, 357)—we have no choice but to "reset the standard", which does not necessarily mean less democratic demand. It implies, fundamentally, not generalizing a specific historic arrangement, such as the national identities constructed in the nineteenth century. In the dominant theories, the criteria to judge the democratic character of the EU are taken, explicitly or implicitly, from the example of the nation states. That means, among other things, losing sight of the contingent and controversial nature of nation states (Wiesner et al. 2011, 11). The type of configuration of the political space that modernity realized with the invention of the state—the typical contrast between state and society, the relationship between identity and territory, the invention of sovereignty—is not the only or the best possibility for the realization of democracy. Given that the process of European integration is developing a structure which goes beyond cooperation between states but which cannot be assimilated to the concept of statehood, the process will allow us to rediscover possible alternatives to the modern state that had previously been marginalized (Diez 1996, 256). Let us explore these possibilities instead of trying to duplicate known realities on another scale.

2 An Exercise in Political Taxonomy: The Nature of the Beast

Many of our differences in opinion about the degree of integration that is desirable have their origin in the original disagreement about how to understand the European Union. For this reason, any philosophical reflection about the future of integration should be preceded by an exercise in *euro-taxonomy*, describing the type of animal we are confronting in the European Union, clarifying as much as possible "the nature of the beast" (Risse-Kappen 1996, 34). To avoid diagnostic errors, we must do justice to the complex array of practices and negotiated regulations that belong to a post-hierarchical polity (Tully 2008; Wiener 2008) whose structures of governance have emerged as answers to functional necessities relative to managing growing social complexity.

The EU's principal complexity—its sometimes contradictory tensions, the tortuous nature of its commitments, multilevel institutionality or whatever we want to call it—stems from the necessity of combining the state realities that comprise it with the challenges of transnational governance. European complexity does not depend as much on the number of actors as on the diverse nature of the experiences and principles that should be attended if we are facing true integration. Stated paradoxically: there is no viable path if we maintain the contrast between the national and the transnational, but it is no easier if we fully abandon that contrast.

This constitutive complexity always brings us face to face with a dilemma: in regards to the *"pouvoir constituant"* [constituting power], it is not possible to escape the consensual demands of a community configured by means of a treaty, while the *"pouvoir constitué"* [constituted power] tends to be decided by the majority, which suggests federality. Consensual obligation assures consensual multinational plurality, while majority rule provides effective decision-making capabilities. One cannot suppress both traits without substantially modifying the character of the European Union, its constitutive complexity. That is why it does not seem likely that the EU will become a federal state in the classic sense, but rather a mixed system with traits that are increasingly federal, but which at the same time maintains the texture of international cooperation. Wallace defines it as "a constitutional system which has some state attributes, but which most—or all—of its constituent governments do not wish to develop into a state, even while expecting it to deliver outcomes which are

hard to envisage outside the framework of an entity which we would recognize as a (federal) state" (Wallace 1994, 272).

The EU is constructed to accommodate the difference presented by a group of institutions that combine intergovernmentalism and supranationalism, which would, in some people's opinion, justify fusing both terms into the expression "intergovernmental supranationalism" (Ludlow 2005). Its multilevel arrangement is composed of intergovernmental, supranational and transnational structures of government. That is why the European Union can be defined as a "synthetic polity" formed by already established constitutional states that are integrated through the law (Fossum and Menéndez 2011, 216). This great innovation can be qualified as pluralist because there is only one constitutional law, but a plurality of institutions where that law can be interpreted and applied with authority.

It is essential to keep this complex plural balance in mind in order to correctly diagnose what is called a democratic deficit and to propose reasonable solutions. The debate generated by this question is largely due to the fact that the assessment of the European Union's type of governance will depend on whether we take as a model the democratic commitment of the classic nation state or the unexplored territory of transnationalism.

Europe has a very complex form of compounded representation that articulates the coexistence of different channels and institutions that vindicate the representation of European citizens (Benz 2003; Lord and Pollak 2010). Basically the structure of EU legitimation proceeds from the generality of the citizens through the European Parliament and from the states represented in the European Council. National parliaments, the directly elected European Parliament, the European Council, the Commission, the organizations of civil society all attempt to represent the citizens in their diverse facets. This makes the European Union a multilayered, polyarchical polity, with fluid and complex institutional balance. The concept of "demoi-cracy" (Nicolaïdis 2003, 2012) is perhaps what expresses the best this dual nature of the European Union.

In any case, there is a concept of democracy that corresponds to the EU's very nature. If the European Union is perceived as something new, this novelty should also be reflected in the democratic demands we make of it. The Lisbon Treaty seems to understand that a network of legitimacy includes both direct and mediated procedures. But the complexity of its institutional balance always leads us to a dilemma, a non-resolved tension—which we may need to protect as an open question, reminding us of

the provisionality and revisability of human constructions. One possible definition of European democracy is articulated by the will of state representatives, who add up the democratic will of their respective electorates. The second is the idea of a European democracy as a direct expression of European citizens. The ambiguous nature of the European Union, its hybrid position in the area between a federal state and a federation of states, its precarious constitutional balance, should be considered a strength and not a weakness, to the extent to which it leaves open the question of how to articulate its political unity while maintaining its diversity.

The European Union is an interesting case study of democratic complexity because it showcases all the richness and difficulty of governing a complex institutional network democratically. The fact that it is a compound polity makes us develop a democratic theory that does not begin with the axiom of homogeneity but which articulates distinguishing and common characteristics as part of all polities. They all attempt, as the experts have posited, to "moderate heterogeneity by renouncing hegemony" (Franzius and Jauss 2012, 46). In this sense, the EU is more constricted than the nation states, precisely because of the plural structure of its government, divided between institutions, levels and functions that limit each other.

Abromeit has summarized this complexity with eight categories: (1) Various levels (community, member states, substate units); (2) Various dimensions (territorial, functional); (3) Formal, complex decision-making (institutionalized); (4) Informal, complex decision-making; (5) Actors with various degrees of "Europeanization"; (6) Political arenas with diverse degrees of "Europeanization"; (7) Policies that add various numbers of participants; and (8) Those following different decision-making rules (Abromeit 1998). Those who are concerned with how to articulate this diversity normatively should begin by renouncing the imposition of a unique principle of legitimation. "The production of democratic legitimacy is such a complex task that it cannot be carried out without a division of labor" (Lübbe-Wolff 2010, 280). In such a dense polity, the legitimations are more complex, and it is more difficult to articulate democratic responsibility.

We can illustrate this diversity of institutions, planes, and ideological elements in the following chart (inspired by Achim Hürrelmann 2007; Middelaar 2012). In it, we can visualize, on the federal, technical, and intergovernmental level, the institutions that are considered central in

accordance with the dominant vision of the EU, what types of legitimation, government, and idea of the people corresponds to them, as well as dominant ideological elements, depending on one's conception of Europe. Without having the neutral logic of a puzzle, this chart attempts to highlight the coherence of certain ideological options on the basis of what is expected of the European Union as well as the need to balance all the possibilities that are in play.

	Federal level	*Technical level*	*Intergovernmental level*
Democratic principle	Direct representation	Deliberative	Indirect representation
Central institution	European Parliament	European Commission/ European Court of Justice	European Council/ Member States
Type of legitimation	Analogical	Complementary	Derived
Type of government	Majoritarian	Deliberative	Consociational
Demos	The People	Stakeholders	The Peoples
Political logic	Federalism	Functionalism	Con-federalism
Ideological elements	Direct democracy	Aristocracy	Representative democracy
Ideology	Republican	Technocratic	Liberal
Civic horizon	The Citizens' Europe	The Experts' Europe	The States' Europe
Ideological moment	Madisonian	Saint-Simonian	Rousseauian

The democracy that is possible under these conditions is very similar to the American system with its various levels, checks and balances, pluralism of interests, diverse public opinion and scenarios. The institutional equilibrium of the EU is closer to the concepts of "mixed government" of the first modernity (pre-Hobbesian republicanism) than to the later idea of the division of powers (Majone 2005). Although the American constitution is based on the functional separation of powers, limited by the mechanisms of checks and balances, and the EU is characterized by shared power, the two models have many similarities. In this sense, European democracy is somewhat separated from the Westphalian state model. In both cases, small countries are over-represented: there is one commissioner on the Commission per state, and the weight of the votes in the European Council does not depend on population, while in the American Senate,

there are two senators per state, regardless of its size and inhabitants. This means that in both cases, decisions need very broad majorities: a qualified majority for the Council and a three-fifth majority in the American Senate. This has to do with the fact that federal structures favor the over-representation of small territorial units. What is called the *"Connecticut Compromise"* that was achieved in the Philadelphia Convention awarded greater representative power to the small state which made the *ratio* of over-representation of the least populated state (Wyoming) versus the most populated (California) 70 to 1. In Austria it is 1.5 to 1 and in Switzerland, 40 to 1. The disproportion in the US is greater than in Brazil, Argentina or Russia (Dahl 2001, 50).

The consequence is that policies cannot be adopted unless they are supported by a great number of political interests. The institutional system of checks and balances implies sensitivity toward national interests. The suspension of sovereignty is compensated by the fact that the risk of harming the interests of smaller countries is minimized. The only institutions that have made progress in the adoption of common policies are those devised to be managed by consensus. This has surely presented us with more than a few problems of indecision and obstruction. That is why in the last years some elements that are more in fitting with state homogeneity than interstate balance have been introduced. These range from majoritarian decision-making procedures that note the size of the respective populations to direct representation in the elections of the European Parliament. It is probably necessary to move forward in that majoritarian and federalizing direction, but without forgetting that the EU, as a complex entity, does not allow a complete imposition of this logic over the idea of inter-institutional balance, as if we were facing a state polity and not a relatively novel entity that must reconcile, paradoxically enough, state and post-state realities.

3 The Democratic Innovation of the European Union

The European Union contains elements that distinguish it from the nation state, even if these characteristics are more or less recognizable in the history of the nation state. It would make sense to group them according to three common characteristics. In the first place, the EU intensifies and complicates the diversity of the criteria of democraticity that are already

present in the nation state. In the second place, the flip side of this pluralism is the indeterminacy of power, which also means an intensification of the democratic process. And in the third place, the European Union should understand itself as a response to the process of functional differentiation and globalization that weakens forms of territorial power in such a way that it makes it possible to recuperate spaces of political configuration. Therefore, these three properties allow us to understand that the process of integration, far from necessarily condemning us to a reduction of our democratic expectations, afford possibilities of making progress toward democratization.

(a) The Pluralization of Democratic Principles

Democracies are controlled by a plurality of principles that are not always easily compatible. Democratic progress does not simplify this network of principles but, quite the opposite, often makes things more complex. This suggests that the task of balancing them appropriately is the principal challenge we must face. In the face of the monism of some of its clumsier early versions, democratic renovation today passes through the correct combination of the diverse components of a complex democracy: representation, effectiveness, delegation, election, participation, advice, balance, responsibility, none of which exhaust—particularly under the current conditions of complexity—all the dimensions of the democratic process.

As with Aristotle's "being", democracy is described in a lot of different ways and being closer, more immediate, more direct or more popular does not always make it more democratic. There are institutions that do not have procedures for majority decisions or whose members are not elected (or only indirectly elected), like courts, central banks or certain regulatory institutions that are not ruled by the logic of popular decisions or representativity, but by other criteria such as competence or independence. No one can conceive of the correct functioning of a democracy without these institutions that have very indirect democraticity.

This pluralization of democratic ways of thinking is also clearly seen in the realm of territoriality, especially when we examine the function of compound polities such as federal states or the European Union. Most federal states are diverse institutions that mix majoritarian, countermajoritarian and non-majoritarian techniques in an effort to balance unity and diversity. We see this, for example, in the election of the president, a constitutional tribunal, a senate or a central bank. The EU does not do

anything very different, with the federal element more restricted because of the limitation of competition on this level.

Democracy in the European Union (and in other types of polities) is realized through a plurality of strategies and not exclusively through popularity. Some have summarized the European plurality of legitimation principles around four vectors: indirect, parliamentarian, technocratic and procedural (Lord and Magnette 2004, 188). None of these can be taken alone, ignoring everything else. To state it graphically, one could affirm that the European Union combines classic elements of the Aristocracy (the Commission), direct democracy (the European Parliament) and indirect democracy (the Council, in other words, the member states). Improving European democracy must mean rebalancing these criteria according to the type of matters that are in play.

(b) Indeterminate Power

One of the novelties that most stands out and has the greatest democratic significance has to do with something that, depending on one's point of view, may be considered a mere difficulty. I am referring to the principle that the more advanced a system and the more democratic its political culture, the more indeterminate its ultimate definition of power, supremacy, identification of responsibility, the centrality that makes everything intelligible, the originating source of authority or whatever we want to call it. This has been the motive for multiple discussions that have addressed the dispute over supranational institutions' supremacy, constitutional pluralism or control of democraticity.

From the point of view of its political ontology, the EU is a polity without a center, a "political community with different levels of aggregation" (Schmitter 2001). European institutions are strongly interconnected but lack a clear hierarchical order. The system combines supranational and intergovernmental principles in a multilevel and pluralist structure, more consensual and cooperative than antagonistic and hierarchical. There is not an "Archimedian point" from which all legal and political authority unfolds (Schütze 2012, 211). The EU presents a defiant change of paradigm in the face of legal monism and the hierarchical logic that stems from the state-centric tradition. European practices of governance are "heterarchical"; authority is not centralized or decentralized but shared (Neyer 2003, 689). That is the reason for the profusion of expressions like "governing without government" (Rosenau et al. 1969), "law beyond the

state" (Volcansek, Neyer) or "constitutionalization of international politics" (Stone). These phrases attempt to identify a model of governance that relativizes the monopoly of the representation of one's own interests in the context of complex multi-level structures within transnational networks that overlap without forming hierarchical structures that are similar to state structures.

This reality is at the heart of the complaints about such apparently diverse matters as the EU's lack of intelligibility, lack of transparency, difficult accountability or weak leadership. In general, politics in compound systems, with separation of powers, has little transparency, low decision making capacity and uncertain accountability. A plurality of decision-making centers tends to lead to disperse public attention. It is hard to not repay shared power with a certain degree of irresponsibility. One must also consider the problem "of many hands" (Bovens 1998, 45; Papadopoulos 2007, 473) and the disadvantages that this tends to create when it comes to responsibility.

Behind those deficits, there are undoubtedly shortcomings that should be corrected, but also attributes that, from a certain point of view, can even be considered democratic triumphs. Let us also consider the positive side of complexity, which is a state of affairs that is more republican than democratic, to the extent to which it makes domination difficult when it, for example, complicates the formation of permanent hegemonic coalitions (Fabbrini 2007, 197). "The dispersion of governance across multiple jurisdictions is both more efficient than, and normatively superior to, central state monopoly", among other things because "it can better reflect the heterogeneity of preferences among citizens" (Marks and Hooghe 2004, 16).

Behind these deficits, there are without a doubt shortcomings that should be corrected, but also attributes that, from a certain point of view, could even be considered democratic successes. It is true that "the lack of transparency of the European '*Politikverflechtung*' ['joint decision trap'] increases the impossibility of sanctioning any single person or party for a positive or negative performance" (Höreth 1998, 17). However, perhaps we are judging this question from the matrix of the nation state when we should, instead, take advantage of this circumstance to consider a more complex and less personal idea of responsibility, ways of making shared power intelligible and responsible (Innerarity 2012).

The lack of centrality and the multiplicity of levels in the EU matches the diffuse leadership, scant polarization, and not very well-understood

greater collegiality. There are those who interpret this as a political deficit, but it can also be seen as an advanced stage in the evolution of politics, when the personalization of sovereign power has been left behind. "The problem is not so much that it is impossible to provide a clear picture of the European types of policy-making, it is rather that it is impossible to trace those processes to a set of identifiable authors and thus to deal with the 'intelligibility problem,' whose democratic figure is the 'accountability' problem" (Leca 2009). Leadership is lacking not so much because of the personality of European leaders, but because the present set of institutions, rules and conventions do not allow for such a role. In this sense, Europe is a good example of this "empty place" that, according to Lefort, defines the locus of power in democratic societies, a space still too monarchically occupied today, even if it is only because of the nostalgia for hierarchies, personified leaderships, foundational moments, retained sovereignties or aspirations to assure *"Kompetenz-Kompetenz"*. In the EU, there is no central power that must be conquered in a competition between political parties, and policies are not determined by a majoritarian government, but by negotiations between the Council, Parliament and the Commission. In this context, the language of state democratic politics—government and opposition, competition among parties, responsibility to voters—would be completely unintelligible (Majone 2009, 33).

Republican inspired constitutional pluralism can help us understand the institutional equilibrium of the EU, the coexistence of EU law and state constitutions and international law in a non-hierarchical fashion (Zetterquist 2012). We could say it is better to replace constitutional metaphysics with pragmatic metaphysics. Constitutional practice can be more truthful than the traditional hierarchical model (Halberstam 2012, 86). Constitutional pluralists like Kumm and Maduro expand this idea to the extent of believing that the question of an ultimate constitutional authority remains open in EU law (Kumm 2002; Maduro 2003, 2012). From this point of view, the "heterarchy"—understood as the network of elements in which each one maintains the same horizontal position of power and authority—is considered superior to the hierarchy as a normative ideal in circumstances of competing constitutional claims. Against the classic idea of "supremacy", it would be a question of thinking about the relationship between legal systems in a pluralist, rather than monist mode, interactive rather than hierarchical (MacCormick 1995, 265), which means moving toward a more modest and constrained conception of

primacy, as was suggested, for example, by the Spanish Constitutional Court in its ruling against the Constitutional Treaty (DTC 1/2004).

There is a long discussion about how the principle of supremacy should be understood in EU law or, conversely, how limits to the state delegation of sovereignty should be assured. For some people, this means that "there is no nucleus of sovereignty that Member States can invoke, as such, against the Community" (Lenaerts 1990, 220), which would always keep an argument of subordination or a *Kompetenz-Kompetenz* in reserve. In recent years, this conditioning has become more settled, which we can see clearly, in the first place, in certain rulings of the states' Constitutional Courts. It is also true that this holding back would not in any case be rigid but a "resistance norm" that would function as a "soft limit" (Young 2000, 1594). It is not true that the constitutional courts have adopted a position contrary to the idea of the primacy of Communitarian law. Generally, they have adopted an intermediate position, trying to afford the best comprehension of rival principles that are in play (Kumm 2005). Another recent example of the national conditioning of European politics is the recent introduction of national parliaments into European governance with the Lisbon Treaty. We should not interpret this aspiration as the attempt to return to a Europe controlled by the states; it is better understood as the rejection of the conception of "an autonomous and hierarchical legal order", but not as a repositioning of a hierarchical relationship of another kind (Maduro 1998, 8). As can be verified, the question of ultimate sovereignty is not presentable in the EU in its traditional format, with hierarchical security, but through a series of reservations that make it "weak" or contested, in other words, not very sovereign.

For this reason, from the perspective of constitutional pluralism, Communitarian primacy does not establish a type of supra-state sovereignty but only regulates the interaction between the levels that constitute the institutional framework of the European Union. In any case, we can say that either the EU has not found a solution to the question about who has the competence to determine to whom competence corresponds (Schilling 1996; Weiler and Haltern 1996) or else it has stopped considering it relevant. This would be its principal innovation: the possibility of constituting a political community by setting this question aside.

Let us examine the matter anew, from a practical perspective. The EU's peculiar structure—its complex rounds of decision making and implementation—is what makes the power appear weak and indecisive. Without a doubt, there are many aspects of it that can be improved, but we cannot

lose sight of the fact that when the formal instruments of power are weak, assuring agreement is an essential part of their decision-making. As I have tried to show previously, it may be that we are judging the political quality of the European Union based on categories that come from the nation state, and we classify its peculiar form of governance as weak because we are too accustomed to perceiving any example of shared or semi-sovereign decision making in that way. Good proof of this is the fact that the emphasis on state monopoly of violence underestimates the effectiveness of non-coercive procedures of governance (Mitchell 1996; Zürn 2005).

We can find in the European complex a manifestation of this "decentering of democracies" with which Pierre Rosanvallon (2008) indicates the pluralization of ancient popular will—personified in the king or represented in parliament, ritualized in the moment of elections—toward a deconcentration of sovereignty that is diversified in moments, instances, levels, and functions. "In a reasonably effective democracy featuring an ambiguous or unsettled degree of centralization, the norm is fluctuation. Depending on the polity, the issue, and the time, the actors propelling change may include courts, corporations, elected leaders, and appointed officials of central or constituent states, and the electorate itself. The intricate interplay of these actors… tends to generate oscillations between the concentration of power in the centre and the reassertion of the individual states in each system" (Donahue and Pollack 2001, 117). Again, the consolidation of European democracy should not be considered with the pathos from which nation states emerged, which visualized the sovereign people without divisions; our objective would focus more on the less heroic task of guaranteeing the level of complexity and the political culture of limitation, mutualization and cooperation between diverse levels and actors.

(c) Functional Differentiation and Territoriality

As Luhmann noted, the peculiarity of the European Union and its evolution should be explained by virtue of its relationship with the environment, rather than appealing to the memory of historical events (Luhmann 1994). In this sense, its more radical definition would understand it as an answer to the progressive replacement of territoriality for the functional differentiation that characterizes the contemporary world. The process of integration is the answer to a series of very profound social changes that are summarized in the fact that territorial forms of differentiation are

being progressively replaced by functionally differentiated structures. The EU must be understood as a transformative structure that has played a central role in the process of reducing the territorial forms of the nation state, not as a reaction to this evolution.

What does this evolution entail? We can track it through its political effects. Territorial forms have been a stabilizing element since early modernity, but they increasingly act more as a limitation for the type of operations we would like to realize. Today, territorial structures of the organization of power are not capable of confronting certain dynamics that have very little to do with territoriality. Many of the current world's problems with ungovernability are due to contrasts between functional systems of law and politics, which still typically display a strong territorial implication, and other systems like the economy, the environment, communications or science that have a weak relationship with physical spaces. This is the context in which the EU is developing structures of governance that try to overcome the discrepancy between social forces that have pushed Europeanization and an underdeveloped institutional structure that is incapable of managing the demands with which it is presented. In this sense, it is worth noting that the EU, through supranational politics, represents the attempt to recuperate the uneven expansion of functional subsystems for politics (Jachtenfuchs and Kohler-Koch 1996).

In any case, it would be a categorical error to limit ourselves to conceiving of the EU as a mere reproduction of the state on a larger scale, thus ignoring its institutional innovation. This is the approach taken by Habermas, whose theoretical ambition on this issue is, in my judgment, minimal: he simply conceives of it as a polity that is attempting to protect the democratic legacy of the nation states on the European level (Habermas 1998). This is equivalent to considering the EU as a replacement for the democracy of the nation state, a mere extension or a negative reaction to the undesirable side effects of globalization. But the role of the EU's political system is distinct from the role carried out by states, precisely to the extent that it replaces territorial logic with functional logic. Decisions adopted within the state arena were oriented toward problems of a territorial nature, while EU decisions have as an end goal the reduction of negative externalities, asymmetries between the level of globalization of the different systems and the phenomena of contagion that emerge among functionally differentiated systems (principally between economic system and other systems).

In an interconnected world, and particularly in an integrated Europe, one's decisions have ever more effects beyond their limits. The EU's principal mandate is precisely to regulate the negative externalities that result from interdependence. If we take this task as the common theme of its legitimacy, we can see that the EU is neither promoting nor protecting us from globalization. It is a stabilizing hybrid structure that would make legal regulation possible, as well as the adoption of decisions in accordance with the structural realities of a progressively global world and within unlinked spaces. Therefore, instead of considering the EU as a *sui generis* entity, it might be more appropriate to understand it as a new solution for an old problem (Lindseth 1999, 630). In this sense, we see it is nothing but the configuration of a complex democracy in social and political contexts that are very different from the context in which our current democratic systems were created.

4 Who Guarantees Democracy in the European Union?

For some years now, there has been increased resistance to recognizing any democratic or constitutional originality in European governance beyond the mere national "delegation". Certain constitutional courts, when it comes to reviewing the constitutionality of the agreements in the last decade of the twentieth century and the first decade of the twenty-first, have claimed maximum authority for themselves when it comes to delimiting transfers of sovereignty toward the European Union (especially in Germany, Denmark and the Czech Republic). There are those who soften this goal by affirming that it is presented once they have declared their decision in favor of European integration (Lindseth 2010, 135). The problem is whether this profession of faith in Europe is compatible with a reservation that contradicts it conceptually and in practice.

The theme is once again presenting itself with all its historical significance in the German Constitutional Court's current deliberations over whether the European Central Bank's program of buying debt is in agreement with its Constitution. It is clear that this debate is airing a question that is more crucial than the legality of this particular intervention. The deeper question is not whether these operations involve surreptitious debt-pooling in such a way that German contributors would be paying other people's debts; neither is it attempting to determine whether the

specific rescue measures contradict the Lisbon Treaty's express prohibition (the famous "no bail-out" clause that prevents financial co-responsibility) or whether the operations were sufficient given the exceptional nature of the crisis (Sester 2013). What is being determined in the end is the form of democracy that is appropriate for the European Union, whether we need to view it and configure it along the lines of the nation state and who has legitimacy to guarantee that everything is being done according to democratic criteria.

The precedents in this regard are not very encouraging. The German Constitutional court, from its ruling on the Treaty of Maastricht through its ruling on the Treaty of Lisbon, has been developing a doctrine that destabilizes the double legitimacy of the European Union in favor of the states. In these rulings, the judges propose national control over the process of integration to avoid any erosion of the German democratic system. The principle that sustains the ruling is that the nation state is "the primary political realm in which community is achieved" (BVerfG, Fn. 301). This doctrine has been expanding, and there are similar rulings on the part of Poland, the Czech Republic, Portugal and Estonia.

This approach is *conceptually* mistaken, but it is also mistaken from a *normative* and *practical* point of view. It does not sufficiently understand the evolution of the context in which democratic ideals are developed today, it is not consistent with the values that should rule relationships between political actors and it puts into motion a dynamic that ends up being unsustainable.

In the first place, arguing in this way means, in the conceptual arena, enthroning democracy that has been configured around nation states as the only possible or the exemplary form of democratic cohabitation, but it does not offer any indication about how we should think about the transformations of democracy from the moment in which the states replace or complement their sovereign autarchy with integrative techniques. Even while recognizing that the German Constitution is open to integration, the *Bundesverfassungsgericht* considers self-determination in the exclusive context of sovereign statehood; it believes national democracy to be the standard of assessment for the democraticity of the European Union. This implies a descriptive intention, the stating of a fact, but also, indirectly, a performative assessment: *there cannot be* any democracy beyond the realm of the state. In the end, the judges are implying that there can only be democracy with a national *demos*, which is far from being self-evident. They presuppose that democracy is only possible under the model of a

parliamentary democracy associated with a sovereign nation state and that only in the national space do we achieve the type of confidence and solidarity that are required to sustain a democratic polity.

We must abandon the idea that democracy should involve the same requirements on all levels. It is not that there is more or less democracy on a local or transnational level but that there are different criteria to assess democraticity depending on the institutional level at which we find ourselves. "The issue about Europe ought not then to be whether it is totally or completely democratic, but whether it is adequately so given the kind of entity we take it to be" (MacCormick 1997, 345). Either we think about democratic demands in accordance with the specificity of the European Union, or we will transfer categories incorrectly from one level to a level at which they are not applicable without a profound transformation.

From the normative and practical point of view, the German Constitutional Court's demands are contradictory since, on the one hand, their perspective is too internal, while on the other, they condition the European process too much. This contradiction stems from the fact that "the German Court presents itself as a guarantor of the universal values of democracy rather than as a guarantor of German particularism" (Weiler 1995, 222). In their ruling on the Treaty of Maastricht, it is established that foreign sovereign agents cannot claim superior validity over democratically legitimated (in other words, nationally legitimated) law, but as Joerges argues: What if we turn the argument around? We would then have the principle that constitutional states cannot unilaterally impose burdens on their neighbors (Joerges 1996). By assuming the function of controlling the democraticity of this new reality that is configured in the process of integration, Germany presents unilateral demands on its European colleagues, demands that are formulated as if there were a perspective that would allow Germany to consider itself—even if only at the moment of judging constitutionality—outside of the European Union. Let us imagine the cascade effect and the resulting obstruction to the functioning of common institutions since all the states would feel the same obligation to attest to and condition the democraticity of Communitarian decisions. The European Union is inconceivable and ungovernable as a juxtaposition of sovereignties.

The rulings seem to also ignore what practical necessities respond to integration, what possibilities integration has created and the extent to which Germany—like the other member states—depends upon the

European space of action. It gives the impression that we are facing a zero sum game between different legitimacies, as if there had not been an increase in spaces and possibilities of action for all the states because of transnational integration. The German Constitutional Court presents, in short, the question of democracy in a unilateral fashion in favor of national control, while it ignores the other side of the coin: that the existence of institutions capable of acting beyond the nation state matches democratic necessity.

Many of the tasks assigned to the constitutional state cannot be realized except in a transnational fashion. No state alone can guarantee on the European level the domestic market, free competition, monetary stability, financial regulation or the protection of the environment. The institutions we have designed to guarantee these common European goods should not be understood as a hetero-determination but as instruments of expanded self-determination, for a realm of action that states cannot achieve, on their own or through mere aggregation. The future of the EU depends on how we resolve the question of adequate spatial measurements for socially relevant policies.

The process of integration has given member states some spaces of action which evaded them or which they would not have reached on their own. These spaces are not mere supplements or prostheses that are given to "complete" states, leaving their constitutionality intact and viewing the institutions as "agents of member states" (as Lindseth, for example, suggests: 2010, 227). There is often an excessively "hydraulic" idea of the system by which states recuperate on the European level that which they cannot provide on the national level. The conception according to which European integration would be a tension between national self-government and the functional delegation at the European level is too static. In the political theory of European integration, there is a lot of compensatory functionalism (the European Union as the corrector of state incapability) and little theorization about its nascent and transformative side. It is true that understanding European governance as a corrective for functional limitations of member states protects us from the error of interpreting it as a mere successor of the states, but it also prevents us from realizing its innovative significance.

That is why the construction of rights and responsibilities of the arenas generated by integration cannot be carried out by the vigilance of their constitutional courts. What sense does it make to leave the determination of the democraticity of European integration in the hands of a state (or all

the states) that has accepted the idea of integration precisely because it recognizes that it is not capable of insuring the supply of certain democratic goods to its citizens on its own? Future development of democracy in the European Union cannot be guaranteed by allowing one of its member states to control constitutionality, not even from the space of intergovernmentality constituted by all the states in their function as "guarantors of treaties". Are we confronting the option of understanding the discrepancy between the European Court of Justice and the national courts as a "pluralist dialogue in which there is no praetor" (Beck 2005) or as the states' warning about the inescapable limits of its delegation (Lindseth 2010)? My answer to this dilemma is that, since the European Union's nature is as a complex and composed polity, its democraticity must be viewed in an original manner in the balance between what is intergovernmental and transnational. This balance should now be reclaimed with greater emphasis on common institutions.

It is possibly a bit exaggerated to think that the attempt to assure *Kompetenz-Kompetenz* matches a conception of democracy based on Carl Schmitt (Weiler 1995, 222), but it certainly does not seem to sufficiently recall the recent transformations of democratic politics especially in areas of special interdependence, such as Europe. These transformations are demanding that we elaborate a post-sovereign idea of the control of constitutionality, of Communitarian interest and of democratic legitimacy. Instead of conceiving of sovereignty as state property, we should view it as an ability for political action and, therefore, a pragmatic problem. We must replace the question of state or interstate sovereignty with "the real possibilities of human self-determination" (Neumann 1980, 57). If we were capable of thinking and acting beyond the idea of sovereignty as an originary possession with a focus on foundationism, then sovereignty, instead of being viewed as a state attribute, would begin to reference a property of the people in their collective state, their capacity for concerted action.

It would not only be a question of protecting spaces of individual autonomy (as it tends to be understood from a liberal perspective), but of designing institutions from the perspective of a republic in order to create spaces of influence where state politics often bumped up against the limits of their power. Member states acquire power in exchange for sovereignty; they give up the ability to act in favor of a frequently empty title. No matter how paradoxical it may seem, popular sovereignty is only realizable within a horizon of shared sovereignty, where what makes the exercise of power possible limits it at the same time.

The question is not, then, to determine who holds sovereignty and to take part in the debate confronting state sovereignists against federal sovereignists (who tend to be in agreement on the traditional framework of the argument and only differ in the question of where sovereignty resides). The much more relevant question is to determine whether the European Union does or does not constitute an adequate framework to achieve certain objectives of political configuration that the people have the right to expect. European integration is precisely a consequence of the confirmation that state frameworks are often insufficient for the provision and securing of certain public goods. If it is true that the fragmentation of normative power has given way to a complex regulatory system within the states, in such a way that no singular institution can "control" the totality of political processes (Lindseth 2010, 23), this fragmentation is even more open in the case of the EU. This has negative consequences (deadlock regarding residual sovereignty in the Constitutional Courts) and positive ones (the states' willingness to consider the effects of its decisions on other states and, therefore, to not claim control over the democraticity of the European Union).

The structure of Europe should respect the political peculiarity of the European Union, its logic, institutional novelty and complexity. Europe cannot be reduced to simple alternatives: states or integration, the supranational against the intergovernmental, what is common or what is individual, and so on. But there is no doubt that responding adequately to the current challenges requires granting greater protagonism to common institutions of deliberation rather than institutions of aggregation.

5 A Madisonian Moment for Europe: XXL Democracy

When it comes to democratic demands, "does size matter?" (Dahl and Tufte 1973). At the beginning, yes, and in fact democracy arose in small communities, with almost no mediation or social complexity. There is a very long tradition that begins with the Aristotelian idea that democracy requires environments where mutual knowledge is assured through the Schumpeter assumption that the success of a democracy depends on having a realm for political decisions that does not extend very far (1942). The idea that there is no democracy without *demos,* so recurrent in

European debates, also survives by accepting that the connection between democracy and community is accredited and unmodifiable.

This prejudice in favor of immediacy can be questioned for social and historical reasons. It is worth noting, in the first place, that this is already not at all the reality of our democratic systems, which are instead characterized by extensiveness. But there is a more radical argument against the charm of micro-politics: its lack of historic awareness, which is fundamentally an experience of the contingency of our political successes. The question about the ideal size of a society in order to be democratically configured has not always received the same response. Ideas about the acceptable size of a political community change with the passing of time and do so as a response to real problems and necessities. Therefore, it may be that we are now in a third configuration of democracy, after the democracy of cities and the democracy of states, facing the challenge of conceiving of it and achieving it in a post-state or transnational format. In this context, the EU appears as a test of singular historic significance, to the extent that European democracy allows other experiments that can *no longer* be realized (on the national level) or that cannot *yet* be realized (on the global level).

Europe is the most appropriate space to revise the conventional wisdom that democracy is only realizable within the framework of the nation state. We should reformulate the very principles of democracy so they fit post-national and global conditions, in the same way they took on a representative form when democracy was extended to the masses in the realm of the nation states. I do not believe it is going too far to affirm that we find ourselves at a Madisonian moment for democracy in Europe, but where is our Madison or Hamilton to replace Hobbes, Rousseau, Schmitt and Kelsen?

Let us consider for a moment the argumentative thread of the debate that took place in 1787 and 1788 about the ratification of the American Constitution. In that debate, articulated in the *Federalist Papers,* there were many arguments that are currently in play again when we discuss expanding democracy to transnational spaces, especially in the EU (Jörke 2009). It was a struggle between two principles: *homogeneous democracy* and *republican distance*. Hamilton's debate against Jefferson is the confrontation between the federalism of a strong government with a large delegation and a suspicion of large spaces and cities stemming from the democratic idealization of rural life. With all the reservations that one must introduce, it is worth establishing a parallelism between the

arguments that were asserted regarding the extension of the American Constitution to the thirteen American colonies and the political institutionalization of a Europe that includes twenty-eight nation states. This is one of the reasons why it does not seem exaggerated to affirm that there are more similarities than differences between the political system in the US and the EU (Fabbrini 2007; Nicolaïdis and Howse 2001; Goldsworthy 2003).

The principle of homogeneous democracy was supported by an honorable tradition: the tradition of self-government that is only possible in a territory that is small and homogeneous enough that citizens can attend to their civic obligations. When Rousseau, Montesquieu and the Antifederalists defended the political advantage of small spaces, they were not thinking of the nation state, but of city states or republics like Venice and Geneva.

All of them assert the idea that great spaces involve a significant distance between governments and the governed, making democratic control difficult. Rousseau affirms it emphatically: "practically all small states, whether they are republics or monarchies, prosper to the extent that they are small, when all citizens know and watch over each other; when the leaders can themselves see the evil that is being done and the good they must do; when their orders are carried out before them. All large states end up being crushed by their own weight" (Rousseau 1969, 970–971).

The core of the argument in favor of small-size democracy is that effective citizenry and republican freedom are difficult in large spaces; that is why complex states tend toward monarchy and even despotism. However, let us think for a moment about what it would mean to defend this argument today: it would imply negating the democratic possibilities of the United States and the majority of the European states, whose size and population go far beyond what Rousseau and the antifederalists imagined as the size of republican government. Without trying to force the comparison, we could wonder: why is popular sovereignty possible in the nation state and not in a broader or denser and more fragmented public space? Rousseau and the antifederalists would have rejected both possibilities. Had they been questioned about a political community's ideal size, Rousseau would have pointed to Geneva, the antifederalists to Pennsylvania.

The most important lesson we can draw from the arbitrariness of these assumptions is that in political formats there is a similar contingency to many of our political successes. Optimal political space is not a fixed data point that might correspond to a time of city-states or, later, to the nation

state, not only because states come in all sizes, but because it is a question of contingent and variable historic magnitude, subject to spatial-temporal transformations promoted by technological and social development.

But Madison's argument is not quantitative, but qualitative; his defense of large sizes is, deep down, a defense of republican distance: it is easier to impose a majority in reduced political spaces than on the large scale (Hamilton et al. 1972 [1787], 42). That is why one can claim with good reason, both historical and theoretical, that expansion and heterogeneity are better protections against internal tyranny. The supposed advantages of a small republic are revealed to be inconveniences that threaten freedom. Only the United States's expanded community can neutralize the danger of the tyranny of the majority and of corrupt politics. "The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens" (1972, 135). The *Federalist Papers* contain this and other similar observations, such that in extended systems, a change in majorities is more likely and knowing that one may be in the minority in the future promotes tolerance and the disposition to compromise. This is a conceptual change, a true democratic innovation: a republic is not defined by self-government and immediate participation but by being a representative system with the reciprocal neutralization of interest groups. It is more a system of controlling power than of immediate self-government by the people. What was evidence for Machiavelli, Montesquieu, or Rousseau that a democracy could only exist in small units, is only possible for Madison in a large territory, not so much because of size as because of the possibility of articulating more diversity and greater institutional complexity.

This focus can help legitimize the ceding of sovereignty that stems from European integration because it gives the act of ceding democratic plausibility. We are clearly still very far from having achieved democratic balance, which is probably caused in no small part by the fact that the building of Europe is being carried out by consolidated democracies. Some people insist on the difficulty of the task. Let us presume that democracy beyond the state were impossible. However, is it a question of impossibility in fact

or an impossibility of norms? The difference is not trivial because it allows us to deduce diverse imperatives regarding transnational democracy: it is the difference between considering it difficult, even very difficult on practical grounds, or realizing that it is an ideal after which we should not even aspire.

There are those who believe the European experiment defies democratic orthodoxy, demands a new democratic theory (Bohman 2007). I prefer to understand it as an opportunity to recover all the social complexity that certain conceptions of democracy have dodged. The question of complex democracy will not be resolved by responding to the question about its optimal size; instead, it has to do with democracy's ability to articulate a greater complexity than that for which it was originally conceived. Perhaps the best beginning would be to recuperate that plural conception of democratic principles to which I previously referred. There are democratic problems that stem from a poor realization of correctly established ideals, but there are others that come from a poor, simplistic formulation of democratic ideals. One example of this is the Rousseauian or Jeffersonian fiction, unusable in societies in which the direct participation of all citizens is not so much a difficult objective as a poor objective. Representative democracy is not a pale reflection of true democracy but the best way for democracy to create the optimal combination of universality, participation, deliberation, and efficiency.

6 Democracy and Complexity in Europe

According to the Treaty of Maastricht, the European Union rests on the principles of democracy and refers to democratic structures in the operation of its member states, from which it receives a good deal, but not all, of its democratic legitimacy. Moreover, over the course of integration, the necessity of incrementing its *own* mechanisms of democratic legitimation has increased. It is frequently noted that this self-legitimation is deficient, and I personally share this appraisal. I only note this point of view because not every democratic deficit is attributable to the EU; some respond to disproportionate expectations regarding its functioning or poor comprehension of its complexity, largely because it is compared to the measuring stick of the nation state. In discussions about democracy in Europe, there is frequently more criticism than analysis, much normativity with scant reflection about conditions of possibility. Many of the problems regarding legitimate governance in the EU are not due to an inadequate application

of democratic principles but to an insufficient conceptualization of the complexity of the arena in which that transnational democracy must be achieved. For that reason, I must conclude by affirming that the best way to overcome these deficiencies is to reformulate the democratic ideal itself, not in order to weaken demands in response to current difficulties, but to present the democratic ideal in a manner that is compatible with the complexity of the European project.

For the first time in history, we are facing the project of establishing a complex democracy, a democracy that is not coercive or based on a homogeneous people. The interest in European integration, from a philosophical-political perspective, stems from the fact that reflections about the EU's nature, institutions, and forms of government can contribute to the conceptualization of a complex democracy. "Complexity" is not only a negative designation; it can represent greater richness or the presence of more agents in the political field given the very opening up of democracy.

It is obvious that this complexity has nothing to do with its character as a "baroque entity" (Fossum and Menéndez 2011, 4). Complexity does not mean the accumulation of institutions of distinct and even conflicting ideological nuances, as is largely the case right now (a European Court in the French style, a Central Bank based on the German model, an Open Method of Coordination imported from the culture of *New Public Management*, which is dominant in Great Britain and the Scandinavian countries, etc.). It means balance and tension among various parts of democracy, which focus on levels and criteria whose harmonization is a condition of possibility for the development of a true democratic culture. We seem to be achieving confusion, rather than complexity, and our oscillation between criteria of national democracy (majority procedures, the strengthening of parliament, more direct representation) and uses of intergovernmental negotiation (the growing role of the Council) reveals that we need a new concept of democracy that is applicable to European complexity.

In a banal sense, the complexity of the European Union is that of a *decision-making* body that must accommodate a great variety of interests, institutional realities and cultural orientations. But in a more radical sense, the complexity stems from the dynamic character of the EU, which a static vision of political realities will struggle to express. Almost all the difficulties of understanding and governing the European Union have to do with the fact that we are not facing fulfilled realities, but processes that have great dynamism and whose final result we do not know: fundamentally

these are all things that could turn self-sufficient realities into something in common. In any case, we would be committing a profound error if we were to suggest that this process necessarily tends to bring disparate elements together. I have noted that the final result of these dynamics is unknown to us because there is no conclusion in which all the principles and experiences that intervene in the process of integration can be harmoniously reconciled. There are realities that will only be integrated polemically, amid interests that are difficult to reconcile, where power relationships do not magically disappear, which will require political decisions, in other words, choosing in such a way that someone or something will not be attended in the way they believe they deserve. The necessary politicization of the EU does not focus as much on organizational procedures to make the Communitarian scale worthwhile (political parties that represent Europe as a whole or more direct elections). What is more important is being able to place the decisions that have a certain tragic dimension into context so they are intelligible and acceptable to those who have the most to lose.

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CHAPTER 5

Who Are We? A Democracy Without Demos

> *"The very notions we employ in thinking and talking of political matters have gradually become deceptive and inconvenient. The word 'people,' for instance, had an exact meaning when it was possible to gather all the citizens of a town together, round a hillock in a public square. But the increase in numbers, the transition from the order of thousands to millions, has made the word 'people' a monstrous term whose sense depends on the sentence into which it enters"*
> (Valéry 1996 [1931], 15–16).

Principal theories about European democracy agree that there is no European *demos* (unfortunately or inevitably, depending on whether one is a federalist or intergovernmentalist). In my opinion, the "no *demos* theory", in all its various manifestations, has, at least tacitly, an excessively demanding concept of *demos*, utopian for federalists and static for intergovernmentalists. In both cases, it is so categorical that it does not correspond to the history from which political communities have arisen, nor to how a sense of belonging is truly established, nor to the limits on the expectations we can reasonably hold for Europe. The *demos* could be more practical and contingent, more performative and vulnerable. It can, for that very reason, be constructed or lost; it is more emergent and fragile than those who view it so emphatically. Additionally, what if the *demoi* who "truly exist" were not such a solid group or did not need to be so? In

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that case, it may even be that European integration represents an opportunity to articulate unity and diversity in a manner that is more respectful of its internal plurality. In order to do that, we obviously need very different concepts and practices than the ones that gave rise to the nation state.

1 The People as a Condition for Democracy

According to the dominant discourse about the absence of a European *demos* and the consequences of that absence, the democratic deficit does not stem from the EU's institutional structures as much as from a dearth of certain social, historic and cultural conditions that cannot be created or modified in a brief period of time. Democratic decisions, we are assured, take place at the heart of political communities that are based on confidence and solidarity, while nothing similar exists within a transnational political community. A *demos* is "a group of people, the majority of whom feel sufficiently connected to each other to voluntarily commit to a democratic discourse and to a related decision-making process" (Cederman 2001, 224). When there is identification, we can expect coherence, shared objectives and a propensity for solidarity; where there is none, there is generally division and an inability to build anything in common. "If there is no *demos,* there can be no democracy" (Weiler 1999, 337; Weiler et al. 1995). Without *demos*, there is no confidence, recognition, solidarity or reciprocal friendliness, which are all values that are essential for democratic coexistence. There are few exceptions against this general no-demos thesis (remarkably: Nicolaïdis 2003).

This lack of a common national identity would be the concrete reason that distributive justice cannot be applied at the European level (Grimm 1995, 2012; Streeck 1995; Scharpf 1999; Offe 1998, 2000). When there is no *demos*, the citizens are not prepared to pay for their compatriots' bad luck; the "consent of the losers" (Anderson et al. 2005) is impossible. Those who oppose the advancement of federalization tend to argue that Europe lacks a sense of solidarity provided by a common history, which would prevent carrying out redistributive policies and any other policy in which there are clear winners and losers, which require majority rule (Majone 2009, 65). Only a robust *demos* would make the obligations of justice acceptable. In order for these responsibilities to be understood and assumed, there must be a sense of co-belonging that no administrative authority seems to be capable of providing. At the same time, without a functional equivalent of the connection provided by solidarity, it is

inevitable that some people will understand any decision as an imposition and others will see it as an undeserved transfer, as if there were no common ground. Meanwhile, in Europe, we share vulnerability, but not enough solidarity; we hold our risk exposure in common, but the protective procedures are specific (and very limited). Within this climate, is it possible to articulate an "us", something truly common, which will connect us and make sense of our responsibilities? To what extent do we need that commonality and of what should it consist?

This skepticism is regulated in various ways. It essentially rests on the principle that when we pursue something such as redistribution based on solidarity, the area of legitimacy must remain within the pre-existing community where there is a "communitarian" civic feeling (Scharpf 1998, 89). The nation is the only possible realm of democracy (Miller 2000). According to this model, European institutions would make up a functional regime that would focus on resolving problems that the member states cannot resolve when they act independently. This would be a type of prosthetic governance that would not form any common identity beyond that mutual utility. Some people suggest that it would be a regulatory regime, which would not, strictly speaking, require popular legitimacy. Politics in common and effective solidarity would only be realized with pan-European democratic support, which regulatory policies do not need (Majone 1998, 2011). At the same time, the federalist idea of creating de facto solidarities seems to have failed when it comes to establishing the type of spontaneous and emotional solidarity that the states seem to have always enjoyed.

According to this way of seeing things, the nation state would be the greatest creator of democracy and solidarity that has been historically possible, and it seems unlikely that we will be able to achieve better integration, in other words, a willingness for new redistributive sacrifices, especially when we are confronting larger areas. However, this contraposition between homogeneous national spaces that are bursting with solidarity and heterogeneous transnational spaces that are incapable of solidarity does not correspond to the reality of the nation states, either from the point of view of their historical construction or their current expression of solidarity.

The states did not arise from societies in which there was already unity, nor have they produced it pacifically. Many experts point out that states have generally preceded nations (Keating 1988) and that the states frequently emerge from a multiplicity of centers that they do not always

manage to integrate completely. The idea that national homogeneity is a condition for democracy is historically false and empirically untrue. The nation state has often achieved uniformity through assimilation, integration, exclusion, and even extermination. There are many examples of compound and heterogeneous democracies, sometimes with extreme diversity. There is no completely homogeneous society (not even among those that form a democratic state) nor is it possible to determine abstractly what degree of homogeneity would be required to generate a democratic society with sufficient solidarity.

On the other hand, it is an empirical reality that the fact of sharing the same nationality is not a sufficient condition (and perhaps therefore not a necessary condition) for the existence of reciprocal confidence and solidarity. There are phenomena of desolidarization within states, but also obligations of justice beyond them. All of this precludes our continued belief that the nation state is the exclusive platform for our obligations of justice. A willingness to express solidarity requires a sense of justice that is not afforded by belonging to the same group, a sense that is to a large extent independent of the feeling of shared nationality. Justice is more complex within states and more demanding outside of them than we generally think.

The difficulties that arise when we attempt to justify and carry out policies that represent transfers from some member states to others stem from this conceptual framework. This approach continues to produce paradoxes, such as federalists demanding that the new European structure includes features that are not always assured in the states that compose it or liberals, paradoxically, thinking from such a communitarist point of view. However, I would like to focus now on what I consider the heart of the question: whether it is possible to maintain the demands of redistribution without a unified *demos*.

In the face of the "no *demos* theory", which I consider too anchored in the conceptual framework of the nation state, my hypothesis is two-fold: (1) these types of solidarities can be constructed on a level that presents different characteristics of state space and, furthermore, (2) they have a constructive or emerging character that does not stem so much from old identifications as from practices shared through time and future expectations. The skeptical point of view over-estimates the values that collective action would require (these values are not that substantive or unattainable and can be created by intense cooperation) while simultaneously underestimating the force of reasons in the coordination of actions (Eriksen

2005, 15). History shows us the extent to which identities and solidarities are constructed; noting this contingency allows us to understand them as something that can erode and even disappear but that can also spring up and increase through collaborative processes. Why not in the European Union? Why can there not be *community building*—creating confidence and solidarity—where there once was *nation building*, at least the creation of the minimum community that would be required by the solidarity that current circumstances demand? The Eurobarometer is a measuring tool, not a normative institution.

It is true that in the Treaty of Lisbon the concept of "the people" is reserved for the member states (Article 1), which suggests that the principle of democracy in the Union should be settled separately from the concept of *demos.* This invites us to conceive of a democracy without *demos* or, if one prefers, a functional equivalent to the concept of *demos* that makes sense on the European scale, a concept that is not anchored to a cultural identity or a historical past, but envisioned on the basis of mobility, interdependencies, the experience of mutual fragility and shared projects.

In place of a *demos*, we should ask ourselves what conditions and procedures are needed to make a particular process of forming political will acceptable. For example, under what conditions will a losing minority accept majority decisions? Or on what questions is recourse to majority rule justifiable? The "majority" must be made up of something that I recognize as a part of myself, even if this recognition does not mean the absolutizing of a communal "us." This does not mean that agreement with the procedures will assure legitimacy, which would be a continuation of the traditional idea of sovereignty as a genealogical justification. Instead, we should question the empirical reasons and the institutional logic that assure the people's satisfaction regarding their expectations both of results and of participation.

Instead of complaining that Europe has no *demos*, we should be asking ourselves what good would come from having one and what functions can be achieved by other methods. Even more importantly: whether this functional equivalent at the European level could be conceived without the inconveniences that the concept of the *demos* has for democracy, its genealogical logic, its tendency to exclusion, its resistance to porousness, its inconsiderateness towards anything that is different from it. The postnational concept of the people would instead point towards the community of those who are affected, the "stakeholders," which is potentially

more democratic than the community of the authors or members. Therefore, the democratic question should not be presented as *from what group of perfectly identified and delimited people does all power originate,* but *what type of communitarization should we shape* when matters that should be governed with some institutional innovation arise. In some ways, we have moved from thinking about "*community that gives itself a government in order to resolve certain problems*" to "*problems for which we must create a structure of government and thus configure a community.*"

The concept of "the people" is too simple to serve as a point of reference for the type of extremely complex decisions that the EU carries out; it is a notion with paradoxes that cannot be resolved even within the nation states, as we shall see in the following section. The functional equivalent that we need for the formation of a European public space will not be characterized by the strength of the processes previously used to build identity; it will be able to be freer and more voluntary, but it will be pushed by some necessity, concretely the need that arises from common risks and the constraints exerted by the interdependencies that connect us.

2 The Constitutional Paradox

I have always thought that the root cause of masculine dominance is explained by a small error of perception, which starts getting bigger, dominant, and can even end up being aggressive: the conception men have of ourselves as sexless, genderless beings, that we are not part of a sex but have a sex, that we are "normal", while woman are an oddity that we are generous enough to protect. A series of conquests from the second half of the twentieth century began with the discovery of the lack of equity that was hidden within these types of visions of reality. Something similar is taking place with minorities, accents, special characteristics and the peripheries: they belong to other people. I will make use of this analogy to talk about nations because there are also diverse classes among them, the old guard and the upstarts, those that are historically accredited and those that are still being created, the ones that defend themselves and the ones that need nationalists to defend them, and so on. And what is under consideration here: the nations of the member states, unquestioned and unquestionable, internally linked by solidarity, in contrast with the non-existent European demos. Credentials are demanded of the latter that the nation states seemingly possess. However, are the societies of the member states truly united? Do we need to expect that degree of cohesion from European

public spaces? And what if the tension between constituted power and constituent power were a property shared by all political communities, a tension that is sometimes made invisible by the ritualizing power of history while, at other times, its insufficiencies are pointed out by a crowd of skeptics?

I would like to look at this paradox with an open mind in order to make a judgment as to whether the communities in which we live are as solid as they seem and if the communities we are constructing should be inspired by that same solidity. Let us begin with the fact that any perspective always includes a "vanishing point" from which we construct our overarching vision of the world and which cannot be seen or questioned in the construction of that vision (Van Roermund 2002). We will have to make an effort to illuminate this blind spot. In order to do so, it may be useful to take an ironic look at the solemnities of origin. We will see that, as Foucault said, at the beginning of things, there is not identity but dissension, "disparity" (1975, 138). In the political reality, institutional commitments that were once achieved, treaties and constitutions, end up acquiring a necessary character; we soon forget that they were no more than temporal stabilizations and very specific configurations and they become "mystifications that work" (Luhmann 1993, 66).

But the race towards the origin is irrepressible when we want to account for a reality and examine its justification. The reconstruction of the origin of things takes place through a fictitious strategy, which does not imply challenging anything, but recognizing two realities: there was no one at the origin of things, but at the same time, we should organize events in a way that allows us to express a judgment regarding their validity. In the case of contractual fiction and constituent fiction, the issue is that, prior to the nation, there were no nationals to be constituted nor owners of things who agreed upon rights and responsibilities over the things they owned. Democracy has always presupposed a people as an all-encompassing authority in which the miracle of the fusion between individual will and general will would take place. Looking at this fiction with a critical eye allows us to discover that the sustained interweaving of constituent and constituted power is "the tiniest piece of law making" (Van Roermund 2003, 34).

In the first place, the situation at the beginning is not one of perfect unity, but "*disparate*", to use Foucault's formulation. The ideal of self-government does not match the historical genesis of power (Elster 1998), nor should we mythologize the participation of "the many" in the

processes of European national construction. This contrast between idyllic projections and historic realities provides points of criticism and response. The principal contrast may be the fact that, in Europe, democracy was subsequent to the nations (unlike in the U.S., where nationality was the product of the democratic process, not its precondition). That is why we Europeans tend to understand this historical correlation as if it were a logical necessity (Fabbrini 2007, 49). And it would also explain why our main concern is the configuration of a European *demos*, instead of thinking that the democratic processes will themselves determine what becomes a European *demos*.

This obsession with the origin—very typical of constitutional logic and the idea of sovereignty—looks to the absolutist logic of the foundation, as if only the existence of a pre-political substratum could sustain everything else. In accordance with genealogical rationality, any constituted power must have been preceded by constituent power. A political entity may refer to "its" origins, but that origin is foreign to it as a polity. "It is in this sense, then, that political unity is not only contingent, but also radically contingent" (Lindahl 2003, 113). Therefore, the task of identifying the original source of the establishment of democracy can neither escape the specter of an infinite regression in search of an elusive first authority nor can it evade the danger of covering up this difficulty by granting a definitive nature to a particular facticity. The beginnings of democracies are trapped in paradoxes of this kind: if we want the rules of democracy to be subject to democratic determination, we will end up in an infinite regression (Richardson 2002, 67).

The relationship between constituent and constituted power, or between democracy and legality, is a true dilemma. The sooner we recognize that "in many cases, constitutional doctrine presupposes the existence of that which it creates" (Weiler 2001, 56), the less will we commit the error of granting some realities greater necessity than their contingent nature allows. Because keeping the contingent reality of the *demos* in mind does not only mean accepting a fact of history but making a claim in the present from which a significant number of normative consequences are extracted (Näsström 2007, 650).

Using the U.S. Declaration of Independence as an example, Derrida has demonstrated the circular and contradictory nature of constitutional documents, in which "a people" signs that it constitutes itself as a unitary subject through its signature. However, the people do not exist before their founding action, an action that precedes the people as an authorizing

authority. This strange event means that the people, by signing, come into the world as a free and independent subject, as a possible signatory. By signing, the people authorize themselves to sign (1984). This is the founding myth of democracy: the presence of the *demos* is postulated so that it can come into existence (Offe 2003, 254). However, the "us" that is constituted in these declarations "escapes itself"; the us that speaks does not coincide with the us that is referenced (Waldenfels 1997, 149). The constitutional paradox is that the self-constitution of a non-constituted crowd can only take place if the individuals identify themselves retroactively as members of a *polity* that constitutes itself by exercising the powers conferred upon them by constitution. "All representations of political unity lead back to a representational act that is not mandated, yet without which no genesis of a polity is possible. Not only does this suggest that there is a core of irreducible groundlessness at the heart of every political community, but also that no polity is contemporaneous with its own genesis" (Lindahl 2003, 133). That is why the "us" gathered in the foundational act masks an original heterogeneity. The people are a decreeing subject at the same time as they are still an empirical group of disperse individuals; they are the establishers of a law to which they themselves are subject.

Thus, any discussion about who is the subject of the right to self-determination cannot escape a vicious circle, unless we reify the people and afford them an entity that is unquestionable and above all contingency. "The people cannot decide until someone decides who are the people" (Jennings 1956, 56; Whelan 1994). In fact, any democratic system is incapable of resolving the question about "who decides what" democratically and always refers to a previous framework of sovereignty (Walker 2011, 103–104). "The criteria of the democratic process presupposes the rightfulness of the unit self" (Dahl 1983, 103). This paradox always makes the attribution of an action to "the people" problematic.

How do we resolve this dilemma? In a democracy, the only way we can assume this paradox is to consider the people representatively, to detotalize them, leaving open the question of belonging and consider them more as a practice than an entity removed from historical contingencies. Power always has a representative structure in virtue of which the unit is always a represented, feigned unit. Of course, the subject of legitimacy is the people, but "the people" nowadays can only be understood if it is crystalized into a plurality of procedures and institutions that respond to its complexity. We must think of the *demos* as a reflexive, debatable, revisable and open polity.

At the heart of every constitutional order, of every democratic coexistence, there is an unsubstantial us, a rupture and a contradiction, which continuously redefines the dimensions of inclusion and exclusion in a provisional manner. That is why the political cannot be monopolized by institutional realities, by the organization of society and by ritualized statehood. What is political is instead the place in which a society acts upon itself and renews the forms of its common public space. Society has not emerged from the collapse of a community; there is no original division or first unification or lost innocence of collective life or initial formation. This does not mean that the "us" does not exist at all, but that it is of an unstable size, an open and changing reality, grasped by human beings from the twists of fate and placed in the realm of what we do with our freedom.

This gap between what is constituent and what is constituted guarantees that the people are not exhausted in any of their representations. "Questionability" is part of the collective identity (Lindahl 2007, 21) because, in a democracy, totality is only conceivable as a "polemic totality" (Röttgers 1983). Modern societies do not owe their strength to identitary determinants but to resistance in the face of the hypostasis of a lost familiarity as well as in the face of the definitive determination of the social arena. If a society wants to remain free, it must reject any totalizing unity between the representative and the represented.

How can we, in practice, remove the paradox from this dilemma of democratic identity? Luhmann maintains that complex societies manage to do so by displacing their paradoxes in time (1997, 1061). Proceduralization does not resolve the constitutive paradox of the social, but postpones it, turning it into flexible rules of inclusion and exclusion, reiterating over and over again the question about the us in such a way that it includes and considers its externalities. The unrepeatable and fictitious foundation represents nothing but the initial non-identity that breaks apart into a continuous iteration. This impossible identity recalls that the foundation of a polity is not closed once and for all, that what is common is neither original nor present, neither previous nor deducible, but instead continuously out of place, deferred, postponed. "The collective subject is always in a state of continuing self-constitution, and the judgments it makes will have a reflective effect upon its own identity as a community" (Beiner 1983, 143). The heterogeneity of the community that founds itself forces it to always repeat its founding again.

The difference between constituted and constituent power suggests a normative horizon that cannot be reduced to legal facticity or constitutional framework. Neither can this facticity appropriate the horizon as if those values could not be realized in any other fashion. For that reason, the engagement between the two types of power must be continuously renewed. Anyway, it is important to note that making people contingent on history does not mean merely accepting a fact of history but making a claim in the present (Näsström 2007, 650).

3 Community as Practice

When we speak of democracy and, concretely, about the relationship between society, polity and decision-making, the first question we should ask is: what community for what democracy? It is essential to clarify the type of *demos* that is required by the type of democracy we are considering, in this case, the one that suits a polity such as the European Union. To tackle this question properly, we must reject heroic conceptions of identity, pre-political rigidity and the tendency to think of identity as a homogeneous reality. In short: we must begin to understand it primordially as a practice.

Many of the opinions and studies about the *demos* that fit or should fit the EU begin with a "heroic" conception of identity, which has been provocatively characterized by the following question: "who will feel European in the depths of their being, and who will willingly sacrifice themselves for so abstract an ideal? In short, who will die for Europe?" (Smith 1995, 139). However, the configuration of identity in political communities and, especially, in the EU is more fashionable and banal, contingent and contextual (Cram 2012). Why do we demand identification with the EU that is barely established at the heart of the member states? A reflexive and post-conventional community is one in which we are prepared to sacrifice ourselves for others, not because those others have always been part of us but because we understand that interests of those people—given the risks we share or the tasks we have undertaken with them—have in fact become part of us. Of course, the political maturity of the EU implies something more than being from an organization that resolves problems and requires a type of political identity (Menéndez 2005, 188). However, this type of community that we are configuring does not need to be imagined as a polity with all the features of classical national identity, nor does it arise from a pre-political entity. It will be a political innovation that differs from both

the federalists' dream of a European-level replica of the nation state and also from the weakened intergovernmentalist instrument wielded by member states.

The other background reference that hinders opinions about the European *demos* is the belief that identities are a stable and homogeneous pre-political substratum where we can find that elemental solidarity upon which a political community can be built exogenously. In the face of this vision, we must point out that political identities are not stable categories but realities that are, to a greater or lesser extent, emerging, an "us" formed through an intense political relationship, by the exchange of goods and services, by proximity, through processes of reciprocal confidence or sustained interaction over time, and even through conflict. All of these things create a common reality.

This malleability is especially apparent in the processes of the deterritorialization of democracy, in those functional areas of governance where there are *demoi* that do not coincide with the limits of the states, communities of destiny that do in fact overlap. For that reason, it would be regressive to anchor the political community to a static population (Besson 2006, 188). These open and dynamic areas have no choice but to function with a certain amount of experimentalism. It makes no sense to judge them based on categories that come from the nation states or measure their cohesion with criteria of strict nationality, in the same way that it makes little sense to talk about "optimum currency areas" that only exist in books, but are created in real life. As Van Parijs writes: "the relevant factual question is then not whether there is one or more ethnoi involved (a matter of cultural distance), nor whether there currently happens to be a common demos (a matter of political institutions and of sufficiently common public space), but whether the circumstances (mobility, contact, interdependencies, etc.) are such that there *should* be a common demos—if only to enforce the requirements of justice" (Van Parijs and Rawls 2003, 7).

Communities are much more variable than we generally learn from our institutional taxonomies. Some communities are created, and their cohesion increases or they merge; others are fragmented or debilitated. The failure to note this malleability is one of the weakest points of the German Constitutional Court's doctrine, which excludes the possibility of any democratic government emerging on the European level, since Europe lacks the homogeneity that would be indispensable for the functioning of a democratic system. Not only does it establish a debatable principle (that

democracy needs a homogeneous *demos*), but it makes a prophecy that it does not have the standing to make (see Nicolaïdis 2011, 990 for an excellent criticism of the German Constitutional Court's demand for *demos*).

European identity is not stable and definitive, fixed by pre-political categories; instead, it can be shaped by public discourse and political practices. Europe is nothing but an emergent polity, the result of a dynamic interaction between external challenges, internal responses, and citizen practices, in the midst of a process that combines decisions, omissions, projects, crises and undesired effects (Olsen 2005; Liebert 2012, 103). The European Union is an emergent structure in the same way the modern states emerged out of the previous old (dis)order.

European identity and the emergence of a process of self-identification on a European level depend more on future political developments than on cultural pre-givens (Cerutti 2008, 7). We should think about this less based on a determinant past and more related to mutual projects, long-term interests, shared destinies, the law and linkages that create a long, deliberative experience. There is no *demos* as a given, but as something shared that stems from the performative nature of politics, that recognizes that which is common and activates the procedures to configure, integrate and renew it. We would understand the nature of the EU better if we moved forward with the conception of the object of political action as something changeable, contingent, incalculable, and multi-dimensional. From this perspective, the functional need for integration continues to be contingent to the extent that it reflects the level of interdependence, which is in turn reliant on factors such as economic and technological development. The need for norms and policies on the European level will change over time since the nature of those specific areas of action is also constantly changing.

If there is no *demos* or community of experience or robust identity or shared memory, how can Europeans acquire that minimum sense of sharing something common that would allow for the resolution of their deficits of democracy or justice?

The only way to resolve this dilemma is to abandon the preconception of thinking that political identities are constituted by virtue of a conscious decision to be one and take a pragmatic turn, replacing metaphysics with pragmatics. We are what we are because of the community of practices we establish, because of the logic we enter into as a result of this collaboration, and because of the variations with which we freely accentuate this game of interdependencies. An identity is a series of stable and reciprocal

practices of identification between people and institutions (Adler 2009). "The coherence and unity of constitutional practice is neither guaranteed by the cohesion of a *pouvoir constituant,* a written text, or a final arbiter as the guardian of the constitution, but by a mutually deferential and engaging constitutional practice held together by common principles" (Kumm 2012, 204). Therefore, Europe will not only be legitimized through institutional reforms but through shared practices. From this point of view, the fact that Europe is *not yet* that community does not mean that it *cannot* be. The whole combination of regulations, motivations, and perceptions can emerge in virtue of processes that do not presuppose common shared identifications.

The construction of the European Union will be more a question of patience and the adaptation of institutions than of democratic imperatives (Schmitter 1996), more reflexive bricolage than large-scale architecture (Bellamy and Castiglione 1998) or of a kind of "institutional avant-gardism" (Peters 2005, 117). It is not so much a question of institutional engineering as of reflexivity on the part of the actors.

For this pragmatic reason, the theories of democratic deliberation have allowed us to make more progress in the legitimation of its practices than a constitutional law generally burdened by a static vision of the idea of sovereignty (Eriksen and Fossum 2011). Precisely given the complexity provoked by the number of actors who intervene in decision-making processes, the modality of communication has a legitimizing function. For the EU's type of polity, the configuration of its communicative and cooperative space is fundamental. The power of the European Union is not exercised by a central actor, but by a conjunction of different governmental, parliamentary, and social actors. The effective instrument of the government is no longer order, but the configuration of forms of political interaction aimed at understanding. Communicative processes have the potentiality of reducing the alterity of other people, constructing reciprocal confidence, and extending cooperative behavior. In these open processes, what is decisive is not what exists but what can arise. The category of "emergence" plays a central role in current theories of complexity (and European democracy must be conceived within this categorical framework of complexity).

In contrast with those who hold the rather static position that the problem is the absence of *demos* on the European or global scale, our experience is that intense relationships can create elements of a transnational

demos as a result of the normal dynamics of institutions or transactions, in terms of solidarity, confidence and the construction of shared memories.

This dynamic can even be seen in international institutions, which have made a move, not yet consolidated, from a mere aggregate of interests to communities with increasingly shared destinies. For example, the demand for unanimity has been decreased to majority decisions in institutions such as the International Monetary Fund or the World Bank; there are many deliberative elements of shared sovereignty in the European Union, of course, but also in the International Criminal Court, the World Trade Organization and even, to a certain extent, in the UN Security Council.

In recent European history—even though there is both progress and regression—we can see the emergence of decision-making processes that are increasingly similar to the processes of a national *demos*. Since the mid-1980s, the EU has been gradually transforming itself into a majority system: "qualified-majority voting" (QMV) in the Council now covers the main areas related to the internal market; the European Parliament (EP) has the same decision-making power as the European Council in almost all areas of economic and social regulations; if the Commission presided by Santer was most similar to a grand coalition, the Prodi and Barroso Commissions have obeyed central left and central right positions respectively. The European Court of Justice (ECJ) is not limited to arbitrating between competing governmental aspirations but adds new elements to the legal order, in such a way that its teleological application of the law has promoted greater integration. The EU is increasingly less consensual and more majoritarian by virtue of its system of decision-making, the increase in EP power and the change in the way the European Commission (EC) and its president are elected.

We also find an example of this emergence in some of the ways in which we have confronted the current economic crisis. European economic governance requires institutions that afford continuity and supervisory control, which intergovernmental compromise is incapable of providing. What is interesting is that, by demanding more automatic sanctions in the context of the reformed Stability and Growth Pact, governments have to end up accepting, even if it is through gritted teeth, greater power for common institutions. This is one example among many that allows us to understand the malleability of the European project, which for the same reasons that it can be captured by the member states also allows developments in federalizing evolution, more from logical necessity than express design.

The European Union has no more direct and unquestionable procedure to laboriously build its complex democratic legitimacy than creating conditions so that the aforementioned emergence is produced. Why should we not think of this complexity as its true political contribution rather than a regretful problem? Let us not contrast its fragility with the supposed unassailability of its member states. Most democracies have not arisen from a homogeneous people, nor have they managed to fully configure them. We have no reason to stop hoping that collective political action, the destinies we share, our experience and communication (including communication through conflictive forms of the divergence of interests) are capable of originating a certain form of political community, perhaps not especially lofty, but with the characteristics needed to tackle the demands for justice with which we are presented.

Does the emerging nature of the European *demos* favor intergovernmentalist or federal theses? My hypothesis is that, even when the history of the Union registers movements of renationalization, its malleability is contrary to being placed within the framework of intergovernmental management and tends inevitably to go beyond it. It is true that in neofunctionalism there was excessive necessity; intergovernmentalism, on the other hand, has an excessively static vision of social processes. In the face of both, the idea of emergence is very appropriate for complex processes like European integration, in which the social dynamic is, at the same time, unforeseeable and governable; contexts and conditions can be acted upon in such a way that the verisimilitude of the desired result is increased. The emerging character of the Union does not necessarily need to lead to profound federalization, but it questions intergovernmental closure as a statism that contradicts the dynamic opening of the Union, its possible future development. The federalists have no reason to maintain that the course of events will inevitably show they are right, but the intergovernmentalists can be certain that their model will be surpassed by events, if that is not already the case.

The emerging nature of European integration is revealed by the fact that it is neither a process in the hands of the member states nor a process through which member states are subordinate to the Union. There is, in the Treaty of Lisbon, no emphatic call for a unitary collective, which we could interpret as a rejection of the idea of dissolving the elements that comprise Europe into one unit. But we should not see it as dissolving the question of European democratic legitimacy into verification by each of its component states either. Unlike the international institutions, the EU

does not derive all its legitimacy from the member states but from an emerging quality from which a unique community of destiny and interests with their own logic has been arising (without configuring a *demos* in a strict sense). It is a process that is taking place at the same time as this new political entity has transformed the states that originated it. When we say that the states have moved from being nation states to member states (Bickerton 2012), we are making reference to this transformation. In the face of the "hydraulic" model of the EU, according to which the democraticity of decisions on the European level would be administered by national deposits, we would instead have to reference a "gaseous" or transformative reality in order to explain the fact that new constellations and emerging attributes that are being produced in the European aggregate should be provided with distinct and specific legitimacy.

4 The Communitarian Innovation of the European Union

When we Europeans think about configuring common institutions, why do we not know how to do so except by imitating the format and properties of the nation state, thus wasting the opportunity to think of something new and avoid some of the worst manifestations of the national realm? Realizing the European political community without the communitarian *pathos* that has characterized nation building could be an opportunity to revise our political culture and afford ourselves, on other levels as well, a relationship with our community that is less emphatic and more open to understanding ourselves in a plural fashion. We are faced with the challenge of understanding ourselves without an "organic" concept of community or "a robust pan-European identity" (Liebert 2012, 96). Europe should respond to the old question about how to build a community in a very different way from the logic of domination and homogenization that have generally characterized the processes of nation building. It should be carried out in an evolving, reflexive, inclusive and dispassionate fashion with much discussion and negotiation or not be done at all.

The problem is that we still do not know how to act together, and we place too much trust on the classic instruments of nation building, like the flag and anthems, direct parliamentary elections and typical right-left polarization. We are in search of the Kelsenian and Schmittian "holy grail"

(Weiler 2001, 60) to build a community in the classic style (indisputable authority, general will, a foundational moment, a homogeneous people, etc.), and we do not know what to do when we suffer the shock of finding out there is no Bastille or Philadelphia for Europe. The propensity to demand that the EU display attributes of statehood—a people, hierarchical government, majority vote, a voice and a leadership—makes as little sense as a republican whose expectations manifest nostalgia for the monarchy.

But furthermore, taking the nation state as a model implies some degree of idealization of contingent historical processes that are not particularly exemplary in many ways. It makes no sense to project our communitarian frustrations onto an idealization—implicit or explicit—of the nation states, many of which imagined an ethnically defined homogeneity, a culture of precise contours, a common destiny and unconditional state power. The preconception that democracy and the constitution can only exist within a delimited *demos*, within a homogeneous ("relatively homogeneous" is what the German Constitutional Court decision on Maastricht says) and united nation state is still very much with us. However, the democratic nations do not necessarily have that degree of homogeneity nor should we assume that it is impossible to configure a democratic constitutionalism without that emphatic unity.

Why not think of the European Union as an opportunity to create a community based upon a conception of polity that is more respectful with its complexity and less obsessed with producing its unity as homogeneity? Just as European integration is a challenge because of the very idea of constitutional law, its legal monopoly, and its hierarchical organization (Maduro 1998, 175), it also represents an excellent opportunity to understand collective identities in another fashion. It is, thanks to the European experiment, possible to completely dissociate the idea of community from any reference to a determinant past and a homogeneous identity. It is an opportunity for identities to be balanced by reflexivity, to be weaker and self-limited, under the common principle of shared humanity.

The European Union is a refutation of the idea that the nation state is the only site of community and identity politics. A uniform national identity is not a requirement for democracy or for solidarity. Not even liberal intergovernmentalism with its assumptions of rational choice (Moravcsik 1988) nor neofunctionalism with its idea of a spill-over process (Haas 1961) have been able to explain how non-coercive integration has come about and, especially, how it can continue to develop under new conditions

with actors with such varied interests. What should be explained empirically and normatively is how we can configure a true European community capable of confronting the new obligations of justice, the harsh reality of which we have seen during the euro crisis. The European democratic experiment consists precisely of attempting to realize a fair division of responsibilities and opportunities, of costs and benefits, without the guarantee of old-style national organic solidarity.

The political community can be constituted on the basis of three assumptions: expression of a sociocultural community, calculated utility or adherence to political principles (Johan P. Olsen 2005). Europe should be understood as a shifting equilibrium between all of them, but in its articulation, the shared past plays a smaller role than the desired futures. The strength of the EU—its internal cohesion and capacity for solidarity—does not depend on any past determinant, but on its relationship with the future. The difficult European construction would then be an opportunity to make future projects replace common pasts as a source of identification and legitimacy (Müller 2011, 197). Rather than bemoaning our limited sources of identitary cohesion, we would have the opportunity to develop a new notion of *demos*: those who confront certain problems in common while still preserving and even celebrating their differences.

The idea of shared destiny would allow us to build *that which is common without community*. We would be speaking of something for which it would be sufficient that we were conscious of having been thrown together by history, as Hannah Arendt would say, and sharing the same destiny, without pre-established harmony, with interests that are divergent but should be resolved together. We could thus confront the idea that it is not feasible to continue with the democratization of the Union in the absence of a strong identity as a community (Theiler 2012, 785). Rather than speaking of "a community of unity", we should discuss "a community of destiny", as Raymond Breton (1995) suggested, which emerges from politics, rather than preceding it, when there are experiences of reciprocal influences, shared risks, perceived inequalities and redistributions that should be realized. For there to be democratic legitimacy, it may not be necessary to have "a people", but it does require some type of recognition of a "community" with a shared destiny—even if it is only a question of fate—and certain reciprocal obligations. We must delve deeper into "the common", which cannot be reduced to interaction or agreement between self-sufficient elements, but refers to the reciprocal obligations and responsibilities that we in fact share.

Europe is a political community but not in the sense of a particularly emphatic co-belonging. The EU's common foundation consists of shared elements that are being configured as European societies have begun creating processes of integration that no longer allow self-government and democracy to be conceived in a purely national context. Interdependence means that the effects of the decisions that one group makes upon others have come to acquire a certain magnitude in virtue of which the governance of Europe as a whole should be articulated with the self-government of every one of its component parts. The nuclear idea of the EU consists of considering the identity of other groups not as a limit but as an element for the construction of a political community among those who are different. This interaction sustained over time has allowed them to go about configuring a supranational logic that civilizes national passions and introduces them into a space of constrictions that moderate self-interest (Weiler 1999, 341). Viewed from this perspective, the idea of community is no longer addressing self-determination in the face of others but "the inclusion of others" (Habermas 1999), the surmounting of the antinomy between us and them. This is the sense in which Jauss could speak about "an us of others" (2005, 530). An us thus conceived will always have to get along with dissonances that are not easily redirected towards unity but that must be understood as recourses towards democratization to the extent to which the Europeans' different will of unity is made manifest through them.

We asked ourselves at the beginning if Europe needed a *demos* to be truly democratic, but perhaps we should conclude by questioning whether the concept of "the people" may not be problematic for democracy in Europe. In the face of those who are clamoring for an "overarching communal identity" and others who consider it an unattainable requirement without which one cannot speak of democracy in the European Union, I will close by affirming that this deficiency can constitute a democratic advantage. The fact is that the more we delve into the question of democracy the more suspicious we tend to be of that which is overarching. The same individualization that distrusts the processes of concentrating power at the state level resists any attempt at consecrating that which is transnational, against any communitarian hypostasis, national or transnational. From this perspective, we could understand that some of the resistance towards moving forward with integration, rather than being disqualified as nationalist populism, could be interpreted in a democratic manner. They are implicitly telling us that they will only accept greater integration

if the *demos* we are attempting to configure has been desubstantialized, if we understand it as something more porous, inclusive and open than the national *demoi*.

The solution to the dilemma of the impossibility of a democracy without *demos* offers an alternative that has yet to be created: a type of political community without national intensity, that will replace belonging with identification, with the institutionalization of political processes rather than previous identifications, where the us/them dichotomy is relativized by the values of recognition. There is a *demos* where there is a reflexive community and where there are no assumptions of cultural, linguistic, or historic homogeneity. That which is common refers more to the procedures that secure and institutionalize that reflection rather than to prepolitical assumptions.

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CHAPTER 6

On Behalf of Whom? The Multiple Representation of Europeans

Since 2000, we can establish a "representative turn" (Bellamy and Kröger 2013) in European Studies, and the question of the democratic deficit is presented less as an issue related to procedures of democratic participation than as a question about quality of representation. In the first place, about how to articulate the multiple modes of representation in the European Union: from citizens directly or through the states they belong to, the representation exercised by the European Parliament and the parliaments of the member states, or the ways in which non-state actors, the interests of civil society, the distributed intelligence or the impartiality of non-majoritarian institutions are represented (Evas et al. 2012).

The Lisbon Treaty distinguishes between representation that is electoral, territorial, functional and a direct channel of representation, although it does not specify the relationships between them. We can think of two types of subjectivity—subjectivity of the individuals and the states—that correspond to a different type of representation: popular sovereignty and the sovereignty of the states. If the first one points toward an integrated European polity, the second views the EU as an advanced intergovernmental organization. The first is enforced through representation that is electoral, functional and direct, while the second is enforced through territorial representation. The compound representation that European institutions articulate obeys the attempt to guarantee the presence of all elements that form a part of those institutions. It is an attempt to avoid

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having their policies seized by the states or experts, or allowing one level to prevail over another unjustifiably. The goals is to ensure that minorities are included and that citizens of states that are affected by domestic decisions have a voice.

From a certain perspective, voters and politicians nowadays must confront a cacophony of attempts at representation, but, from another point of view, this plurality of "representation claims" can be understood as an opportunity to enrich democratic representation. European integration presents considerable challenges to political representation. Article 10 of the Lisbon Treaty establishes that the functioning of the Union should be founded on representative democracy, but we do not know exactly what that principle means beyond the nation state. And if that were not enough, this cacophony takes place at a time when representative democracy is in crisis, when politics is increasingly confronting the presence of powerful transnational actors and decision-making areas that escape the reach of traditional representative institutions.

These three factors—plurality, novelty and the crisis of representation—are demanding a conceptual leap when it comes to understanding and designing representation. We can find a negative example of a lack of conceptual innovation in the German Constitutional Court's ruling on the Lisbon Treaty, when it makes the case for choosing between full parliamentarization of the EU or strengthening national parliaments; in this way, it fails to take into consideration the new possibilities for understanding the representative relationship. It appears that it does not fully understand that the great intellectual and practical challenge we are confronting is an attempt to free the idea of representation from the bond that associated it so strongly to territory and the *demos*. The processes of Europeanization and globalization present enormous challenges: there is no longer a clear demarcation of the represented *demoi*, there is no clear center of institutional authority and the right to vote has lost its simplicity as a measure of political equality. The task we should undertake is imagining how to rethink the representative relationships within these contexts.

1 The Europe of Parliaments

The Lisbon Treaty has been called the "treaty of the parliaments" (Brok and Selmayr 2008) because it introduces many considerations about representative democracy and the role that parliaments exercise within it, urging collaboration between the European Parliament and the parliaments

of the member states. This declaration has not managed to deactivate the complaint that we are witnessing—in general, but more particularly in the European Union—a progressive weakening of parliaments, a process in the face of which there have been proposals to include member state parliaments in European decision-making as well as increasing the powers of the European Parliament. My hypothesis is that the possibilities of reparliamentarization of the EU are limited, but there are various innovative ways to think about representative duties.

(a) The Thesis of Deparliamentarization

The denunciation of the progressive irrelevance of parliaments in the face of powerful executives is a general criticism in all democracies; it seems even more plausible in the European Union given the peculiarities of integration. Parliamentarianism is as weakened at the national level as in an incomplete European parliamentarianism. In both cases, governments dictate the agenda to parliaments and not the other way around (Sprungk 2011, 211). In the European Union, we can note the seizing of the decision-making powers of executive institutions (the European Commission and member states), resulting in a weakening of legislative powers and, therefore, of the voters that elect them (Auel and Benz 2005, 373; Raunio and Hix 2000). The executive powers are thus constituted as the "gatekeepers" of European politics (Schmidt 1999; Maurer and Wessels 2001; Bellamy and Kröger 2012). In the course of European integration, national parliaments have lost legislative powers; they conserve a degree of control over changes to treaties (at least when the ratification does not take place through referendum), but they do not participate directly in European negotiations. National parliaments lack control over European politics, they suffer a lack of authority on transnational politics and they become the principal losers of European integration. At the same time, European integration has led to a shift of power toward national executives. It does not seem exaggerated to affirm that deparliamentarization is the aspect of European democracy that is most concerning (Pollak 2014).

The management of the economic crisis and the euro has not improved the situation in any way. Europe has tried to respond to the crisis through informality and *ad hoc* structures, strengthening the division between the space of democratic procedures and the space of political decision making. The crisis has revealed enormous parliamentary weakness, since

parliamentary controls could barely be carried out in those areas where decisions were made intergovernmentally. They were finally submitted to the national levels, as was revealed by the 2010 and 2012 bailout mechanisms, the European Financial Stability Facility (EFSF), at first, and the European Stability Mechanism (ESM) after that.

This diagnosis requires a great deal of nuance, but I will try to set my opinion aside until we examine the limits to the parliamentarization of the European Union and other possible representative innovations that should be considered. For the time being, we need to address the two strategies that have been proposed to change this situation: assuring the presence of the national parliaments in European decision-making and strengthening the European Parliament. In the first case, it would be a question of emphasizing the national roots of European democracy and the second would entail Europeanizing parliamentary democracy.

(b) The Implication of National Parliaments

The expectation that informs this proposal is that greater intervention by current parliaments would help increase the democratic legitimacy of the Union. This expectation was included in the Maastricht Treaty's appeal (1992) for greater collaboration between parliaments (all of which have their Commissions on European Affairs and gather twice a year since 1989 at the *Conférence des organes parlamentaires spécialisés dans les affaires de l'Union*), as well as in the *"Protocol on the role of National Parliaments in the European Union"* which was added to the Treaty of Amsterdam (1997). It is presented most openly in the Lisbon Treaty a few years later (2007); it is a milestone on this issue, not only because it is the first that mentions national parliaments in the body of the text, but because it confers upon them a potentially very significant status in the democratic governance of the European Union.

The new structure of the Lisbon Treaty helped national parliaments stop being mere "victims of integration" and become protagonists (Neunreither 1994, 2006; Maurer and Wessels 2001; O'Brennan and Raunio 2007). The amendments introduced in the Lisbon Treaty involve the national parliaments as guardians of subsidiarity in the European legislative process (Calliess 2010). They are given the role of "early warning system" to make sure the principle of subsidiarity is being respected (Cooper 2006). The scope of these expectations is disputed. Rittberger (2005), for example, believes it does nothing but complement the

legitimizing functions of the European Parliament, while Lindseth (2010), sees it as part of an effort to reconnect European governance with representative democracy on a national level. In any case, although the powers that parliaments are granted are rather limited and exceptional, this would establish what some have called a "Multilevel Parliamentary Field" (Crum and Fossum 2009), a space of interaction between the parliaments that share the task of representing Europeans in the Union's decision-making process.

However, many researchers are quite skeptical about the Early Warning System. In the first place, because the system ignores the fact that the parliamentary majority rarely adopts a position that is different from the government. In member states, the principal *cleavage* is the division between the government and the opposition, not the division between the government and the parliamentary majority. For this reason, it is uncommon for the government and the parliamentary majority to hold different positions, which makes it unlikely that a state parliament would present a position that is different than what its government maintains in the Council.

On the other hand, it is worth noting that this practice would mean a weakening of deliberative abilities at the European level. In the literature that analyzes the rights of co-decision between parliaments and their executives, the Danish *Folketing* is used as an example, since it has the ability to give their government a binding mandate for negotiations. In general, national parliaments only have the ability to adopt non-binding resolutions about European matters (except in Denmark and Austria, where they are binding). Even though the responsibility and control the Danish Parliament has over European affairs is laudable, their binding mandate prevents open deliberation about their decisions within the European Union. The parliamentarization of the European Union does not necessarily make it more democratic in the sense of making it more deliberative. Strengthening the role of the national parliaments may constrain the position of governments, making them restrict their negotiating position so the parliament has no room to maneuver (Auel and Benz 2007). This might make the Union's institutional framework more connected to the national voter, but less predisposed to transnational understandings. The incorporation of national parliaments would mean increasing national legitimacy when what is needed is greater legitimacy on the European level. We do not need *parliamentary aggregation* but *parliamentary emergence*; the solution is not to connect with the voters we already have but with the transnational lines of thought that should arise from our practices.

To encourage greater integration, parliaments should not only think about red lines, subsidiarity and specific interests, but also in terms of how they can make a positive contribution to the process of European integration.

There is another reason for the unlikelihood of involving parliaments in the Union's major issues, a reason that has a functional nature, of customs and political culture. State parliaments are not prepared to internalize the concerns of other states or to articulate a form of solidarity with them. Unlike government leaders, parliamentarians are not accustomed to justifying decisions adopted at the European level before their own electorate. "A greater salience of EU-wide issues in national parliaments would only stir national party competition without any structural countervailing force to induce a fair consideration of the interests of the rest of the European population" (Parijs 2015, 256). If there is a deficit of representation on the European level, greater involvement of the national parliaments would not improve things and it is not likely that this qualification would give them greater importance. For this reason, it is not an exaggeration to affirm that national parliaments will continue being rather weak actors in the Union's political system (Raunio 2007).

(c) The Strengthening of the European Parliament

The European Parliament has evolved from a consultative and non-elective body into one of the most powerful assemblies in the world, more than many national parliaments in Europe. It is the only supranational parliament in the world. The 1976 decision to construct a European Parliament through direct and universal suffrage creates an institution that attempts to articulate the general European will, not as a mere aggregate of national interests or institutional balances, but on a genuinely supranational level. Since 1979, members are elected directly by citizens; the Parliament is co-legislator, with the Council, on a wide number of questions, and it can hold the Commission accountable. It is obvious that this has not made the European Union a "full-fledged" representative democracy, but it has increased its parliamentary nature. We should not, therefore, underestimate the current European Parliament's power, even though many of the proposals for strengthening its powers seem reasonable.

Some criticisms of the democratic deficit refer to the European Parliament's limited role since many decisions have been transferred to institutions that are only indirectly representative (such as the Council). There are demands that the European Parliament be given more power,

with the understanding that this would strengthen the connection between citizens and their representatives, to the point that European elections could become "first-order elections" (Follesdal and Hix 2006). The proposal to have the Members of the European Parliament elect the president of the Commission, which was first introduced in 2014, follows a similar logic (Decker 2002; Hix 2002). Many critics also attribute the difficulties with developing democracy in the European Union to the lack of a system of parties at the European level capable of generating government and opposition groups within the EP (Follesdal and Hix 2006). They argue that increasing political competition at the European level by empowering the European Parliament will make voters more interested in participating in the elections and would dismantle the democratic deficit.

This analysis is very questionable. Continual transfer of powers to the European Parliament has been accompanied by a decrease in participation in those elections (Weiler 2012, 830). The powers of the European Parliament have not stopped growing, for example, in the Amsterdam (1997) and Nice (2001) revisions, but electoral participation has not increased. It seems to have responded in inverse proportion to the increase in powers.

On the other hand, this strengthening of the European Parliament could produce a representation deficit for the smallest members, which the current system protects (Dehousse 1995, 118; Schmidt 2006, 273). The strengthening of the European Parliament, which is not a federal but a central body, would have centralizing effects (Grimm 2004, 80). Keeping this possibility in mind, the solution of the European Convention consisted in strengthening all the institutions of the Union without significantly altering the balance between them. The fact that representation in the European Parliament does not strictly follow the criterion of population stems from its institutional peculiarity. The European Union differs from the federal states in that its unequal representation is not confined to a second chamber but is found in all its bodies, from Parliament to the Council. Difference and not equality is the organizing principle of the European Union. This is not a deficit but the result of a history and an emphasis on the protection of small states against the domination of large ones.

It is very doubtful that the European Parliament will be the principal agent of EU democratization. Even if the Parliament is granted greater powers, that will not create a *demos* or a unified public space. To resolve the problem of European representation democratically, we must have a

differentiated structure of institutions and procedures. The powers of the European Parliament can only assert themselves with a high level of consensus and an interinstitutional agreement between the Council and the Commission. These constraints do not correspond to a *timid democratization* but to the reality of *democratic complexity*.

The European Parliament will most likely need to be granted greater powers, such as the power to amend all areas of the budget or extend the "Qualified Majority Vote" to fiscal areas. It is also very positive that the president of the Commission has been elected by Parliament instead of the Council since 2014. In this way, there can be more political struggle and mobilization regarding European decisions. Its control mechanisms can also be improved. For example: even though the Lisbon Treaty specifies that recommendations on a particular country's fiscal policy can only be carried out by the Council, nothing precludes European Parliamentary involvement in that supervision, at the plenary or committee level. This would be even more justified when the recommendation implies a modification of the European budget (Dawson 2015, 64). Even regarding questions on which the European Parliament does not decide, it can adopt greater supervisory capacities and control over executive institutions. Greater accountability of the European Council and the Eurogroup before and after their respective summits would help correct the Union's drift toward excessive executive power (Piedrafita and Blockmans 2014, 20).

But we should not believe that these procedures are going to magically strengthen the identification of citizens with Europe by making it more similar to what we know on the national level. In addition to this democratization by analogy with what is familiar to us, we need a form of democratization that agrees with the particularities of the Union, which no similarity with the national approach will cover completely.

(d) Parliamentarization or Representative Innovation?

Widespread public frustration regarding European democracy will not be overcome by increasing the powers of the European Parliament, adding mechanisms for transparency or any other procedure of institutional engineering. These frustrations will be resolved when we fully understand the complex nature of European democracy and stop measuring it with standards that it will never be able to satisfy. "Governments have found it extremely difficult to resist an increase in the role of the EP because they have not easily been able to formulate an alternative for addressing the

'democratic deficit'" (Shackleton 2012, 145). The fact that we have not fully considered the shortcomings of European democracy *at the same time* as its specific potentialities explains the recurring lack of originality with which we confront the matter and the fact that there are no proposals that do anything but introduce conventional democratic procedures from the nation states at the supranational level. We also propose solutions without realizing that the procedures and institutions that seem most democratic in one context may be inappropriate in another (Nelson 2000).

Let us think, for example, about the strategy of giving European institutions the same name as national institutions, thus giving them an air of analogy and familiarity with that which is already known. In this way, we avoid their specific characteristics and appear unaware of the fact that we find ourselves before institutions that operate based on different principles and fulfil different functions. This duplication in naming is a recurring but not very helpful strategy when one is entering unknown territory, and it tends to end up generating greater perplexities. This is the case with the European Parliament, which differs from national parliaments not only because it lacks the ability for legislative initiative in fiscal and spending matters or because of the near absence of the typical antagonism between the government and opposition. Its *sui generis* nature is revealed in the attitude of its members, many of whom consider themselves more as specialists in a certain field than as party politicians; it is also revealed in that the European Commission demands a certain neutrality, which partially explains that its monopoly on legislative initiatives has never been seriously contested. Why insist that the European Parliament look more like known parliaments rather than delving into whether its particularities, rather than being a failing, might reveal an unprecedented function that we should analyse and perhaps promote? It could be something like a politics beyond the classic forms of antagonism and a Parliament whose representative function is more important than the function of controlling the executive branch.

One of the properties that most unsettles some people is the fact that the European Parliament involves so little ideological opposition and the division between the government and the opposition plays a smaller role than in known parliaments. But why must rivalry and the battle for the control of power be what is essential in politics? Can there be no other way of doing politics that is more consensual and less oppositional in spaces that, like the European Union, are more complex and have greater demands for integration? The consensual side of European politics has

functional reasons in a minimally cohesive polity. If the majority were to wield more power in Parliament, there would be more at stake in European elections and perhaps the electorate would be more involved, but disaffection toward the Union would increase in the losing minority, which might not feel represented and could choose to de-identify themselves from it. It is frequently affirmed that the spirit of consensus encourages those who dissent to question policies and reject the polity, in other words, they experience disaffection toward the European project, but would the divisive effect not be worse if there were a strictly majoritarian logic that could elicit the same disaffection in the eventual losers (and there would be more of them than when there is a consensual logic).

Some of the things that are presented to us from the beginning as defects that fail to live up to that with which we are already familiar could be interpreted as advantages or functional good judgment. Given that the government-opposition division does not have decisive importance in European governance, deliberation must play a greater role than in national parliaments (Pekonen 2011). The powers of control of the European Parliament are certainly limited, but they should be placed in the context of a semi-presidentialist system, in which the executive (the Commission) is not a party government and the European Parliament, more than an institution of debate, is a "working parliament" (Tiilikainen 2011, 39). The European Union is not an imperfect majoritarian democracy but a complex form of democracy that intentionally limits the application of majoritarian principles (Neyer 2012, 161). Based on its specific properties, the European Parliament has an opportunity to be closer to certain parliamentary principles than the national parliaments.

Let us return to the thesis of deparliamentarization, a suggestion that fundamentally rested on the Parliament's minimal power of control over the government (in this case, the European Commission). We could begin by recalling that national parliaments do not control their governments too much either, although that is for different reasons. The European Parliament's function in European governance should be considered in consonance with the evolution of parliamentary institutions in general, which are far from being the instrument with which the states attempted to control their governments and give themselves legislative initiative.

Parliaments have the double function of representation and control of the government, but there is no reason this double function needs to be replicated at the European level. In Europe, there is representative democracy more than representative government (Mair and Thomassen 2010,

22). The European Parliament represents the citizens but does not control the actions of the government. There is representation without connection to a government. But it is worth considering that a parliament liberated from the function of sustaining an executive may be able to carry out its function of scrutiny in a more independent fashion than the national parliaments and that may strengthen representative democracy in Europe.

While it is true that in order for executive power to be something different than mere administration, the legislative branch should be able to control the executive in some way, which in the case of the European Union is very limited. It is unlikely that the Union will evolve toward a fully parliamentary democracy, but control over the executive by diverse actors—among them, the European Parliament—can be improved and expanded with the criteria of good governance formulated in the *White Paper on European Governance* (openness, participation, accountability, effectiveness and coherence). In addition, even though the European Parliament only has formal rights to information and consultation, the intensity and regularity of the debate with officials and high representatives translates into very intense scrutiny (Thym 2006, 119). The principal task of the European Parliament is not to represent a European People, which does not exist as such, but to critically serve the work of the Commission and the Council.

The thesis of deparliamentarization is incomplete since it focuses excessively on the legislative functions of parliaments while neglecting others that are as important (Auel 2014). The function of control is not the be all and end all. There are also information and specifically representative functions, which may even be carried out better if they are partially freed from the obligation of controlling the government. The principal goal of parliaments is not necessarily controlling the government, but reducing the information gap between parliaments and the government and, in second place, informing citizens.

We can conclude by affirming that parliamentarization is not the only way of assuring representation in the European Union, although the potential of the European Parliament and other parliaments can be improved. Democratization of the Union does not mean full parliamentarization, which is not possible nor is it in agreement with that complex system which is in need of democratization. The European Union is not a system of parliamentary sovereignty but of a separation of powers. Similarly, the European Commission is not a parliamentary government in a majority democracy, nor the executive in a presidential system; it is a

collegiate body that presents a large number of headaches to the theory of democracy, instituted to protect European common good and as an autonomous executive that should make sure that individual national interests do not excessively condition European politics. Representation in the European Union should be complex, with sophisticated institutional balances and interconnected deliberative processes.

2 The Representation of Impartiality

While we do not know with certainty whether there is life beyond our planet, we can be sure that there is democratic life beyond the electoral space and its procedures. This space is filled by institutions that we call non-majoritarian or independent, institutions that claim to represent impartiality. Democratic life within this space depends on those institutions being democratic as well, which does not mean that they must be democratic in the same way as the nation states.

Institutions that have democratic legitimacy but are not electoral (because their members have not been elected or do not answer directly to the electorate) are not exclusive to the supranational realm. All democratic states have constitutional or quasi-constitutional provisions that limit the power of the *demos* and create a series of institutions that are less representative of the people—whether as individuals or citizens of a state—and more representative of certain values or public goods. These are institutions that are charged with monitoring certain issues (the stability of the currency, the interpretation of the constitution, expert knowledge on certain topics or minority rights), and their authority differs from an immediately democratic authority (judicial power or expert knowledge, for example). In the European Union, governments and Community institutions represent the citizens, while certain institutions, such as the Court of Justice or the European Central Bank, take responsibility for the representation of certain principles. They represent impartiality in some fashion, and they defend specific public goods with no participation from or even in opposition to the current electorate.

Given the particular nature of the European Union, these types of institutions are more plentiful there than at the state level. Europe trusts its luck to independents and experts, while the strategy of parliamentarization has had rather limited success. This leads to increasing criticisms of what is called a democratic deficit, even though quite a few of these criticisms could just as easily be directed toward nation state institutions that

carry out similar functions. The way these "impartial institutions" proceed can certainly be improved from the point of view of democratic demands, but some of the criticisms of a lack of democracy in transnational and international institutions respond to a confusion between the logic of the national democracy and that of global interdependencies. If we want to govern these spaces more democratically, it will not be very helpful to take the democracies of the nation states as a model. We can see that as interdependence increases, the less exemplary the states' democratic procedures; similarly, as the problems that need to be resolved become more complex, formal participation becomes less useful and expert knowledge and deliberation becomes more relevant.

To the extent that transnational architecture advances, there is a corresponding increase in the importance of the non-majoritarian institutions that make relevant decisions and exercise a new type of political authority. The institutions that govern in this way have other sources of legitimacy, such as the knowledge or protection of fundamental rights. This displacement within the institutional architecture means that expertise and individual freedoms gain in importance in Western democracies, while parliaments, parties and elected governments, traditional democratic institutions, lose the confidence of the people (Zürn 2011, 622).

This all takes place at a time when the complex problems that contemporary societies are confronting have increased interest in the quality of the results of its policies. Economic policies, labor policies, policies regarding social security, health, environmental protections, and so on, have become so complicated and dependent on specialized knowledge that it is very difficult for them to be understood by the voter and managed by normal administrative structures. Interdependence, complexity and efficiency are not incompatible with democratic demands, but they challenge our traditional way of understanding democracy and place us on the threshold of its future evolution. The democratic justification for this type of non-majoritarian institution is one of the first tasks that is pending for this transformation.

(a) Impartial Institutions

One of the characteristics of governance for all contemporary democracies is the delegation of significant powers to institutions that are not held accountable to voters or elected representatives: courts, independent central banks, regulatory authorities. These are politically independent

institutions like special agencies, legal procedures such as judicial review (which can examine even democratically adopted decisions) or the delegation of certain policies to independent regulatory authorities that operate outside of the bureaucratic hierarchies. They have been called "the fourth power": independent supervisory and regulatory authorities, commissions for competition and courts of auditors take responsibility for increasing arenas of political and economic life. We expect special impartiality from them: the monitoring of markets, mobilization of knowledge, control and equity of procedures, and so on. They intervene wherever objectivity is necessary (Rosanvallon 2015, 180). This is a type of "desubjectivized" power within democracies that is functional and limited to particular areas of intervention. These are institutions where neither the participation of those who are affected nor public discussion is very significant. This leads to the paradox of democracy depending on institutions that sustain it but are not themselves democratically configured. To state it succinctly: it is as if "the intelligence of democracy" (Lindblom 1965) had concluded that justice and money are too important to leave in the hands of the majority.

We could understand this logic as a process of depoliticization under which an ever-increasing number of functions, responsibilities and decisions move toward spheres that are non-governmental, semi-official, hybrid, regulatory, transnational, non-majoritarian, independent or judicial; in other words, they are beyond the scope of democratic election and supervision. The European Union is one of the institutions that fills this role. The idea of the "quasi government" (Koppell 2003) and the increase in "the unelected" (Vibert 2007) corresponds to this new reality, which constitutes a new division of power. There are other versions of this "functional depoliticization": an epistemic correction of procedural democracy to introduce expert knowledge into our decisions in some way (Estlund 2009), the defense of a deliberative space and depoliticizing some issues (Pettit 2001), the proposal to depoliticize certain institutions through bureaucratic criteria or the negative power of judges in the face of partisanship (Rosanvallon 2008). There is also the fact that leaders increase their discretional capacity and their powers of intervention—including the very possibility of acting—by privatizing or through emergency procedures. My goal here is not to assess whether these ways of shifting power are justified or not; I am simply pointing out that there is a reallocation of power toward places that are less subject to public scrutiny and control, and that this movement is not always a result of bad intentions. Sometimes

it is a response to functional necessities that we must understand and legitimize.

In the European Union, this type of institution has acquired more extensive and intensive powers (Chalmers and Chaves 2014), which obeys a logic that we could summarize by saying that there is an attempt to protect *policies* rather than *politics*. These independent institutions are the tryptic formed by the Court of Justice, the Central Bank and the Commission, which we assume are more closely aligned to the general European interest and very distanced from electoral legitimacy. They have a type of legitimacy that comes from being at a remove from democratic passions and national interests, from partisanship and the self-interest of member states.

(b) A Type of Non-electoral Democratic Justification

The justification of these institutions comes from sources that are different from electoral democracy. We could group these justifications by their functionality, by long-term protection, the defense of the common, deliberation and the protection of institutions against populism.

1. Let us begin with the *functional justification*. There is a broad consensus around the conviction that, for example, the monitoring of rules and monetary or credit policies is better carried out by constitutional courts and central banks than by parliaments. We can imagine the disastrous consequences that could result if these tasks were taken over by parliaments. This is why the delegation of these moments of sovereignty does not weaken but strengthens democracy, if by democracy we understand not only the formality of who is making the decisions but the ability to provide particular public goods. In the specific case of the European Union, entrusting certain policies to non-majoritarian institutions is a way of confronting the impasses created by some forms of government that are based on opinion polls or are excessively dependent on national interests.

There is a non-majoritarian *ethos* that has been deeply embedded in the European Union from its beginnings. This ethos arose from the belief that an intergovernmental approach would be less effective at managing the conflicts that would arise because of the heterogeneity of the Union than strongly executive central institutions that are partially removed from state control (Haas 1964; Dehousse 2011). We can see an example of this if we consider taxes on corporations. For a long time, member states were unable to come to an agreement and elaborate common legislation on this

issue. Based on the Four Freedoms, the European Court of Justice was able to create a series of rules that situated that taxation under the umbrella of the first right of the EU (Genschel et al. 2011). Another example of functional legitimacy can be found in the management that independent or technical institutions tendered in the development of the single currency. In an interview published by *Süddeutsche Zeitung,* Walter Rademacher, the Director General of the EU statistical office, explained that all the member states were responsible since they accepted the financial statements that Greece put forward for membership in the monetary union even though they all had serious doubts about the reliability of the information provided by the Greek government. For this reason, the Eurostat requested more oversight power, but the member states opposed it. Another example is the fact that the majority of ECOFIN members decided in 2003 to suspend the procedures initiated by the European Commission against France and Germany's excessive deficit (Majone 2014, 203). These two examples reveal how the institutions that are least dependent on the national electorate may at times be better able to carry out oversight function than member states that are vulnerable to the pressures of their respective electorates or intergovernmental processes. What would have happened in these cases if these impartial institutions had had a higher profile than the governments that represent national interests directly?

2. A second type of legitimacy that comes from delegating to institutions independent of the electoral cycle stems from the *justification for the long term*. One of the problems of current democracies is their temporal inconsistency, the fact that they sacrifice far-reaching projects before the altar of immediate electoral benefits. Everything related to the protection of minorities, intergenerational justice or certain environmental commitments—in other words, issues related to interests that are by definition only minimally present in our decision-making procedures—require some type of justification that does not depend on the will of actually existing voters. One of the more significant problems we are facing is how to honor common issues and the future when governments have no incentive to take into consideration the negative externalities their decisions produce in space and time, in other countries and upon future generations. Ultimately, major questions of redistribution cannot be resolved by a majoritarian institution. Compound societies, where there is dense interdependence and when the future is strongly conditioned, cannot be called

democratic if they do not keep other people's interests in mind, which means that only listening to their own electorate is clearly insufficient.

Intergenerational justice can only be carried out when a part of sovereignty is transferred to a level that is less "electorally democratic", and decisions are adopted by institutions that are more protected from immediate pressures. Certain unpopular decisions to limit polluting emissions or to reform pensions can be better adopted at an unaccountable European level than in the domestic sphere. Bourg and Whiteside have pointed out some of these systemic short-circuits of democracy in an ecological context (Bourg and Whiteside 2010). European institutions were created in part to manage these types of externalities that cannot be handled by democratic procedures. Some of the accusations of technocracy or democratic deficit have to do with this circumstance; it is not that they are not sufficiently democratic but that they are not electorally democratic. There are decisions that can only be adopted at a level that is protected from the electorate, on a plane that is more "republican" than "electoral democracy".

The agencies, which are so present in European politics, specifically offer a solution to the problem of time, an institutional answer to the contradiction between the short-term temporal perspective that characterizes politics and the necessity for long-term solutions in many areas, such as issues relating to the ECB, competition policy or the regulation of risks (Majone 1996). Only the type of institution that comes from the "political business cycle" can represent credible expectations and commitments for the long term. If we want to talk about building a democracy that better represents the interests of the Europeans, their diversity and complexity, we should not forget the representation of those who are in some way "electorally absent".

3. We cannot understand European institutional architecture if we forget that certain institutions have a *justification for the common,* and that it is precisely this that makes them appear distant. We say that they do not represent us, but in this way, we seem to concede that only national representation counts. In other words, national representation strikes us as familiar, capable of being held accountable and politically worthwhile. It may be that these institutions strike us as less representative because they represent the common more than representing that which we see as our own interests.

Who represents all of us? This is precisely one of the reasons why certain fiduciary matters are delegated to the European Commission: even

though the members of the Council, elected politicians, belong to states that have ratified the treaties, its members could renege on their commitments in order to gain immediate political advantages. The European Commission, since it is especially committed to monitoring the supranational fulfillment of treaties, balances this tendency. The fact that the Treaty of Lisbon insists on the limitation of common powers is, on the other hand, a symptom of the lack of confidence that member states have in common institutions and how difficult it is for them to renounce the instrument of national advantages in the short term. This is another of the lessons that a rekindled European democracy could give national democracies.

The nation states are embedded in interdependent spaces that are committed to European common goods, but their electoral obsession does not allow European commitments to appear except under the authority of an institution that appears technocratic, distant and insensitive to the interests of the people. Until the states introduce into their functioning a thoughtful consideration toward common issues, they will be promoting this systemic ruse that they later criticize for lacking in democratic legitimacy.

4. There is also a *deliberative justification* that sustains impartial institutions. I am referring to the process of delegating complex or specialized issues to independent institutions that seem distant from representative democracy but that revitalize its deliberative dimension instead. They are not democratic because they allow universal participation but because they concretize a realm of deliberation. Because of them, the fiction of unlimited participation is replaced by concrete and differentiated deliberative bodies where participation and expertise are possible. These institutions are not based on their own power but on an explicit delegation of tasks. In this way, the sovereignty of the sovereign is guaranteed, but the distributed knowledge of a differentiated society is also exploited.

The term deliberative supranationalism (Schmalz-Bruns 1999) has been coined to discuss elements of deliberation in the political and administrative practices of the EU, principally in what is called comitology. This EU invention was created to respond to requirements of efficiency and legitimacy. In order to adopt correct and legitimate decisions, the European Commission needs information and expert knowledge, not only the legitimacy that stems from the support of the national governments or the representativeness of the European Parliament. Comitology is an essential procedure in a system of governance that needs to confront

complex questions in a rational manner. Comitology allows for the establishment of inchoate areas for "deliberative politics" (Joerges and Vos 1999, 311), thus making possible an articulation of knowledge and decision-making that would not be realizable in other formats.

It is true that comitology can be viewed as an "administration without government" (Wessels 1999) or as "technocratic deliberation" (Schmalz-Bruns 1999). However, comitology can have a legitimizing effect for the political practices of complex institutions. Efficiency and access to expert knowledge, the epistemic quality of decisions, are not a threat to democracy; quite the opposite, they are essential for good government. If decisions are not good, it does not much matter whether the process in which they were adopted was democratic. The quality of deliberations between experts not only contributes to the quality of the regulatory process, but also to its legitimacy (Joerges and Neyer 1997). That is why a certain degree of delegating is an integral part of the political process in complex societies.

5. Perhaps the most radical reason to support non-majoritarian institutions is the *justification against populism*. This type of institution is not very sexy from the democratic point of view, and they can be easy targets for those who complain—often with good cause—that those who comprise them are not well controlled or exercise too much power over elected representatives. But it is also true that they allow us to confront the populist attitudes that are often based on unfounded prejudices, on pro-corporate or local interests, or on the resistance to sacrificing certain benefits in the short term in favor of long-term gains.

There are some authors, such as Pettit, Moravcsik or Majone, who vehemently defend the democratic logic behind having certain regulatory policy-makers who are isolated from democratic majorities, both in general and in the European Union in particular. They argue that the fact that European institutions have indirect accountability or more mediated representation presents many problems, but it also allows for the implementation of certain policies that would not be possible if the only sovereign were the one established by national voters. (Of course, there must always be the democratic balance that is implied by vigilance on the part of the national executives on the Council and oversight by parliamentary institutions, both within the European Parliament and by the national parliaments). This isolation of certain decisions from democratic majorities has, among others, the advantages of freeing citizens from the weight of universal participation, protecting minority groups from majoritarian tyranny

and correcting the prejudices inherent to democratic competition. From this perspective, "the EU may be more 'representative' precisely because it is, in a narrow sense, less 'democratic'" (Moravcsik 2002, 614). Moreover, if we think radically about democratic representation as complex representation, one could talk about a populist deficit that arises when there is an underrepresentation of less popular points of view, such as the voice of minorities or of expert knowledge, precisely those voices whose representation depends upon impartial institutions.

I believe that this defense of non-majoritarian institutions is more radical than the parliamentarization of all decisions that is supported, among others, by Habermas, when he criticizes the lack of input legitimacy given to regulatory bodies and sustains that bureaucratic structures should be permanently supervised by the public sphere, if we want to avoid having technocratic regulation carried out at the expense of true politics (Habermas 1992, 452). Of course, Habermas is conscious that social and cognitive complexity is not incompatible with parliamentary practice; this complexity often requires specialized agencies or autonomous committees. But according to Habermas, the legitimacy of decision-making requires at some point that the proposal pass through the "sluice" of that part of the public space that is empowered to make decisions that affect society as a whole in accordance with procedural and deliberative criteria. From my point of view, Habermas thus re-electoralizes (even if it is at a transnational level) this type of political question and de-dramatizes an issue that does not have a solution in accordance with the standards of majoritarian democracy, thus requiring us to be open to different ways of thinking.

The costs of an institution that is non-democratic (or better yet: non-electoral-majoritarian-democratic) must be weighed against the benefits of safeguarding certain collective goods (Coffe 2012). Thinking in this way does not imply abolishing democracy but instead defending it from its weakness, which is more necessary when national societies and global contexts become more complex and increase the risks and uncertainties that they must handle. But all of this would be no more than a sophisticated justification for technocracy and elitism if we did not try to consider the possibilities that exist for improving the democraticness of these institutions without compromising their ability to carry out their functions. That is precisely what I will attempt to do below.

(c) Democratizing Independent Institutions

There are social functions that, for structural reasons, we should not want to have politicized. This tends to be the fundamental argument when it comes to defending the existence and legitimacy of independent institutions, but it strikes me as an insufficient argument because it suggests that the only and most appropriate politicization would be the one that comes from an electoral and majoritarian approach, which stands in the way of considering other forms of politicization that may be more in line with the nature of certain issues and particularly with those that affect supranational institutions. For a long time now, we have not made anything other than the technical and apolitical function of these institutions emerge, which prevents us from seeing the extent to which they can carry out a function that is political, but a different type of political. These impartial institutions exercise a political function, and that political function should be able to be improved without compromising their nature. It is not depoliticization that these institutions carry out; protecting *policies* from *politics* does not mean committing yourself to *policy without politics;* there is politics, but outside of the typical format. There is a competitive process of different institutions that can be understood by analogy with the division of powers, and the different institutions represent diverse legitimacies.

At their core, these institutions develop authentic politics, which is not inscribed along (or not only along) the right/left axis and which is organized around principles of confrontation that are specific to each institution. We can see this if we examine the common institutions of the European Union. There are people on the Court of Justice who are in favor of a "constitutional" interpretation of treaties and others who defend a classic "international" reading. On the Commission, there are those in favor and against regulation. In the ECB, there are inflexible monetarists and others who are more pragmatic. Any proposal of reforms in Europe must keep in mind these circumstances, the nature of the institutions that we want to reform and, especially, the history of Europe and the thinking that explains its institutions.

Is it possible to "democratize independence" (Vauchez 2014)? Can we improve the democratic representativeness and responsibility of the bodies that do not depend upon voters? In the first place, we must begin with the idea that they are *already* representative institutions: even if they do not represent the governments of the states, they represent geopolitical vectors, values, sensitivities and political cultures. The legitimacy of

transnational or international institutions will always seem lacking to the extent that they will never fulfill the criteria of accountability and participation that we expect from our democracies, but they can compensate these gaps through reputation, efficiency and justice (Guérot 2013). Furthermore, when we consider how to assure accountability in places where traditional criteria do not fit, the first thing we need to keep in mind is that being held accountable by voters is only one of its facets, a very important one, but not always the most relevant. In the context of complex democracies, being held accountable by peers, experts, stakeholders, a particular segment of public opinion, and so on, may be the most appropriate way to justify the reasons for a particular decision (Grant and Kehoane 2005).

The question is how to introduce these independent authorities into the political process without this meaning that they are part of the national electoral process, which would contradict their nature and function. It would be a question of recovering the connection between these independent powers and the democratic political process without putting into question the guarantees of independence required by their mandate. In this sense, improvements could be made in their representative function by reformulating their independence, which does not have to be understood as an absolute distance from social and political interests to the point that, for example, women are so underrepresented (especially in the ECB). Improving their representativeness from this point of view does not compromise their independence but de-absolutizes their distance from society. There should also be discussion about certain criteria that can make them more democratic without compromising their nature at the time of their constitution: that they cannot be dissolved (without sufficient motive), plurality and diversity of their members, impartiality, autonomous budget, the right to be listened to by parliaments, the right to appeal and jurisdiction to make decisions (Datla and Revesz 2013). One can talk about democratization based on the opening of debates about their mission and mandate, increasing publicity in such a way that we can get to know differences of opinion, and assure their social and political representativeness (Vauchez 2014, 10).

In the same way, delegating some matters to specialized or independent institutions allows a certain space for accountability; it is not a license for some people to do whatever they want and others to completely ignore their ultimate responsibility for supervision. For example, the managers of central banks, supreme courts or advisory committees can be called by the

government or parliament to explain the ways in which they are fulfilling the independent function they have been assigned. In the European Union, comitology has been democratizing its function in this direction. The Code of Good Administrative Behaviour adopted by the Commission tried to assure equity, objectivity, transparency and the obligation to justify decisions. One of these rights is found in the Charter of Fundamental Rights (Article 41): "the obligation of the administration to give reasons for its decisions" or the obligation of accountability proclaimed in the *White Paper on European Governance*.

Institutions that represent knowledge or expertise constitute a special chapter about democraticness. It would be naïve to believe they are entirely neutral, of course. There is an inevitable partisanship that also becomes pluralism in the heart of the experts and that is channeled in a specific manner, which is distinct from normal political antagonism. Even if these knowledge institutions had no ideological conflicts in the traditional sense, there is a struggle between numerical figures and the law, through statistical indicators, international comparisons, surveys and reports. Incorporating these institutions more fully into a complex democracy is possible, for example, by limiting the sovereignty they have to interpret their mandate, questioning the claim of scientific objectivity in their appraisals and judgments, or demanding publicity for their debates.

We should recognize a particular "democracy of knowledge" (Innerarity 2013) that has a potentiality for the life of a democracy that must be adequately considered. In opposition to the idea of presenting experts and expert knowledge into the processes of democratic decision-making, it is frequently claimed that those experts do not always agree, that they may have a conflict of interest or ideological preconceptions, or that their starting point is not one of guaranteed, indisputable knowledge. That is all true, but this precaution can also be read positively: the experts also move within the realm of provisionality and critical revision; their manner of resolving differences of criteria is analogous to democratic politics: through argument and open discussion. We must ensure that these deliberations are organized correctly and that their place in the political process is the proper one. Politics is not a scientific method for the resolution of collective problems, but the history of science reveals that many procedures of great political value have been developed, like the capacity for self-control and correction, or the unsustainability of dogmatism, which has conferred a particular authority on these actors. It is a question of authority that is based, internally, on the process of self-criticism that scientific controversies

confront and, externally, on the possibility that citizens always have to hold that authority accountable and even withdraw their confidence from it.

We could conclude by affirming that impartial institutions (which is what I have called independent, regulatory or non-majoritarian institutions) should be understood as a democratically configured constitutionalism, not as a constitutionally restricted democracy (Tully 2009). They would be democratically unacceptable if they were methods for preventing the power of the people rather than methods for channeling it adequately or if they were configured in such a way that they were fully outside of the reach of public discussion and reform. These institutions are justified because they guarantee the equality of popular democratic influence (protecting minorities and the rights of future generations) and try to guarantee the maximum possible objectivity (allowing the consideration of available knowledge in the process of political decision-making), but they would not be democratically acceptable if they were exempt from the obligation of justifying themselves publicly.

3 The Representation of Interests

The representation of European citizens is not only carried out through formal procedures and institutions; the picture of representation in the EU would be incomplete if we fail to include that varied type of informal representation that takes place in the multi-faceted world of the interests that we include under the label of lobbies. There is a scattered and disjointed group of actors who say they represent the interests of Europeans, whose desire to represent is accepted, corrected or rejected by other social groups and diverse publics. Taking this space into consideration allows putting the sterile contrast between participation and representation into context and presenting a panorama of democratic procedures that is richer and more dynamic and complex. From this point of view, the picture of representation appears more dynamic and constructivist than static, since the diverse actors who participate in the political arena present certain claims that interact with others and enrich public discussion (Lord and Pollak 2013a, 521; Saward 2006, 2010; Kröger 2013).

As a result of that, representation should be understood as something more than a formal process of authorization and accountability. There is no political representation that does not include processes of renegotiation for that political representation (Urbinati 2006; Disch 2011), and in

those processes of renegotiation, the task of asserting certain interests is fundamental, regardless of the fact that the legitimacy of those interests does not depend on their ability to apply pressure; it should be considered with normative criteria. At this point, we need to ask ourselves precisely about the question of legitimacy or, better still, legitimacies, as well as the possibility and the limits of democratic governance.

Governing is not an action against but in favor of the interests of society, interests that should be heard, considered and balanced. The global financial system, environmental balance or consumer interests are too important to be abandoned in the hands of private organizations, and too complex and sophisticated to be managed by public institutions. That is why the objective consists of configuring a mixed system of governance that includes components of self-organization and of public supervision. It requires a hybrid way of exercising authority in those cases in which neither public nor private authority can do the task because, basically, public authority lacks knowledge and private authority lacks power.

Methods of governing that are overbearing are not very effective in global markets, when it is a question of regulating intellectual property or environmental protections, to name a couple of examples. Even though it is true that we should improve the power of institutions, we should not forget that many of the components of governance are not an exercise in power but a group of incentives that are realized through rational argument, the expectation of mutual benefits or fear for one's reputation. That is why, in addition to regulatory institutions on a regional or global scale, "watchdog" groups such as Transparency International, consumer organizations or the global oversight provided by diverse social movements are very important.

(a) The Legitimacies of Interests

Possible justifications when it comes to explaining why it is legitimate for the organization of interests to be a part of the processes of communitarian decision making are similar to those of non-majoritarian institutions and could be grouped in three arguments: cognitive, democratic and transnational.

1. Let us begin with *cognitive legitimacy*. It is clear that one of the problems had by our democratic societies in general and the European Union in particular is that governments should improve cognitive capacity and evolve toward a mode of political decision making based on knowledge.

Good governance depends on making decisions that are supported by expert knowledge and legitimized democratically. In a knowledge society, there is greater demand that the modes of decision making are based on knowledge, in other words, more on cognitive considerations than on value judgments, which does not mean that politics must sacrifice their function in the face of experts but that politics itself must adopt a style that is more cognitive than normative.

In this respect, a first problem of governments is that they do not come with a complete diagnostic of every problem in their society or, stated in another way, if they want to prepare that diagnosis, they need information, warnings and even protests that emerge from the civil society. Even if these associations of interests do not, strictly speaking, have electoral authorization, they can be useful to call attention to matters that would otherwise be left unattended (Liebert et al. 2013).

But we have a problem that does not relate only to the warnings about the requirements of civil society but to insufficient collaboration between representatives and experts: in many situations, those who can do something do not know, and those who know cannot do; those who are responsible for the administration of legitimacy often lack the knowledge necessary to adopt effective solutions and those who know the complex reality of the issues they would need to govern are not particularly interested in democratic justifications for what they do; those who are not involved in the issues can be objective about them, but only those who are interested in something are capable of understanding it. How do we escape this dilemma? Well, fundamentally through collaboration to the extent that, with all the limitations that stem from their positions, both sides can understand that they benefit from it: some people will learn about matters they do not understand very well and others will end up accepting the question of its legitimacy.

From this perspective, we can see that *lobbying* in the EU is not simply an exercise in a single direction, since the influence of private actors on community decisions is conditioned by their ability to provide information relevant to the institutions of the EU to which those institutions would otherwise have no access. Private actors satisfy a functional need that the institutions of the EU would not be capable of handling themselves. This explains why *lobbying* plays a role in the EU that is relatively important compared with the situation of the member states, whose administrations have more resources and do not have as much need to compensate information deficits through alliances with private actors.

2. There is a second *justification of a democratic nature* about which we need not spend much time because its relevance is readily apparent. There is no democratic society if there are no channels for the expression of interests in addition to those that are articulated in the formal, electoral, representative and institutional space, and if those interests are not taken into consideration when it comes to adopting the attendant political decisions.

In the concrete case of Europe, the *Civil Society Organisations* (CSOs) have been seen as a means to overcome the democratic deficits of the EU (Nanz and Steffek 2004). It is understood that a wide and diverse network of associations would balance the deficits of political representation and would contribute to the creation of what is called "social capital" that is required to keep democracy alive. These associations could serve to make the interests and values of citizens visible at the EU.

3. Lastly, we have *transnational justifications*. Another justification for lobbies and special interests is that they introduce transnationality (Tommel 2011). Their activity also brings the transnational realm to the fore, to the extent to which they tend to be decoupled from the national electoral space. In this way, civil society would have the role of mediating between the national and the supranational (Rumford 2003). In some fashion, lobbies would compensate the lack of parties at a European level, the lack of a distinctly European public sphere, which leaves citizens little space to participate and respond. It would even be worth questioning whether the participation of interest groups that were organized through EU decision-making processes can be a supplementary source of legitimacy for governance at the European level; this possibility could be inscribed in what has come to be called "post-parliamentarianism", keeping in mind the difficulties of full parliamentarization of EU political life.

(b) The Governance of Interests

Because of the furor over the idea of governance, what were previously called pressure groups turned into stakeholders, and they compete with representative democracy. It is unquestionable that special interests should be introduced into democratic processes, but that does not imply that representative institutions and governments should resign themselves to their pressure or renounce the task of weighing them. Even though civil associations and NGOs are fully convinced that they are legitimate representatives of public interests, their claim of legitimacy must be proven

empirically. Civil society is not the same as organized civil society; this difference between true interests and those that are most able to assert themselves, no matter how minimally, is what justifies the moment of "verticality" or institutional responsibility and introduces an element of skepticism regarding their claims of spontaneous and harmonic emergence resulting from the free flow of interests.

The governance of interests always has a fundamental responsibility that stems from the obligation of guaranteeing the plurality of interests represented and paying special attention to the inequalities of that informal representation. Even though informal representation often enriches the quality of the democratic process, access to informal representation is inevitably unequal because not all people and groups have the same capabilities and incentives to influence politics. In general, those who are most active in participation tend to come from the most favored social strata, with higher levels of education and greater income, while the least privileged are barely represented (Rose 2006, 40). As for the groups, there is an inequality of resources among general interest associations and the representation of economic interests. Participation does not favor professional lobbies and other less organized interests equally; the opening of participatory spaces for everyone does not correct the inequality of representation that exists in civil society (Kohler-Koch 2007). Those who have government responsibilities should know these limits and must become involved in correcting them.

4 Participatory Democracy and Representation

The crisis of representative democracy is as old as its claim to represent society as a whole. This crisis has been exacerbated for very diverse reasons, including the fact that digital utopias believe we could do without representation. Dominant discourses do not make use of language about improving our representational procedures; although they have not felt the need to formulate these beliefs expressly, they speak from a horizon in which representation would be unnecessary, or they imply that representation is always inconvenient, a falsification. The truism of our time is immediacy, directness, proximity.

A construction as complex as European integration becomes doubly subject to a misrepresentation of the will of its citizens: because in its errors of design and governance, it has frequently deserved that criticism and because, even when it has done things well, its sophistication distances

it suspiciously from the immediacy that we presume to be characteristic of a true democracy. In fact, most of the discourses about how to democratize the EU focus on ways to make citizens' voices heard, more successfully, more frequently, more directly, about more issues and with a more immediate impact on politics. Based on this vision, populist parties and protest movements defend the use of referenda for a greater number of issues. On the other hand, those who are in favor of deliberation insist on improving the processes that precede these consultations. Preferences must be shaped before they are expressed and asserted. In this way, a double solution to the problem of institutional distance is constructed: the proposal for participatory proximity and the solution that comes from recognizing the complexity of the Union, which requires tackling the question from a diversity of strategies, including initiatives to increase participation, of course, but also other sets of values that, like representation, help improve democracy in Europe.

(a) Participatory Aspirations

The idea of bringing the EU "closer" to citizens was one of the strategic principles agreed upon at the Laeken European Council in December 2001. The idea of participatory democracy was included in the *White Paper on Governance* and in the text of the unsuccessful Constitutional Treaty. Even if the same value is not given to representation and participation, in the Lisbon Treaty the traits of participatory democracy are emphasized, and it says decisions should be taken as closely as possible to the citizen (Art. 10). This participatory aspiration culminates in the Citizen Initiative, by which a million citizens from at least a fourth of the EU states can ask the Commission to propose legislation in areas of its competence. This Initiative is presented as a form of direct democracy, beyond the consultative principle by which the European Commission consults the groups of civil society. After some years and a very weak balance regarding utilization and results, the question we should ask ourselves is why the procedures of direct democracy provide legitimacy to a lesser extent than we tend to imagine.

There are numerous studies that reduce our expectations regarding a possible revitalization of the EU through procedures that increase the legitimacy of the most representative institutions (like the European Parliament), participatory democracy or direct democracy (Abels and Eppler 2011; Mayer 2012; Kohler-Koch and Quittkat 2013). But this

disappointment does not only refer to the European Union; it has a more general nature and refers to all the expectations that were placed upon making democracy more direct.

There are assessments that reveal that most referenda tend not to do anything but confirm the *status quo*. In general, the left has won little through initiatives of popular legislation. The welfare state has been more improved by the northern European democracies than by Swiss methods of direct democracy. The political class has often had to make decisions once the popular vote fails (like lowering the voting age to 18 years in Denmark, for example) (Freitag and Wagshal 2007). The decisions adopted by direct democracy must be compatible with the values of the rule of law, the protection of minorities and human rights (Christmann 2012; Lewis 2013).

The solution to the democratic deficit of European institutions cannot always be to increase participation or decrease representative distance (implying that the closer the procedures are to direct democracy the more democratic), but clarifying what type of popular participation is necessary to provide democratic legitimacy without endangering the current level of integration. Of course, citizen involvement is an unquestionable democratic value; what I want to emphasize is that it is a principle that should be made compatible with other principles that are just as important and, from an idea of democracy as a pluralistic set of values, citizen involvement should vary depending on whether we are dealing with a constitutional, legislative or regulatory issue. This leads us to a complex idea of democracies, which are not reduced to the decision-making moment.

In complex political systems like the EU, the procedures of direct democracy are in no position, on their own, to revitalize democracy. From this point of view, the Citizen's Initiative should be understood in the best-case scenario as an instrument of "agenda setting", not so much as direct democracy (Plottka et al. 2012, 21). What does not make any sense is for us to demand of the Union things that are not even possible at the level of the nation states. Why would the people be more directly present in the decisions of the EU than in those of the member states, which are already sufficiently complex? Direct democracy is too simple for complex societies and too complex for the citizens.

(b) The Solution for Representative Complexity

Is the European Union democratic enough from the point of view of representation? Of course, EU complexity seems incompatible with direct public participation. The concept of popular sovereignty, understood only from the ledger of direct citizen involvement, cannot be easily and immediately applied to the European realm. The EU cannot satisfy a "popular" or "participatory" definition of democracy, but it has enough "checks and balances" to satisfy a "protective" definition of democracy (Mény and Surel 2002, 6). This is what we find if we examine the plurality of representation on a European level: the large numbers of actors who can access its agenda and decisions, although it is true that a combination of actors and practices does not automatically lead to good representation. In any case, the democratic ideal will not be realized through the radicalization of one of its applications but through the articulation of its diverse demands, which are not always easily compatible. In the same way that it is not possible to represent and aggregate citizen interests, opinions and values through simple electoral mechanisms (based on territoriality) without taking into consideration the complex system of multi-level governance and growing interdependencies, neither can the common good be represented and constructed by merely aggregating decisions from plebiscites, without taking other democratic values into account.

The EU is obligated to improve the relationship between representatives and those represented, which is the aim of a variety of strategies, not only the Citizen's Initiative. The representation that is achieved is a process that has many facets that obey diverse moments of the political process: relationship, participation, accountability, presence, representation, communication. The Union's political representation is characterized by a simultaneity of different representative practices: formal, semi-informal and informal at different spatial and geographic levels. These multiple forms of representation have the ability to express the existing diversity and making it visible in the public sphere. The "right to justification" (Forst 2005), which is essential to democratic life, can be guaranteed through complex and different forms of representation (ideological, territorial, institutional, formal/informal) with various classes of arguments and different types of majorities. It is, however, important to keep in mind that the chain of popular legitimacy in the EU is long and weak, which is why it is not illogical for the balance of power to be displaced toward the law and administration. This points toward one of the possible criticisms

of the German Constitutional Court for having concentrated only on the technical aspects of the election of representatives—the translation of votes into seats—and ignoring the dynamic of modern systems of representation, particularly the representation that goes beyond formally accredited representation and includes more informal structures and opportunities for democratic representation (Lord and Pollak 2013b, 196).

The multiple construction of representation in Europe confronts, in turn, varied public interests that may even be incompatible (Bellamy and Castiglione 2013, 207). Although the systems of "compounded representation" (Benz 2003) can be criticized because they multiply the possibilities of having a veto or inefficiencies, they also have the advantage of making it more difficult for policies to be captured by a specific interest (governmental, transnational, the experts, and so on) more than other systems of simple representation. The political system of the EU presents opportunities and dangers in relation to democratic representation. The complexity of the system and the numerous institutions and actors at different levels can favor strong and well organized interests to the detriment of the weak ones; however, in principle, this same complexity opens pathways so that the voices of civil society, including the weakest ones, can access the European scene (Kröger and Friedrich 2012). But we will not do justice to the true sense of representation if we do not understand it correctly. "The opposite of representation is not participation. The opposite of representation is exclusion. And the opposite of participation is abstention. Representation is not an unfortunate compromise between an ideal of direct democracy and messy modern realities. Representation is crucial in constituting democratic practices" (Plotke 1997, 19).

The EU is called upon to be an institution that rearticulates democracy and representation in an unprecedented manner once both have distanced themselves from the real life of our societies. This blend cannot be carried out without strong democratic innovation. The peculiarity of the nature of the EU is translated in the balance between the need for representation of the national power, the demands of the electorate to have a direct voice through the European Parliament and the need to provide an administrative capacity without a traditional executive (Sbragi 2002, 396). Successful articulation of all of that in a balanced fashion depends on being able to

effectively consider European representation as a way of resolving democratic problems that arise with interdependence and globalization.

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CHAPTER 7

What's New? The Political Innovation of the European Union

Europe is often said to have communication problems. I would like to begin this paper by saying that this is not surprising, given the very nature of this political undertaking. Jacques Delors himself said that what we are facing is an unidentified political object; we should then not be at all surprised that public perception is often blurred and confused. This perplexity would be minimal if we were dealing with an organization that could be guided by the traditional categories of the nation state or international relations, if we were building a nation state on a larger scale or intensifying relations between sovereign states. However, this integration process is unique and requires original concepts and actions. For this reason, my reflections on Europe do not focus on the way to communicate as much as on what must be understood in order to enable communication; they are not instructions for use but guidelines for understanding.

A lot has been said about the democratic deficit. However, I believe that Europe's deepest problem is its cognoscitive deficit, our lack of understanding about what the European Union stands for. It is difficult for us to understand that we are facing one of the greatest political innovations in recent history, an authentic laboratory to test a new formula for identity, power or citizenship within the framework of globalization. The crisis behind the failure of the Constitution or the widespread disaffection concerning the possibilities for further integration are mainly due to poor understanding of what we are and what we are doing, or, if you allow me

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this statement, the lack of a good theory of Europe. The deficit I have mentioned is not a communication problem that can be solved with better marketing techniques. It is a lack of understanding and conviction (among citizens and their government leaders) about the originality, subtlety, meaning and complexity of the European construction. This explains the citizens' fears and the modest ambitions of many of their leaders. The ideas that many people hold about Europe are full of misunderstandings, at the mercy of superficial public opinion: Europe is seen as a supplementary power scale, a strategy to survive in the face of globalization that is seen as a threat, a political system replicating the nation state model, and so on. Some countries seem to be firm believers in Europe because they appreciate the subsidies they have received while others see Europe as a threat and fail to recognize the opportunity it represents. Both sides have the wrong idea of what Europe stands for, and until this misunderstanding is cleared up, endorsement of the EU's political project will continue to be weak or superficial.

Understanding Europe requires audacious concepts and governmental procedures. It is possible that the Europe of the future is more similar to the medieval model than to Westphalia, more like shared sovereignties, differentiated institutional agreements and multiple identities than the concentration of power, hierarchy, sovereignty and defined identity that characterize the triumphant era of the nation states; there will be more fuzzy borders, with opportunities for entering and exiting, than fixed limits, different types of solidarity instead of strict rules and sanctions. The European Union is better understood if we conceive of it as a political entity without a coherent *demos*, without defined territorial limits and as a power without an identifiable finality. "Europe will look like a complicated puzzle without a clear institutional structure, legal order and ideological consensus. Is any kind of integration possible in a Europe of plural political allegiances, overlapping jurisdictions and flourishing sociocultural heterogeneity? My answer is yes, but we must modify our vision of integration by embracing genuine pluralism and diversity" (Zielonka 2014, 74–75). From a practical point of view, the European Union will demand "exploratory governance" (Dawson et al. 2015, 16), in other words, a policy-making innovator, ad hoc and stepwise, in matters that are highly contestable and highly political choices under extreme uncertainty.

I am going to try to demonstrate the European Union's originality in six aspects: (1) European *identity*, more complex and diverse than we tend to think; (2) European *space*, with margins rather than limits or

borders; (3) European *governance* testing a new political structure that goes beyond the nation state and sovereignty; (4) European *economic governance*, meaning pooling risks; (5) European *citizenship,* which has become pluralized and whose endorsement is needed to advance towards greater integration; and (6) a globalized Europe that could serve as a model for an interdependent world. The aim of this chapter is to reflect on these six topics (identity, space, government, economy, citizenship and globalization) and explain why Europe, paradoxically, has a poorly defined identity, a space that is not closed, a government that is not sovereign, an economy that shares risks, citizens with conditional loyalty and a sense of "us" without others.

1 European Identity: An "Us" Made Up of Others

Europe has often been defined by geographic, cultural, historical and political factors supposed to form the basis of a unique civilization and to give rise to a Western model of modernity. However, a closer look reveals that the issue of identity is more difficult to define. From the geographic point of view, Europe lacks natural limits: the Atlantic does not separate its shores in absolute terms, above all because of the peculiar relationship between Great Britain and the United States or Spain and Portugal with Latin America; the Mediterranean is a space that separates as much as it unites and relates. On the East, Europe has no clear border. If we understand Europe as a continent, it is even less clear. Paul Valéry aptly described it as a small promontory of Asia (1957). In this sense, Europe is even less consistent geophysically than, for instance, the Indian subcontinent. In terms of civilization, Europe stretches towards Asia and encompasses a large part of the Mediterranean.

From the historical point of view, Europe is not a uniform civilization that has followed a unique path clearly differentiated from the rest of the world. Europe's cultural diversity is more than the diversity of the nations forming it. Europe has been formed by the interaction and mutual fertilization of its civilizations. Therefore, it more closely resembles a "constellational civilization" (Delanty and Rumford 2005, 37) than one civilization.

When attempting to effectively identify Europeans, there is no all-encompassing inclusive identity. Europeans are not especially united and are even less likely to define themselves in opposition to others. As Brague said, "the danger for Europe cannot come from outside simply because it

cannot consider itself as an inside" (2002, 185). Neither the forcees that keep us together nor the things that differentiate us from others are especially forceful.

Europe cannot be defined as the West either. The historical roots of Western civilization—Athens, Rome, Jerusalem—were not European in the Western sense of the word. We often forget that Western culture and civilization originated in the Eastern world. The ancient world was Eastern rather than Western (Delanty 1995, 16). Classical antiquity and the origins of Christianity were Mediterranean in the sense used by Braudel (1999). The Romans, like the Greeks, did not have a clear sense of European identity, which was more typical of the Middle Ages. Rather, the Romans thought of Rome as the center of the world. Because of its history, Europe is not the same as the West, and this is especially true in the present time.

Ancient peoples thought that the North–South division was more meaningful than the East–West one. For many years, the Alps stood for a geographical and cultural frontier much more than the Mediterranean, which was considered the center of civilization. The counter position East versus West originated when the idea of Europe was articulated against Islam in the seventh century. This counter position continued throughout the Middle Ages, in modern times and until the end of the Cold War (Delanty 1995, 21).

The enlargement of the European Union towards the East is qualitatively different from former enlargements. It is not only a significant increase of member states but also a reshaping of Europe's civilization framework. By moving its borders toward Russia and, with the future entry of Turkey, toward Asia, Europe is becoming increasingly post-Western and polycentric (Delanty and Rumford 2005, 47). This makes it possible to overcome the "little Europe" of the Cold War. Enlargement not only makes Europe more extensive but also transforms it qualitatively. The fall of the Communist regime did not eliminate the East but reshaped it, a new "East" that is going to be increasingly relevant in the new Europe. The fall of the Berlin Wall in 1989 meant the disappearance of the sharp distinction East versus West and gave rise to a new European era oriented toward building a multipolar world.

The answer to the recent debate on "Europe's Christian roots" can best be understood within these premises. If European identity is not codified in a cultural package, it cannot be defined in terms of religious identity, either. Europe's identification with Christianity—which comes from the

Habsburgs and was used at the time to oppose the Ottoman Empire—does not do justice to Europe's religious pluralism either in historical or sociological terms. It does not succeed in explaining the significance the religious dimension has had and still has in Europe. The problem is not admitting or simply forgetting the importance Christianity has had as one of Europe's foundations. To begin with, this acknowledgement cannot be fair if it forgets that there are other religions that have helped shape our constituent identity. This pluralism (which cannot be understood without the Jewish or Islamic influence) is required by our history. However, this pluralism is also demanded by the current configuration of our societies, home to, for example, over fifteen million Muslims. That said, the core issue lies in the fact that the definition of citizenship cannot be determined by a reference to a culture or religion. Europe will certainly have to adjust to a pluralism that refers not only to diverse religions but to the diverse meanings religion has for our fellow citizens. We will have to do so within this dissociation between the identitarian and the public that has allowed, like no other polity, the coexistence of beliefs and lifestyles.

Europe is not a lifestyle, a people, a civilization or a super-state. Rather, it is a particularly original construction allowing the possibility of accepting legally binding rules that stem from the articulation between spaces that are neither homogeneous nor wholly unified. In this way, the EU differentiates itself from the traditional constitutionalism that called for unity of *demos,* which very often also entailed political, cultural or linguistic unification. This dissociation between the identitarian and the political constitutes one of its most interesting innovations. This contemplates the possibility of a democracy without *demos* or with diverse *demoi,* a vaguely defined, not clearly limited and porous people, not necessarily opposed to others.

This difficulty in describing Europe in cultural terms that refer to a common history, a defined common territory or a set of shared values, makes the configuration of a European public space particularly important: Europe must be seen as a conversation, as a discursive space that does not need determining bases but opportunities for dialogue.

If one had to stress a particularly characteristic value in the midst of this pluralism, I would say that the starting point would be Montesquieu's sharp remark when he said that Europe has always been especially interested in knowing what others think about us (Lucarelli 2008), a habit we would not have developed if we were in a context of indivisible sovereignties. I think it is this will to see ourselves from the outside, rather than a

supposed defense of something exclusive, that is at the heart of our best constructions. But what if our fundamental values are a set of habits that have shaped an identity that continuously makes us keep our own identity at bay? Self-relativization, reflexivity, distance from oneself, curiosity, respect, interest in compatibility, willingness to cooperate and recognition are the descriptive features of a weak kind of identity without which the European experiment would not be possible.

2 European Spaces: Margins that Do Not Set Limits

The European space is key to understanding the meaning of European integration. From this point of view, we can also encounter some peculiarities that are essential for those who need to understand the innovation represented by the singularity of the Europe Union. As a unified political space, it represents an innovation that demands the reconsideration of the premises concerning the conventional conception of territoriality. It is not surprising that the EU has come up with some new spatial terms: networks, variable geometry and multiple levels, among others. This innovation reveals that we are rehearsing the possibility of an organization of the political space beyond certain territorial premises of the nation-state (Barry 2001, 90).

The first category that may be eroded by the new organization is the idea of a delimited space. We are accustomed to thinking of political spaces as delimited, articulated into states and divided by borders. In the case of the EU, what we have, both inwards and somehow outwards, is a plurality of spaces that cross and overlap each other. The European space has margins or 'borderlands', rather than limits. From a geopolitical point of view, its Eastern or Mediterranean borders are not properly fixed limits, but margins that do not limit, relatively porous thresholds, dynamic zones where ways of connectivity and discontinuity are articulated (Delanty and Rumford 2005, 135). Europe's limits are, in any case, "limits that move" (Bös and Zimmer 2006), that have in fact been repositioning themselves in every one of the expansions, without the final stage of that movement being clear (Zielonka 2002). Margins do not necessarily divide spaces; they can also unify them in some way and behave as suture points (Hassner 2002, 40). Something that also occurs in other parts of the world is particularly intense in Europe. Globalization means a continuous crossing of

spaces, a dialectics of limitation and delimitation. Rather than being reduced to a dividing line, discontinuities take place within a space (Sassen 2001). This is the reason why borders have lost their old strategic role. Therefore, the outbreak of new conflicts does not take place in contact areas, but inside the supposedly delimited spaces themselves.

From this point of view, one can state that the idea of margins resembles the *limes* of an empire rather than the traditional border of modern states. In this sense, it seems appropriate to compare the EU and the old empires, which it may resemble more than the nation states from the point of view of the organization of space (Beck and Grande 2004; Zielonka 2006; Colomer 2016). The issue is that contact zones do not delimit spaces in the same way as the borders that safeguarded territorial integrities. Unlike limits, margins do not make a complete distinction between those inside and those outside; they do not delimit them in a definite, sharp way. Margins are spaces that are neither fully integrated nor absolutely exterior, and they cannot be tamed. The nature of margins manifests itself in their expandable character or in the possibility of maintaining privileged relationships with certain environments. When it comes to understanding the kind of borders in the EU, it is very important to consider the argument that the enlargement took place because there were no reasons for opposing it. Due to its peculiar identity, the EU lacks uncontroversial arguments to set its limits.

I think that we tend to neglect this sort of decisive issue in current discussions on the future of Europe. For example, debates on 'integration' tend to ignore other key issues that belong to its spatial shape: provided Europe is a network, internal coherence is as important as the articulation established with its surroundings and the rest of the world. The European space cannot be properly understood if it is reduced to a matter of integration—domestic—and if its connectivity is neglected—external. This is what makes it more complex and dynamic. It is in fact this idea of "European margins" that suggests there is another logic in the process of integration: its incapacity to either wholly unify its political, economic or social spaces or to limit them outwards stems from two different facts. First, that the EU is less separated from the rest of the world than we usually think, and second, that globalization does not make the EU different from other regions in the world, but signifies its interpenetration (Delanty and Rumford 2005, 134). This may be the reason why it makes sense to define Europe itself, the whole of it, as "borderland" (Balibar 2004, 220),

in the sense that Europe itself is both a crossroads and a site of conflict, a space where global interdependences are particularly intense.

The *European Neighbourhood Policy* (ENP) constitutes the clearest manifestation of the EU's interest in acting beyond its immediate sphere and assuming its responsibilities concerning the governance of civilization. The Commission is increasingly aware of the fact that, as a consequence of globalization, financial flows, communication networks and markets, rigid limits are a source of potential instability rather than a guarantee for security. The EU's response to this situation is its intention to develop an area of prosperity and a friendly neighborhood—"a ring of friends"—by means of cooperative relationships (European Commission 2003, 4). By acknowledging the relationship between its inner development and the external environment, the EU admits it cannot think of itself on the basis of a rigid division between the internal and the external (Delanty and Rumford 2005, 130). "Our task is to promote a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean with whom we can enjoy close and cooperative relations" (European Council 2003). EU internal security cannot be reduced to a matter of control of external borders. Little by little, we have come to realize that we have to move from the concept of Europe as a fortress to a topography of the border areas that reduces the separation between Europe and the world.

3 Governing Without Sovereignty: Beyond the Nation State

It is difficult to think of the EU in terms different from those of the state, to think of it as something more than a peculiar variation on the same pattern. However, we are neither facing a super-state nor a simple articulation of states. For the forerunners of the idea of Europe, it was clear that Westphalian order, based on the principle of unlimited sovereignty of states, in which relations are governed by force, had to be replaced by common regulatory principles. It needed to go beyond simple declaratory principles, such as the Universal Declaration of 1948, and make the states commit themselves in such a way that those principles could be invoked and the states punished if their performance threatened democracy and fundamental rights. This internationalization of fundamental rights meant the endorsement of a primordial rule for states, similar to the ones imposed by democratic revolutions. It also pointed to transnational constitutionalism.

Since then, the evolution of Europe has taken place hand in hand with a discussion concerning its nature. Supporters of sovereignty understand Europe as a simple federation of states, or at least, would like to limit it in that direction. Federalists highlight that, in fact, judges have already adopted interpretative criteria closer to those of Constitutional Courts than to those of international jurisdiction. The authority the European institutional system enjoys is stronger than that of classic international law, though less stable than that resulting from a state Constitution. In any case, to understand the EU, it is necessary to overcome this dilemma. An unprecedented kind of post-state political power is built on the basis of existing structures containing elements of federation and confederation.

It is true that the European Union was born in part so as to create a framework of action that allowed all states to cope with the demands of a globalized economy. The Union would provide what states could no longer guarantee and in this way states would be saved (Milward 1994). However, this saving has only been possible by means of radically modifying the scenario defined by states, which have stopped being sovereign actors. Nation states can no longer be the core of the analysis to understand what Europe means. The radical novelty brought about by the European Union cannot be understood when considered on the basis of the old conceptual framework, which considers institutional expansion and widening of spaces of action as a way to weaken particular sovereignties. National categories cannot but provide a negative definition of Europe. Methodological nationalism and its obsession with the state prevents the possibility of conceiving what is new in Europe, which limits perspectives and draws attention to false alternatives and zero-sum games. On the basis of these categories, Europe is understood either as a "superstate" (Siedentop 2001) that would eliminate nations or as a federation of nation states that would defend their respective sovereignties with particular zeal.

In order to get an idea of the innovation involved, it is necessary to understand that European integration as a whole is a process resulting from the tension between intergovernmentalism and supragovernmentalism, a movement in which states play the leading roles but goes beyond them. The successive allocation of policies, competences, and spaces for action at a European level, and the implementation of decision-making processes that can no longer be controlled by the member states alone but that have more to do with their own dynamics create a structure that is neither a replica of nation states nor a variation of international organiza-

tions (Tömmel 2003, 54). The best definitions of the European Union have tried to label its radical innovative character under a new category: a network or "set of networks" (Kehohane and Hoffmann 1990; Castells 2001; Kohler-Koch 1999; Ansell 2000), but also a "multi-level governance" or "consociative system" (Marks et al. 1996; Grande 2000; Hooge and Marks 2001; Benz 2001). It has also been said that Europe is "a balance of imbalances" (Hoffmann 1996). The institutional and procedural innovations of the European experiment stem from a way of governing that is based on coordination and interdependence. They correspond to the type of organization that belongs to a society that can no longer put up with being governed from a rigid center, with a strict hierarchy aimed at producing homogeneity.

The EU has become a regulatory framework that undermines the sovereignty of the states (Majone 1996). According to the European Court of Justice, there is even a limited possibility of amending founding treaties and, therefore, a drastic limitation to the sovereignty of states. The principle of the primacy of European law over national law, which was not expressly included in the constitutive treaties, has become an unquestionable jurisprudential formulation since the *Costa v. Enel* case in 1964; some member states have introduced it into their constitutions and there was an attempt to codify it in the unsuccessful Constitutional Treaty. It is not unconditional primacy, but a primacy in the framework of subsidiarity, proportion and respect for the identities of the member states. But it is a sufficiently relevant principle to have provoked discussion about whether there is a right to secession, without the consent of everyone else and complex negotiation. Although the Union lacks coercive instruments, one must bear in mind that it is a political and legal system that is original, and its effectiveness does not rely on violence, but on interdependence (Díez-Picazo 2002, 65).

The idea of a "direct effect" of communitarian law in the member states, no matter how nuanced it has been, is incompatible with the traditional conception of the relationship between domestic and international law since, according to the traditional view, the states' constitutional provisions are what determine the internal effects of international law. That is why a member of the European Court of Justice has been able to affirm that there is no nucleus of sovereignty that the member states can invoke, as such, against the Community (Lenaerts 1999, 220).

In any case, due to the complex structure of its government, the European Union has modified the ways power is understood and exer-

cised. The very idea of sovereignty, traditionally absolute and non-shareable, transforms and results in what some have called "complex sovereignty" (Grande and Pauly 2004), that is, the paradoxical possibility that losses of sovereignty can provide gains in sovereignty. It is difficult to understand this peculiarity of the EU's regime when sovereignty is thought of in the traditional way, on the basis of which, one gains what someone else loses. Europe is a cooperation game that does not leave those who take part in it untouched, but it transforms them in such a way that they accept the institutionalized constrictions of collective action. Europe disciplines interests and modifies preferences inasmuch as it inserts them into interdependent networks, and they are subject to permanent discussion and revision. The genius of the "community method" is its capacity to avoid single leadership, hegemony or centralization.

Whether the European experiment succeeds or fails is something that will not be decided because we have a clear idea of what we are involved in. However, a process of such magnitude cannot be carried out without a set of categories that properly interpret the situation. Our main challenge lies in abandoning concepts focused on the traditional idea of the state and developing an alternative understanding of the relationships between states, nations and societies. In order to understand Europe properly, we must have some distance from the concept of state. The European Union is not a state, but a new way of organizing political power for which the concept of state is not suitable. European integration has undermined the old argument according to which democracy can only work in nationally homogeneous territories, the only ones capable of shaping a common identity and indispensable mutual trust. Although the discussion of democracy in the EU is still unfinished, integration has allowed for an evaluation of the issue of democracy at the level of a discussion about the possibility of a pluralist order beyond the nation state.

At the same time, the concept of sovereignty must expand toward areas of power in the global age. The traditional notion of sovereignty is not in line with the political project of European citizenship. As things stand, Ulrich Beck is right when he claims that a cosmopolitan Europe is nowadays the latest effective political utopia (Beck and Grande 2004, 11). As we need to define a new European common good as opposed to the most immediate interests posed by both capital and the states, Europeans have an opportunity to discover the great goals of politics.

4 European Citizenship: A Plurality of Loyalties

What we could, I dare say, call European's disloyalty means in fact that, thanks to the innovation represented by Europe, we enjoy a space in which political loyalty finds itself pluralized, conditioned by the law of the state monopoly and free from it. Some of these features have taken place before, but never had these three circumstances come together in such a balanced way and in such an original citizenship framework.

In order to understand this innovation, one needs to abandon the idea that society depends only and exclusively on the state's architecture, as this no longer enjoys the monopoly on identity, sense of belonging, acknowledgement, and protection. At the same time, European citizens tend to eliminate the hierarchy between different loyalties (Preuss 1995, 280). What makes this dissociation more visible is the possibility for citizens to appeal to Community Courts against decisions taken by their own states. This alone allows us to say that, for the first time, Europe has separated human rights from nationality and citizenship. Thus, it contravenes the state's wish to be the only institution ensuring the preservation of rights.

Advocate General Maduro gave the following explanation for the aforementioned "disloyalty": European citizenship strengthens the identifications with our states (since we are citizens of the Union because we are citizens of a member state), and at the same time, it emancipates us from them (to the extent that we are citizens beyond our state). Access to European citizenship is produced through belonging to a member state, but it makes us become part of a space in which there are rights and obligations that are established by communitarian laws and that do not depend on the state.[1]

Europe as a construction makes clear that the link between nation and democracy is context-dependent rather than conceptual, which leads us to the conclusion that wider civic identifications are possible, that the process of democratic learning can be extended beyond the nation state. We have managed to disperse sovereignty, multiply spaces for civic engagement, while promoting self-government and loyalty towards wider political sets (Sandel 1996, 148). That is why we are faced with the possibility of inventing a new kind of citizenship, a more complex one, which would not stem from the mere extension of the existing kinds of citizenship to the European scale.

Until now, redistributive issues and the definition of a political community have been confronted within the states themselves, but at the same time, there is massive redistribution on an EU scale without specific criteria

for transnational legitimation. The temptation for mimesis is certainly a reason for pessimism, but there are other ways of identification and governance beyond those featured in the nation state. There is no reason for thinking of democracy in wider spaces (Europe or the world) as a reproduction on a different scale of the mechanisms that are representative of the state. The future of the EU is not simply a matter of building a large state, be it federal or confederal, but requires the invention of new structures that lack a substantial precedent either in the experiences of different states or in organized international cooperation (Constantinesco 2002, 139).

What some call 'Europeanization' is something very different from the traditional *"nation-building"*, and has to be reconsidered beyond the category of the nation state, mostly beyond the idea that society is no more than a mere corollary of the state which must, therefore, be tamed. The issue is that one must not think of societies as fixed, delimited entities, but as transforming realities, as "emerging realities" (Mellor 2004). The EU does not govern in the same way as any other state. Its peculiarity is that it builds the spaces in which European solutions to European problems can be found (Barry 1993). Its main challenge consists of building Europe as something to govern, and to this aim, it activates a series of actors, state institutions, citizens, networks, companies, and so on. What is innovative is not the governance tools as much as the fact that what is to be governed has to be constituted. In Majone's words (1996, 59), the first task for governance is to build what is to be governed, in this case, European-wide activities.

One could say that Europe is a space for redefining what is common, and that European citizenship aims at the democratic configuration of that sense of the common. This is difficult to identify by means of democratic deliberation and should not be reduced to a primitive juxtaposition of interests. The old ontological principle that the whole is greater than the sum of its parts is politically translated into a public sphere understood as something that does not limit itself to just balancing individual preferences. The greatness of the process of European integration lies in fact in its enormous cooperative knowledge.

In my view, herein lies the legitimacy crisis we have been suffering since the 1990s, a crisis that has eroded respect for the common rules, as shown by the fate of the Stability Pact. Within a general environment that has not particularly favored great projects and, given a generation of politicians lacking their predecessors' vision, Europe, which is subordinated to

domestic goals, remains at the mercy of the volatility of short-term interests. Citizens do not trust a political system that they misunderstand and state governments do not trust the increasing power of the Commission. Forms of action are reduced to classical intergovernmentalism and leadership is provided by the European Council, which is formed by the heads of state and government. Little by little, a willingness to break with the delegations of power, a feature of the community method, has settled.

This is the context that fostered the need for a redefinition of Europe's own purposes and that led to an attempt to draw up a Constitutional Treaty. In his famous speech in 2000, Fischer's denunciation criticized the "communitarian method", that is, the idea that everything should be dependent on functional integration. But 'permissive consensus' is not sufficient when the issue is to build a political community. Pragmatism promises to make progress step by step without wasting time wondering about the overall picture of the European construction, but the matter of substance, that is, the shape of European citizenship, surfaces when we come across the limits of integration thought of as a technical process.

From this point of view, the Constitutional Treaty was an insufficient step. The fact that it was 'constitutional' suggested a break with the past, but it was basically a treaty and therefore retained a line of continuity and preservation of the power of states, which, in turn, did not seem concerned about anything except ensuring that no decision affecting their essential interests could be made. Negotiations about blocking minorities and about exceptions marginalized any debate on the procedures for the identification of what is common. Constitutional rhetoric was misleading, as can be seen by comparing, for example, those who signed the American Constitution *("We, the people")* and how, in the draft of the Constitutional Treaty, that decision was in the states' hands (Dehousse 2006). The difference between a treaty and a constitution is, in fact, the same as that between a deal between states and an act of self-determination of the European society. The Constitutional Treaty did not involve a qualitative leap; the traces of continuity overweighed the drivers for change. In spite of this, in some countries it also raised fears and difficulties for its acceptance, as if it really were a real break with the past. One of the reasons for the constitutional failure was the gap between the emphasis of the proclamations and the modesty of real objectives. There is nothing worse than arousing fear and lack of enthusiasm at the same time.

How can we get out of the current scenario? There is no doubt that the procedure for the revision of treaties should be modified, decision-making

in an enlarged Union should be made more agile by spreading qualified majority voting, the European social model should be defined, and we should succeed in making citizens find positive reasons for providing active support to one of the most spectacular enterprises in recent history. It is necessary to redefine public goods (security, social protection, economic growth, etc.) in order to make sense of the common European space and, at the same time, design particular projects with identifiable benefits. We will need an objective of integration that is legible for the citizens, since Europe can only be credible when the action undertaken by an organ replaces that of scattered governments.

Nevertheless, the future of Europe depends ultimately upon the recovery of its original strength, which stems from the wish to put an end to the helplessness of traditional diplomacy between states. The European project would enjoy larger support if we were able to understand and explain its large innovative capacity. Rulers and citizens alike need to make the conceptual leap represented by EU means. The former are responsible for making people understand the demands of interdependence, explaining the long-term benefits that can justify mutual concessions and immediate sacrifices. Furthermore, citizens want choices to be made consciously and following public debate; they refuse to accept that, under the pretext of Europe or globalization, irresponsibility may gain ground or political matters may be abandoned to inertia, lacking direction. Even the 'no' is a manifestation that the European space is considered a relevant dimension of citizenship.

In any case, any strategy adopted must combine the search for consensus and convergence, without which the referendum procedure is bound to fail, and the decision-making capacity of citizens, which contains the source of legitimacy. Vision and participation are the two main elements that need to be put in play in what constitutes the laboratory of the largest supranational, multicultural democracy in the world.

5 A Globalized Europe: A Sort of "Us" Without Others

When it comes to thinking about Europe, it is not enough to focus on institutional structures; one has to pay attention to society. Societies are built and transformed under conditions that are not fixed and cannot be reduced to institutional structures. Europe must be understood on the

basis of European society, a society that cannot be understood with the analytical procedures of states and their convergence that can no longer be understood without the reality of globalization. It is necessary to have perspective over the European public space, involving overlapping and interdependence. It is common to speak about "domestic changes produced by the European integration" (Vink 2003), but the opposite process is usually forgotten: that it is the internal transformation of those societies that forces the modification of institutional frameworks, and this social dynamics can only be explained in the global context. This is why it is more suitable to speak about "Europeanization" rather than "European integration". The former refers to society in a wide sense, and includes its global dimension; the latter seems to reduce everything to states and institutional frameworks.

In spite of the EU's regulatory power, Europeanization is taking place worldwide (Delanty and Rumford 2005, 5). Europe is being built in the midst of a process in which diverse logics intervene and projects, discourses, social patterns, and disparate imaginaries are interwoven. This is all taking place at a time in which the nation state has lost the monopoly of collective action and social identifications. There is an abundance of groups, institutions and individuals that think and behave outside the nation states, such as migrations and diasporas, traditional social movements, regions and cities.

When the European Commission, in its Document on Governance (2001), posed the issue of citizenship and European public space, it paid little attention to this dimension, as if it were thinking of a closed, well-defined community similar to the nation states, the image of which should be replicated. The question of whether European citizenship exists or not must also be put forward in an original way; rather than a question of identity, it should be faced as a challenge linked to the civilizing mission we can face. The determination of the Commission to build an "organized civil society at a European level" must be understood within the global society of which it is part. It is paradoxical to state that fostering a truly European citizenship through universal values leads to a weaker exclusive identification with Europe as these values provide reasons for Europeans to see themselves as part of the world, of a single humankind.

What is most interesting about the European construction is that it allows going beyond the fiction involved by the fact that society can be stately built, independently from other societies. There is not a single European civil society that is the result of the mere aggregation of national societies disconnected from the rest of the world. European society forms

part of a global one. It is a mistake to over-emphasize the difference between Europe and the rest of the world, or to think that all integration strategy can be justified as a defence from a world considered a threatening reality. If there is something that justifies the European experiment, it is the fact that it encourages a kind of identity that not only does require the elimination of its internal diversity but also does not need to oppose others to gain its own affirmation: it is a sort of "us" without others. One of Europe's fundamental values is that identification with one's own becomes less exclusive and allows a great complementarity.

The political construction of Europe is singular in a way that makes it different from all the projects of national construction. It is probably the first political body shaped without the need for a kind of ideological patriotism that demands a well-delimited, homogeneous people, a common origin, a common language and culture, and some sort of external enemy that serves internal cohesion. In spite of the abundant rhetoric in that direction, antagonism with the United States attempts to endorse Europe with an unnecessary legitimacy, as Europe is rooted in other kinds of values. Unlike what has been customary in the configuration of nations, the European project does not demand the dramatization of external danger in order to ensure inner cohesion. Joseph Weiler sees, on the other hand, the foundation of European identity in the recognition of the difference of the other and, at the same time, in the preservation of that difference without attempting to remake the other in their own image (2003, 15).

Europe cannot be considered an entity that is apart from the world. This interweaving has been a constant feature in history; here the awareness of being linked to the rest of the world has always been particularly intense. This reference, which in the past was driven by a civilizing will that was at the same time commercial and colonial, has provided Europe with a strength that continuously takes it away from its potential isolation. Therefore, one can state that the impact of globalization does not mean a particularly original break with history. This "cosmopolitan Europe" (Beck and Grande 2004) has been emphasized in the European Union project. Against the conception of Europe as an autocratic entity clearly separated from and competing against the rest of the world, the European experiment has no other justification than to represent the embryo of genuine cosmopolitics. Europe, which has always enjoyed an expansive culture, can find a horizon of meaning here. Against the stereotype that presents globalization as a threat, against the warning that Europe should not become the Trojan horse of globalization—as said by Nicolas Sarkozy during the French presidential election campaign in 2007, and, by the

way, something a large section of the left agreed with, since the Socialist Party itself had used that expression in their Dijon Congress in 2003—it is urgent to "de-provincialize Europe" (Chakrabarty 2000), that is, to place it in the context it belongs to at the same time as it faces its current responsibilities.

The European Union reveals, even though in an incipient way, that globalization is not a threat for democracy, but an opportunity to expand it beyond the limits of the nation state. "Europe is an especially intense way to elaborate a global system" (Meyer 2001, 238), a miniature "world polity". Globalization, rather than a threat, challenge or catalyst, must be seen as a possibility to define the European project in global terms. It does not mean taking sides as a global actor as much as promoting a different way of organizing relationships between actors. We are trying to look for the meaning of society in a world in which social coherence, democratic participation and political legitimacy are being redefined.

Government practices of the European Union develop a series of universal provisions: the ability to see the very community from a certain distance, the acceptance of limitations, mutual trust, willingness to cooperate, and a sense of transnational solidarity (Magnette 2006, 154). Europe is not an example because of some sort of superiority, but because the European public space represents the fact that most political decisions cannot be adopted without considering whether they are in keeping with the interests of others. In this sense, Europe can be considered a paradigm of the new politics demanded by an interdependent world. "Europe provides a modern experimentation of the shaping of a truly 'multipolar' world …. It is, no doubt, one of the messages the political Europe can propose: being multipolar itself, it can foster this kind of organization; by projecting its own internal practice outwards it can contribute to 'civilizing' globalization" (Foucher 2000, 137). That is why it can be affirmed that the EU is a decisive step toward a politically integrated global society (Habermas 2012). The European process of political integration is an unprecedented response, and perhaps it will one day be an example to the current circumstances conditioning the exercise of power in the world.

Notes

1. Opinion of Advocate General Maduro, Case C-135/08 *Janko Rottmann v. Freistaat Bayern* 2 March 2010, Schlüssanträge v. 30.9.2009 in der Rs. C-135/08 Rottman, Sig. 2010, I-000 Rn.23.

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PART III

A Truly Common Europe

CHAPTER 8

Who Benefits? The European Construction of the Common

A brief anecdote by German playwright Botho Strauss describes a situation that reflects metaphorically but very well a peculiarity of the world in which we live and more particularly of our Europe: the contradiction between the universal call to participate in a public space and the fragmentation of discourses and interests; the coexistence, at all levels of collective life, of processes that connect us and make us interdependent alongside the entrenchment of seemingly insurmountable differences. Doing politics today is similar to what one of the characters was doing in a restaurant when he suddenly shouted "psst!" at the scattered mass of loquacious diners, in such a loud tone that everyone looked at him and stopped talking. Then he shook his head: no, never mind. The diners began to move again, laughing stupidly and making fun of the man who invited them to listen and who, even though it was only for a few seconds, turned the most diverse combination of individuals into a group that listened in perfect harmony (Strauss 1981, 9). We see something very similar in the ritual call for greater European integration, which lasts as long as the luster of the call for unity, coming to an end when habitual routines return, with their lack of vision and ignorance about everything that connects us.

What if the true European deficit were not as much of a democratic deficit (understood as a procedure for participation and popular legitimacy) but instead an intelligibility deficit of the common, which is the origin of the deficit of justice and cooperation? (Williams 2009; Neyer

D. Innerarity, *Democracy in Europe*, The Theories, Concepts and Practices of Democracy,
https://doi.org/10.1007/978-3-319-72197-2_8

2011). I pose this question, taking as my starting point the idea that the measures that should be adopted in order to complete the European institutional edifice refer in the end to a conception of transnational justice that we have not yet achieved in the European space, in theory or in practice, because we remain tied to a heavy conceptual burden that hinders us from doing so. The way we label current financial imbalances in the Eurozone is an eloquent illustration of how far we are from seeing ourselves as a common space of justice and solidarity. We should overcome current intergovernmental cacophony by conceiving of the interdependent "us" from which those responsibilities arise, as well as the procedures for cooperation that would allow us to formulate them while respecting their complexity.

1 Intergovernmental Cacophony

If, as an old and well-accepted principle states, power is the ability to define a situation, in other words, to impose—through force and manipulation or through argument—the story about what is happening and what is in play, then the current European moment could be described as the attempt to impose a discourse that is not very common, articulated around national particularisms (center against periphery, north against south, the austerity of some against the excesses of others, and so on), a discourse that those affected sometimes shore up by employing the same framework, but inverting the distinction between good guys and bad guys.

The result is that the euro crisis has shredded the weak *us* that had shaped itself around certain shared objectives and that seemed to find strength in the face of equally shared fears. But this type of synchronicity is fragile and ends up yielding to the powerful voices of some states. The intergovernmental cacophony of European governance prevents us from perceiving the reciprocity of the responsibilities that connect us, which are as real as the benefits we have obtained from our life in common. Diverging interests have turned into conflicting discourses and, even more seriously, they have ended up buttressing asymmetrical powers. The current renationalization of European politics shows the extent to which we have been incapable of interiorizing our mutual interdependence, to which we owe many benefits but also some obligations. There will be no solution to the Union's institutional crisis until a different discourse emerges that manages to convince people that the member states are no longer autarchic, but interdependent and therefore required to cooperate.

The problem we need to resolve is closely related to a process by which new winners and losers appear (Kreisi 2012) and considers how we can achieve "consent from the losers" (Anderson 2005). In the case of Europe, we have moved from a "community of benefits" to a "community of risks" (Chiti et al. 2012, 426). Many legislative previsions were intended for the first situation and do not apply to the second. The most obvious case is the "no bailout" clause that forbids assistance to countries with debt problems (in Article 125 of the Maastricht Treaty, later corrected by the European Stability Mechanism in 2013 for emergency situations), which in fact viewed the Monetary Union as a community where everyone could increase their economic opportunities, share financial resources and a common monetary policy, but forbid sharing the risks associated with that.

The European Union does not have structures to resolve financial crises because the process of greater integration was only designed to share benefits. It was assumed that greater integration would provide earnings for everyone. The biggest demand for justice that appeared on the limits of the possible was that those who earned the most would redistribute some of their earnings. That logic made things like cohesion funds acceptable.

It is not merely that short-term difficulties are currently prevailing over long-term benefits. What is in play is a question that is as uncomfortable as the idea of sharing losses stemming from events for which one does not feel responsible (Mayes 2012, 287). This is no longer a deficit that can be resolved by committees of experts or by participatory governance; it requires a strong idea of justice, a concept of complex responsibility, and it places us in an unprecedented position of repoliticization. Until the crisis, we had taken our decisions on the basis of the uncontroversial identification (often realized based on expert opinion) of the benefits we would all receive; now we are confronting alternatives that involve political competition around values that are debatable or that presume some type of redistribution. The time for politics without alternatives, decisions without responsibility and justice without inconvenience is over.

2 Euro Crisis and Fragmentation of the Common Space

The euro crisis was full of errors of perception, grievances and national stereotypes that have spread and prevented us from understanding what is really going on in the Eurozone. One cliché that stands out among others

is of a hard-working center and a lazy periphery; another claims that the crisis stems from public debt. An examination of both stereotypes is needed to afford a correct diagnosis and appropriate solutions.

Compared with other industrial countries such as the United States, Great Britain or Japan, the debt level of the Eurozone states is relatively low. If public debt has increased in the majority of the countries affected by the global crisis, it has been because of the downturn in economic activity, the delay in financial bailout programmes, stimulation or protection. With the exception of Greece, current public debt is not a problem that stemmed from the states implementing wasteful policies. In the years before the crisis, Spain and Greece had fulfilled the criteria of the Stability and Growth Pact; for several years they achieved a budgetary surplus that Germany has only experienced one time since 1970. Levels of public debt do not sufficiently explain current problems in the Eurozone.

Neither is the euro crisis explained simply by heterogeneity in terms of productivity and the difficulties that such differences present for a true exercise of solidarity (Van Parijs 2004). The problem is that we have not been capable of confronting this heterogeneity in the common economic space; there have been tremendously destabilizing capital flows and bubbles that weaken the common currency. This has been exploited by investment banks and financial managers, as was to be expected.

The euro crisis is better explained by the dramatic shift in the flow of capital that has taken place in the Eurozone since the beginning of the crisis, combining with the lack of competitiveness from countries on the periphery. Capital circulated toward Spain, Ireland or Italy with the expectation of an economic convergence that should guarantee the stability of the Eurozone. Certain banks from countries in the center and north of Europe injected excessive liquidity with the desire to grant easy credit and obtain large benefits. The financial crisis dealt a profound blow to investor confidence. The panic produced by the crisis of American subprime mortgages pushed investors to withdraw capital from the periphery of the Eurozone. The sudden shifting of capital flows produced a severe adjustment in deficit countries at the same time as others were benefiting from the fact of having become safe havens. While capital was directed toward the periphery at the beginning of the monetary union, the threat of the inverse process now has explosive momentum. Many interpret this flight of capital as the investors' response to the lack of competitiveness in these regions (the so-called PIIGS [Portugal, Ireland, Italy, Greece and Spain]), which is a mistake similar to the one made before the crisis by those who

interpreted the flow of capital toward the periphery as a sign of the capacity for growth in those regions.

The Eurozone's system of interbank balances (known as Target 2) is currently the focus of the ire of countries like Germany. In German public opinion, there is an impression (zealously nurtured by the populism of economists like Hans-Werner Sinn) that this payment system is financing irresponsible consumption in the periphery, as if German contributors were paying for the way of life of the southern countries (Sinn and Wollmershaeuser 2011). However, the German account balance in this system has increased because Germany is seen as a bulwark in the Eurozone, in other words, an indicator of the flight of capital rather than of a way of life (Illing et al. 2012, 165). In addition, this flight of capital does not represent one of Germany's strengths. Their current competitiveness is as exaggerated as was the competitiveness of the periphery countries prior to the crisis; it reflects the relative weakness of other Eurozone countries, which in turn favors the export capability of Germany. It is in a more vulnerable position than it seems, and it could change quickly. Target 2 account balances are not a problem that would justify Germany exiting the euro but a symptom of the growing loss of confidence in the continuity of the monetary union.

Exiting the euro is not a solution for countries with special difficulties either. There are those who defend it by comparing the currency devaluation that this exit would allow with the Argentinean peso's devaluation against the dollar at the beginning of the twenty-first century (Roubini 2011). This argument ignores the fact that leaving a unified monetary space is completely different from the devaluation of one currency against another. The few examples we have of the first—the fall of the Austro-Hungarian Empire or the decomposition of Yugoslavia—were accompanied by chaotic processes of political disintegration. The idea of leaving the euro was defended because that would bring back the tool of devaluation, which favors exports and improves economic competition. However, when the country in question has structural deficits, painful reforms are not avoided, they are simply delayed.

For the members of the monetary union, the exit of one of them would put in motion a very dangerous dynamic with capital flows in the rest of the Eurozone. If any country leaves the euro, it would entail an enormous cost, especially for Germany, because the remaining countries would need to assume the corresponding obligations (Germany has a 27 percent capital subscription in the ECB). After one country leaves the Eurozone,

investors would demand greater risk premiums and greater interest charges from other countries on the periphery, thus increasing the costs for financing debt. The door would be opened to speculative movements of capital, and confidence in the competitiveness of the affected countries would take a hit. This leads to the paradox that those who raise doubts about the continuity of the euro encourage the very risks they are bemoaning.

The exit of one country from the Eurozone would be a precedent that would damage, severely and for a long time, confidence in the monetary space. A common monetary space is not just any organization. The expectation of maintainability is a necessary condition so that a unified monetary space can produce the benefits for which it was constituted.

The crisis has revealed the shortcomings and imperfections of the European monetary union, which fund managers and investment banks have exploited. The free play of market forces only produces the desired effects when adequate framework conditions exist; without stability and regulation of the financial markets, market forces can give way to catastrophic processes. For that reason, we need tools that help us overcome the heterogeneity that makes convergence difficult, and that has instead favored movements of capital that lead to speculative bubbles.

The failure of the Stability Pact is not the cause for what is happening to us because their criteria were not sufficient to assure the necessary level of convergence. The problem has been member states' inability to grant the European Central Bank fiscal authority and to complement the monetary union with a corresponding political union that would balance the financial markets politically (Bordo et al. 2011; Marzinotto et al. 2011). The ECB needs to exercise the function of "lender of last resort" to avoid market panic and state bankruptcies, since it was constructed on the model of the Deutsche Bundesbank, with its particular idea of independence, its depoliticized monetary policies, its fixation on the task of monitoring price stability and controlling inflation.

Europe today is the result of a long chain of crises. There was already a crisis about the agreement for types of change at the end of the 1970s and another about the monetary system at the beginning of the 1990s. Our best tradition advises us to react by strengthening Europe instead of seeking protection in national solutions. Even if we can understand the tendency to retreat into the national state when there is a crisis, it is increasingly clear that a space of political action to govern globalized financial markets can only be recovered at the European level. For this level of resolution, we must advance in cooperative rationality, which has its difficulties and its justifications.

3 Rationality and Improbability of Cooperation

Cooperation—especially cooperation between entities accustomed to the exercise of sovereignty and when they discuss economic interests that are in principle opposed—is as necessary as it is improbable. Let us examine what leads to the difficulties and how the possibilities of effective cooperation at the heart of communitarian decision-making mechanisms can be increased. Only in this way can we have any assurance of success when we confront what is likely to be the largest question we have before us: strengthening cooperative relationships in a Europe that must learn to resolve the differences of interest that stem from their diversity.

In the first place, it would be unwise to forget the reasons that have brought us to this point and why the EU is so prone to a type of very low-intensity cooperation, as is revealed in its slowness and inefficiency, its vulnerability to vetoes or its sub-optimality. Unanimity has its limits but also its reasons, which the federal core does not understand. In spite of everything, it is possible to transcend the limitation of interests in a normative horizon; I will address this later on. Interests, collective learning and universalization complete the picture of cooperative rationality that we must rethink and recompose.

1. We should begin, in my opinion, by trying to understand what *the old reasons for unanimity* are. Since the instruments of enforcement in the European Union are rather weak, assuring agreement on its decision-making processes is fundamental. Most of the decision-making procedures are intended to avoid the clash of majorities. As with heterarchical organizations, there does not tend to be a vote, and argumentative procedures have great relevance. The EU's consociational element explains why it is so hard to introduce majoritarian instruments of legitimacy. Pressure to act by consensus is very strong, with all the advantages of integration and the inconveniences of slowness that this presents. In fact, the events provoked by the sovereign debt crisis and the euro crisis have already produced sufficient "shared destiny" to think about advancing the ability of majoritarian decision making in some realms that the states had reserved as questions of sovereignty. We have seen that the whole system has been inadequate to confront crisis situations, given the possibility it offered to reject compromises in order to assure unanimity or majoritarian coalitions.

2. The reason for the preceding, from an anthropological and political point of view, rests on what we could call *the inevitability of interests*. At its

most elemental level, the nature of cooperation has more to do with mutual advantage and usefulness than with reciprocity or impartiality (Rawls 1993, 17). I would like to emphasize, in the polemic against a frequent excess of normativism in communitarian literature, that usefulness is not a negligible reason; it is frequently the case that big advances in humanity stemmed from a calculation of usefulness rather than explicit generosity. In Europe, we are still to a certain extent held hostage by the image of the abstract citizen represented in the political writings of the eighteenth and nineteenth centuries. This image, according to Kapteyn, characterized the Carbon and Steel Community in the twentieth century: a European citizen enlightened by "reason", free from strictly national preoccupations and prejudices and prepared to consider the diverse interests at the heart of the Community from the angle of their intrinsic merits (Kapteyn 1962, 115). This idealization has left the way open to sceptics and when the struggle is presented as a confrontation between enlightened particularist cynicism and the generous moralism of the cosmopolitans, that is because it has already been decided in favor of the first.

The struggle for European values should begin by recognizing the facts and learning the lessons of history. In the history of the European Union, when problems have been able to be resolved in a competitive fashion, that is what has been done; the need to cooperate is imposed when there is no way to find a solution in zero sum terms. Game theories and institutional behavior theories have long since taught us that people do not yield to collaboration when we have a better offer (Olson 1965; Scharpf 1997). The problem is that, in situations of profound crisis, this calculation can fail; barriers are frequently discovered only once they have been crossed. Perhaps we are now at the edge of those very limits.

On the other hand, the distinction between interests and values, between matters that can be resolved in terms of justice as mutual advantage and justice that has distribution costs and therefore implies mutual recognition is not as strong as some people think (Eriksen 2005, 22). In a context of dense interdependencies, in the long run, individual advantages imply exercises of recognition, and they compromise values without which cooperation is itself unsustainable. "Strategic interests and norms cannot be easily distinguished, and … the assumption of a normative sphere without interests is in itself nonsensical" (Diez 2005, 625).

But it is also the case that self-interested calculation is not worthless; the issue is that it is often poorly executed. The immediacy of interests and the tyranny of the short term tend to produce fatal chains of events, unde-

sirable aggregations and unintended consequences. When decisions are adopted with a view to the short term, without keeping in mind the negative externalities and the implications of the long term, when decision-making cycles are too short, the rationality of the agents is necessarily short-sighted. This is not a blindness that is exclusive to communitarian institutions but a general problem of democratic societies, which scarcely have procedures to institutionalize the protection of the future.

It is important to remember that self-interest is a very sophisticated construction that often has little to do with the first impulsive identification of self. In the end, cooperative rationality matures when it can carry out for itself a discovery through which we can affirm that the truly common has emerged from what may have begun as nothing more than a process of self-interested negotiation. Here is how we could apply what Kant said about how hypocrisy can carry virtue; the transformation of interest into solidarity is possible, and it is also possible that the fixation on self, to the extent to which it is carried out in cooperative contexts, ends up constructing something truly common. It is a question of shifting from "mutual advantage" to the "advantage of their mutuality" (Barber 1984, 118). But this shift requires that attention be paid to some other principles at the same time.

3. It is worth pointing out—even if this further complicates the panorama of the construction of the common—that there are what we could call *inconveniences of cooperation, coordination and harmonization*. Some have shown the extent to which excessive emphasis on cooperation can have counterproductive effects (Bryant 1995, 65–73). Efforts to cooperate can distract government attention from first-priority domestic policies or incentivize a delay in political actions that should be carried out without international considerations. The international coordination of fiscal policies often pressures countries that have had more success when it comes to correcting their fiscal imbalances to relax their fiscal policies, reducing them to the level of the ones that have carried out less adjustments. There are even models of game theory that show the extent to which international coordination of policies can prejudice third parties. For these and other reasons, some people maintain that international competition, more than coordination, best serves economic development.

4. The principal argument of deliberative theories of democracy is *the indeterminacy of interests,* which in the realm of European construction translates into the fact that the actors (principally the member states,

although not only them), do not know exactly what is good for them nor do they know it in advance. They dialogue not so much to negotiate closed positions but to overcome uncertainty. Deliberation is what is done when the actors do not know exactly who they are or what they want.

The model for intergovernmental negotiation often contravenes this principle when it presupposes that the interests of the states are either given or they can be formulated without the need for a process of deliberation in which the players learn or discover something new. Political agents would act like mere emissaries of their electorates and might even have strict mandates; democratic authorization would be limited to the determination of this interest in the heart of each state; what comes next is no longer democracy but negotiation between states. Democracy would continue to be something exclusively national, and relationships between states would be ruled by diplomatic logic, which is something quite different. The mistaken starting point of this focus is, first and foremost, cognitive: it consists of thinking that the distinction between *ours* and *theirs* or, better yet, between the national interest and European interest, is self-evident.

One of the most prominent representatives for this argument affirms, for example, that the steps taken toward greater integration in the 1980s and 1990s should be understood as the result of a convergence of state preferences (Moravcsik 1988). This is an excessively static and predictable vision of the formation of European political will, as if it were all simply a coincidence. With movement forward and backward, the processes of discussion are negotiations based on individual interests, of course, but also deliberations that allow interests to be identified, solidified and even transformed; we should not decide that collective learning is uncommon (especially in the unchartered European landscape). At the very least, rivals are bound by the tenuous solidarity of those who have argued a lot; atavisms like the fear of solitude sometimes end up being more powerful than the possibility of being accused of weakness in the defence of that which is ours. These are the formulas within which that which we hold in common appears, and intergovernmentalism would do well to pay them greater heed if it wants to comprehend the logic of cooperation.

Cooperation is only truly democratic when agents have the possibility of influencing the definition of its terms or when they accept that the consequences of the process we are beginning are not fully anticipatable because this is a question of collective learning (something that the German Constitutional Court does not recognize in depth, preferring the

idea of national control over the processes of integration). An experience of cooperation sustained over time does not so much imply an end to self-identity, but a commitment to internalizing the preferences of others while exposing one's own preferences to argumentative confrontation with those others and learning together.

The democraticity of the European Union can only be understood if we conceive of the Union as a polycentric system of transnational governance, a non-hierarchical system of cooperation, a community of learning and adaptation. Its evolving logic implies a transition from the idea of reason of state toward the far-reaching assumptions that are implicit in the very idea of cooperation (Schmalz-Bruns 2005, 79). It is the "institutional reflexivity" (Giddens 1991, 20) that articulates this process of collective learning. The European Union should prove Klaus Eder's principle that it is not only individuals who learn, but also societies.

5. The logic of cooperation implies *universalization, coherence and training* in the face of processes of mere aggregation. The strong element of intergovernmentality that characterizes the European Union does not impede it from truly exercising a power that cannot be derived from the legitimate power of its member states. The political will that exercises this power is not a mere aggregate of national preferences. Articulations that are simply aggregative often provoke non-desired effects and shape clearly suboptimal decision-making, but more importantly, they do not represent a true general will.

When agents are principally moved by domestic motives, it is very unlikely that the simple aggregation of different national representations will configure the true will of the citizens of the Union or that it will do so in an effective fashion when it comes time to efficiently defend their interests, which are now truly intertwined and interdependent. It is not possible to take democratic decisions if those who intervene in them do not expand the horizon of their considerations and interiorize in some way the interests of those who, while they are *other*, are not entirely *other*. The first condition to configure this horizon of universality is to question the *universalizability* of one's own positions. This, in my opinion, is one of the principal weaknesses of the argumentation of the German Constitutional Court. Its rulings seem not to have anticipated the possible cascade effect of its generalization, its potential centrifugation. If all the states were to do the same, they would block operations at the European level (Zürn 2010, 51). A Kantian-style principle of generality is translated here, on the other hand, into the duty that all member states must assume responsibility for

the development of the Union. More specifically, if we formulate it negatively, this means avoiding become entrenched in positions that are not generalizable. This demand has a pale legal reflection in the principle of communitarian loyalty (Art. 10 of the EEC). The republican principle of non-domination here provides a conceptual space to assert its democratizing possibilities.

6. It is precisely the principle of effectiveness—not so much the principle of democraticity, depending on a demos that accepts majoritarian decisions—that promotes the transformation of cooperation so that the old logic of unanimity increasingly makes *the new logic of the majority* more relevant.

The best part of the German Court's ruling on Maastricht was a conclusion that could be deduced from its defence of the state as "a community capable of acting politically". This argument could have served to legitimize the transfer of sovereignty (although the ruling did not make that conclusion and that was not their intention). What if what was important was the exercise of that capacity rather than who carried it out, who was in a position to govern certain things and not who should be able to do so according to the constitutional doctrine elaborated in a world of self-sufficient states? If that capacity can no longer be carried out more than at a transnational level, then the transfer of sovereignty that results in an authorization to use procedures of majoritarian decision making is justified. The principle of effectiveness implies a true democratic skill, which is not understood based on direct input legitimacy, but neither is it mere technocratic rationality. Only power can be democratic, never impotent sovereignty. Unfortunately, this idea of replacing sovereignty with power was not a part of the spirit of that ruling and even less of what it laid down about the Treaty of Lisbon, in which it used the term "sovereignty" over fifty times—considering it a "non-transferable constitutional mandate"—when the word never appears in the German Constitution.

But the logic of the processes that are put into motion, the arguments in play and the objectives that are being pursued are more powerful than the rhetoric. This is what happened in the European Union and in all those international organizations that have been wanting to improve effectiveness: the majoritarian principle has been giving way. Since the approval of the Single European Act, the majority of the decisions that concern the Common Market and increasingly other domains have been adopted with non-consensual procedures, with majoritarian vote and the participation of the European Parliament, including in the face of the

resistance of powerful states. European law has been progressively emancipating itself from its foundations in international law and from the consensus of the states. That is also occurring when the United Nations Charter establishes a series of institutions with their own powers, that allow the Security Council to create new legal obligations following non-consensual procedures.

All communities that pursue a democratic horizon conceive of it as an exercise in self-government. But for there to be self-government, there must be government, in the same way as democratic decisions are, first and foremost, decisions. European democracy, in consonance with the complex pluralism that constitutes it, requires a capacity for acting, the lack of which would be as lethal for its claims of democraticity as other deficits that are more criticized.

4 A Europe of Solidarity

Its repeated invocation indicates, by default, that we are referring to a value that is rather limited. Europe is ripping itself apart because of its inability to think and act according to the unity that it does in fact have, because of the inefficiency of those who construct it when they act independently, because of the irresponsibility of those who believe they have nothing to gain by respecting common rules, because of a lack of solidarity of states that have stopped considering others as part of themselves. Is it still possible to identify and defend a "European common good", that "widest common interest" that Jean Monnet talked about? (Monnet 1988; Wydra et al. 2013).

A "zero sum" mentality is taking hold in the European Union: the fear of the "transfer union" in creditor nations corresponds to the rebuttal against austerity politics in debtor nations, in other words, the difficulty of thinking responsibility and solidarity at the same time, of giving a balanced institutional shape to both values, while the economic divergence between those two types of countries, countries that appeal to responsibility and countries that appeal to solidarity, continues to grow. In recent years—given that crises seemed impossible, in the first place, or that they were too present, later on—the instruments of transnational European solidarity have not been well developed. They would make it possible to complement the economic and monetary union with elements of a greater redistributive policy. The result is insufficient intra-European solidarity on economic matters, but also on things related to other crises, such as the

refugee crisis, because both things refer to common responsibilities to which we have committed ourselves in diverse treaties, to risks we share and to opportunities we can understand as common once we overcome the short-sightedness of space and of time; in other words, our fixation on immediate self-interest and the short term.

It is frequently affirmed that the problem with Europe is the lack of solidarity, which is largely true but requires a clarification about what we understand by solidarity and how to put it in play. There are misunderstandings about what this value means that are not at all helpful when it comes to defending it. The first difficulty stems from evoking a concept that demands too much, that takes responsibility from the actors and does not have any relationship with the principle of reality. A "moralist" conception of solidarity suggests that political agents do not have any self-interest and that society is regulated by relationships of generosity. When things are understood this way, it is not illogical for debtor countries to lack incentives to fulfil their commitments (such as commitments related to the deficit, especially if there are elections on the horizon) and for creditor nations to be increasingly reluctant to agree to any type of transfer. A concept that is as murky as solidarity ends up encouraging both types of countries to eschew responsibility for the whole to which everyone belongs.

On the other hand, we have what could be called the "cynical" concept of solidarity, which underscores the supposedly "natural" limits of solidarity, in order not to take into account the interests of others, but—what is worse—preventing themselves from perceiving self-interest. I am referring to those who believe that there cannot be solidarity among those who do not share a "demos", a "redistributive identity" (which they imagine to be absent among the states, but they tend, in reality, to take it for granted inside the states, while perhaps both things are too much to presume).

These two concepts of solidarity, the moralist one and the cynical one, have in common a lack of self-reflection about what is in play in this Europe that is characterized by heterogeneity but also by interdependence. We find ourselves in a historic situation in which reflection about self-interest and its extensive resizing is especially necessary. I propose that we consider a third conception of solidarity as "reflexivity", which would lead us to understand it as the institutionalization of "enlightened self-interest" or long-term self-interest in Europe, beyond the altruistic concept that seems to evoke images of generous self-annihilation and the cynical concept that prevents us from realizing that our immediate self-

interest does not always coincide with our true self-interest. The appeal to solidarity will only be understood and will receive the corresponding popular approbation if people understand that this value does not suggest that the pursuit of one's own self-interest is illegitimate, while at the same time, instruments are provided to perceive the true scope of that self-interest, which tends to be more inclusive than we think. Solidarity implies considering as our own, to a certain extent, the affairs of others, understanding that the realization of particular individual objectives depends on certain common goods.

Let us consider a couple of examples to illustrate this principle. Even though economic antagonisms in the European Union do not seem very modifiable, Germany might just deliver some surprises, not so much because of a burst of generosity as a new calculation of their self-interest. Germany is the country that has the most to lose with a setback to the EU: it has more commercial relationships with the other members of the Union than any other country, and it is also the one that has the most borders with other member states. If it were not for the fact that their public opinion has been bombarded for a long time now with a very exclusive vision of their self-interest, it would be reasonable to predict a Euro-enthusiast turn in the identification of their self-interest. Another example of solidarity based on reflection: let us consider the fact that the countries that needed a bailout because of the euro crisis were not saved for reasons of solidarity as much as to carry out a politics of stability that was a good goal for everyone (Gaitanides 2014, 33–42).

In a space of growing interdependence, there will continue to be exclusive interests, of course, but the interweaving of collective destinies prevents us from thinking we can achieve our own good without promoting, even if it is in a lateral and involuntary fashion, the good of others. In this sense and against the theory of the lack of "demos", solidarity is not a feeling of community, much less a space for charity between equals, but a "community of foreigners" (Nicolaïdis and Viehoff 2012, 40). Solidarity should be understood as the reflection about self-interest and its demands for justification in relation with all those who are affected by our decisions when there are shared institutions, derived externalities and reciprocal impacts. Seen from this perspective, solidarity is nothing but the intelligent reflection of our interests in the broadest sense of space and time, "our foreigners" and those who are not our contemporaries, our shared neighborhood (other member states, for example) and the long-term perspective (ecological obligations or obligations related to future generations).

We should explore the possibilities of institutionalizing greater solidarity between member states without forgetting that it will always be a value that is fragile and criticized, a matter of shared and questionable reflexivity, because the identification of self-interest is not realized from an abstract and aseptic position. In addition, it makes no sense to expect altruism from the nation states, like from any political actor. Instead, it is a question of awakening self-interest through cooperation and supporting it through solid arguments (Keohane 2001). Unlike the models of the mere aggregation of preferences about which international law has been constructed, transnational deliberation about our interests, about what is ours and what is common, to the extent to which it is more deliberative than aggregative, demands that we all render account of our preferences, replacing negotiation with argumentation, requiring the reformulation of preferences in the language of the law (Kratochwil 1995). The problem with instigating this reflection is that the electorate's perception depends more on local conditions than on global contexts. Years of European integration have not greatly modified this perception. What is decisive in this regard is creating institutions and procedures that mediate between local preferences and global necessities, in such a way that citizens do not see their preferences suppressed but connected to unbiased institutions that can realize them in a broader perspective. Institutions are precisely places in which short-term democratic processes are completed by broad-ranging perspectives when it comes to creating political will.

Many of our difficulties in achieving these levels of solidarity stem from having assumed that they would be produced naturally. The social aspects of the first European treaties were fundamentally directed at assuring the realization of the economic goals of integration; it was a question of managing political objectives *through* a successful economy. Today we have greater evidence that economic growth and economic integration are compatible with an increase in inequality between individuals, the states and geographical areas, within and between member states. The convergence of social policies can no longer be understood as a consequence of integration but as a condition for integration.

The implementation of solidarity is particularly costly when economic trajectories are divergent and this heterogeneity does not seem likely to soften in the short or medium term. Germany as an exporter emphasizes the cost of labor to the detriment of interior demand; France, on the other hand, maintains its growth on the basis of private consumption; Greece is a service economy, meaning that, by definition, it does not export much;

Spain is dependent on the housing market, and so on. J. P. Morgan, the American bank, has calculated the internal heterogeneity of the Eurozone and has compared it hypothetically with other geographical spaces according to 100 economic, social, and political indicators. From this comparison, one can deduce that the Eurozone states are more heterogeneous than the hypothetical monetary union of, for example, the Ottoman Empire in 1800, the Asian tigers and even the union of all countries whose names begin with the letter m (cited by Streeck 2013, 324).

What should we do, therefore, with this heterogeneity of the European economic space when divergence emphasizes particular interests, when the transition to new stages of cooperation would imply decisions that touch upon certain commitments that are profoundly inscribed in the individual characteristic of each state and their respective social contracts? It is indeed difficult to ask German contributors, for example, to put up with the consequences of the falsification of Greek statistics that allowed them to benefit from very low interest rates or to facilitate the liquidity of the Irish bank when we all know that their spectacular economic upturn in the 1990s was due to European assistance, but especially to a fiscal dumping that was not coordinated with the rest of Europe. This is at least as difficult as getting southern countries to accept austerity politics when many of the benefits of their real estate bubbles are in German and French banks.

Solidarity in the European Union will move forward at the same pace as the convergence of its economies. This is not a question of deciding whether the chicken or the egg comes first. It is best to understand that there is a game of mutual feedback between solidarity and convergence than to conceive of them as incompatible values that force us choose one at the expense of the other. The economic crisis has perhaps helped us learn that exceptional rescues are always worse than regular preventative measures to avoid future crises.

5 A German Europe?

The last book of the recently deceased Ulrich Beck (2012) advanced the thesis that the euro crisis had turned the "German Europe" about which Thomas Mann warned us in 1953 into a reality. Germany has not only benefitted from the new European order, but it has in fact become a hegemonic power (Schönberger 2012, 25). I do not know whether it is a "reluctant" (Minton Beddoes 2013) or "overburdened" hegemon

(Kleine-Brockhoff and Maull 2011, 50) as some maintain, but in any case, there is no other country acting as a counterbalance and there is weak institutionalization that barely balances its power. It is a paradox that Germany has become a hegemonic power, but at the same time, it has not wanted to exercise the European leadership that corresponds to it. The German government has always been reluctant to assume European leadership, which does not mean that it has refused to assert its geo-economic weight.

Before the crisis, Germany had already given signs that it viewed itself as less and less committed to the European project. The no bailout clause was introduced in the Treaty of Maastricht because of pressure from the German Government in 1992, and since then, it has been considered a fundamental element to push the economic responsibility of the Eurozone countries. At the same time, various rulings by the German Constitutional Court have been placing limits on the process of integration. It is worth remembering that Germany did not display exemplary behavior regarding the criteria of convergence and the maintenance of a stable exchange system: in 1996, Germany exceeded the 3 percent debt limit that had been agreed upon in the Stability and Growth Pact. All of this while also keeping in mind that German reunification required the solidarity of the rest of Europe. In order to finance it, the Bundesbank raised interest rates in the 1990s to such an extent that capital flowed toward Germany instead of toward other European countries. In this way, Germany's European neighbors contributed indirectly to defraying the financial costs of unification. Over the course of those years, the German economy has behaved in a more pro-cyclical than anti-cyclical fashion, so it has not corrected financial speculations and capital markets: before the crisis, the German banking sector invested massively in the southern Eurozone countries, and during the crisis, it significantly reduced its financial commitment to the euro area.

Germany has been a central actor in the management of the euro crisis. Initially reluctant to make a commitment, even prepared to let Greece fail (Bini Smaghi 2013, 39), once it understood that a Greek exit would entail significant political and economic costs, it used the crisis to reconfigure an EU in its own image and place it at the service of its own economic interests. It established a series of non-negotiable conditions to participate in bailout operations. With the objective of tightening control over debtor countries, it demanded in May 2010 that the IMF be included both for aid to Greece and for the creation of the Stability Fund. In this way, it

excluded the European Parliament and weakened the Commission. Instead of strengthening Europe's operational capacity, the German government preferred to include the IMF in the bailout programmes, carry out a banking union in accordance with its own preferences and reserve veto power for itself.

As we know, the German government joined the bailout fund with the condition of imposing fiscal consolidation on all the Eurozone countries, a tightening of the Stability and Growth Pact as well as a commitment to limit debt. This demand reflected a diagnosis of the situation that is very questionable. The German government claimed that elevated interest rates were due to the risks presented by individual countries and that without disciplinary pressure from the financial markets, debtor countries would not carry out the necessary reforms. In contrast, some empirical studies reveal that to a significant degree, the differentials of Eurozone periphery countries in 2010–2011 were not related to an increase in debt, but were caused by negative feelings in the market, which had become very strong since the end of 2010 and which acted as self-fulfilling prophecies (De Grauwe and Ji 2013, 15).

Germany is not one of the euro crisis losers; instead, they have, to a certain extent, benefited from it. In the first place, because much of what was done to bail out Greece, Portugal, Ireland or Spain benefitted German banks especially. German businesses also benefited from the weak value of the euro exchange rate in international foreign currency markets. Germany also benefitted from the fact that the increase in the price of credits for countries with greater debts is accompanied by a lowering of the refinancing costs for their own bonds. It is clear to everyone that Germany's model of the market economy is not a sustainable model for the Eurozone in the long term (Cesarato 2010). Germany's relative competitiveness and strength is not only the result of the export industry, but low labor costs, and its financial situation allows it to obtain credit cheaper than other Eurozone countries. The euro crisis has been a test for the EU but also for German leadership. In this regard, German insistence on limiting the European Central Bank's power has not been very courageous. Positioning the ECB as lender of last resort would have offered protections against the risks of liquidity. In fact, the mere announcement of the OMT (Outright Monetary Transactions) program and Draghi's corresponding declarations did more to save the euro than the German Chancellor.

Behind these differences, there is a lack of agreement around how to understand the relationship between solidarity and responsibility in the

Union. German policies against the crisis, as Merkel and Schäuble have repeated tirelessly, have been based on a very simple principle: solidarity in exchange for solidity. The debtor states should earn solidarity, which means an increase in taxes, a reduction of the public sector and structural reforms. German authorities are convinced that certain forms of solidarity can imply a loss of responsibility in countries that receive aid. However, those efforts cannot be carried out at the cost of destroying a country. States in crisis must implement certain reforms, but the conditions must be realistic. In addition, we must remember that austerity measures have a limited democratic legitimacy.

Is German solidarity in the euro crisis excessive? If we consider the absolute numbers, Germany is by far the most important contributor to the Eurozone. Its contribution to the European Stability Mechanism reaches 211 million euros. Nevertheless, if we place German aid to Greece and to the euro bailout funds in relation to Germany's economic capacity, German credit entails 4.5 percent of its GDP (less than what Malta, Estonia, Slovakia, Spain or Italy dedicate to it). In addition, it is in the creditor countries' interest to have debtor nations improve their economic capacity. If Greece were not able to pay its debts, German banks would be the ones to suffer that loss. That is why it is logical that the German government has a special interest in not allowing that to happen. If Germany has been the great beneficiary of European integration and the common currency, it would also be one of the great losers in an uncontrolled break-up of the Eurozone.

If we want to escape this impasse, we need to think about the relationship between solidarity and responsibility in another way. Solidarity implies relationships of reciprocity and can be connected to certain conditions. Mutual aid between states does not have to be selfless, but it does need to be understood as a contribution to a common end. The EU is not only characterized by the density of its interactions but also because solidarity is a constitutional principle (Calliess 2013; Mau 2009; Jones 2012). But it is also true that solidarity always includes an element of self-interest, in the broad sense; it may even afford an improvement in the conditions of those who offer it and not only its immediate recipient. That is why it seems to me that, rather than discussing solidarity, we should talk about common responsibility.

While the debtor countries need to be more responsible in their economic behavior, Germany must accept greater responsibility for the stabilization of the Eurozone and the union as a whole. This is where the

difference between hegemony and leadership is fundamental. Kindleberger synthesized it in the idea that those who exercise hegemony do not want to know anything about responsibility or reciprocal obligations (1981). The function of leadership in Europe can only be exercised if there is a commitment to transferring more sovereignty and assuming greater responsibility for the European community. The relationship between those who exercise leadership and those who accept it presupposes a certain community of interests, risks and values, which is not the case if it is a hegemony. That is why it can be affirmed that the leadership of the Eurozone is more of a burden than a privilege. The functions of leadership in a community also imply certain obligations and, when it is a community that is as complex as the European community, it can only be carried out in a coordinated fashion.

Germany has not had any experience with European or international leadership and that concept is affected by its recent history. But 20 years after reunification, the possibility that Germany could assume a leadership position is considered normal and even desirable (Crome 2012). Who could do it if not them? It is evident that the Franco-German axis can no longer exercise that function (Krotz and Schild 2013). France does not represent the type of authority that Germany recognized in the past and finds itself in the midst of a political and economic crisis with an uncertain outcome. Germany does not appear prepared to allow its European politics to be driven by French uncertainty. Since the Economic and Monetary Union was put into motion, France has not stopped losing international competitiveness (which, incidentally, is also due to German wage dumping).

What we now have in Europe is a situation of hegemony that consists of Germany exercising economic power over the rest of the European countries that it had not had since reunification, but it has limited this power to the realization of short-term interest. Germany has renounced the type of leadership for which it would be recognized if it had exercised cooperation and solidarity with its sights set on possible future risks for Europe. As Jean-Claude Juncker said when he was president of the Eurogroup, the German Chancellor has not been prepared to assume any domestic risk in favor of Europe. If Germany does not assume this function of leadership and responsibility, then—as Kundnani (2012) sustains—we will not have a German Europe but a chaotic Europe.

6 After the Brexit (1): The Importance of Being Able to Leave

Everything that preceded the announcement of a referendum on whether the United Kingdom should remain in the European Union was a political absurdity (demagoguery, irresponsibility, shameful concessions) with one exception: it has politicized an issue that was resting on the placid necessity of unquestionable mechanisms. We do not hear a lot of good news out of Europe, which is why I am taking the opportunity to point out one piece of positive news, even if it may be only an unintended consequence of a bad decision: from now on, there will be less excuses to shelter European policies within the limbo that has protected them from the decisions of Europeans. Politics is returning to the European Union, not because of the dynamism of its institutions, but prompted by the pressures of populism. Conflicts like the one presented openly with the Brexit are returning the European project to a space of free decision making. Integration is a free option, not the inevitable consequence of a process that escapes our control.

We should consider Europe as a contingent reality even if we are convinced it is the best project for the citizens that compose it. The Europe that could be different is, for the same reasons, the one that is not condemned to success, as the crisis has shown us, after decades of quiet necessity. A theory and a praxis of integration that has not even imagined the possibility of failure, that does not question the possibility of setbacks or even of processes of disintegration make no sense. Replacing the conviction that every change is necessarily an improvement with the contingency that things could get worse is the only perspective that allows us to once again situate political projects in the realm of liberty.

I do not possess a magic formula for achieving the full democratization of Europe, but I would like to make a modest proposal for democratization centered on the type of discourse we must maintain. Let us begin by abandoning that functionalist language, the language of irresistible and pressing needs, while barely making use of expressions that appeal to our freedom of choice toward the future. The practices of the European Union, which are on the one hand consensual and gradual, through procedural adjustments, also constitute a system that favors dissimulated or hidden decisions, decisions that are democratically unauthorized, sometimes in the form of non-decisions or submissiveness to technological objectivities. Even the "federate or perish" by Alterio Spinelli may be true,

but it speaks the language of coercion. All our vocabulary is pure necessity; none of it speaks to a free decision of the citizens. This is incendiary material in the hands of populists who seek motives to denounce a conspiracy of the elite.

In the face of this type of surrender before a supposed historic necessity, the only democratically acceptable imperative is that Europe must be politicized. From this point of view, the existence of conflicts, questioning and tensions should not be considered a symptom that politics is not working properly, but as an opportunity for politicization. The fact that decisions are not easily adopted or accepted is what makes them, strictly speaking, political decisions, beyond the unquestionable technological motives.

We may need to thank the British one day for their contribution to politicizing the European Union. We will recognize it more if they stay than if they leave and will more fully appreciate a decision to stay if they could have left.

7 After the Brexit (2): To Leave, or Not to Leave? That's Not the Question

When it seems like everyone wants to leave some place, I can safely say that being inside or out is no longer terribly relevant since we are all essentially in an intermediate zone where we are continuously renegotiating our belonging. Furthermore, 'inside' and 'outside' are relative notions, although there are times when someone might be able to force the relativity toward the ridiculous, such as that famous headline from a British newspaper that announced dense fog in the English Channel and concluded that the continent had been cut off.

We have a monistic vision of political space, elaborated from rigid dichotomies and assumptions that are far from self-evident. We are accustomed to thinking, for example, that our interests are more clearly seen from the inside or that threats always come from the outside. Our political categories imagine us as hermetic compartments, and it is very hard for us to understand the aspects of reality that do not follow a binary pattern, such as our responsibility toward the common good, intertwined realities or transitory spaces. All our political concepts are developed from Euclidian geometry and until we begin to think about them in a less deterministic fashion, it will be difficult for us to understand the new logic of political

spaces. I propose that we reflect upon what it means to stay or to go and whether those are the only two possibilities, about how little is explained by the inside/outside dichotomy and the benefits of thinking with categories that are more subtle.

There are many who want to leave, from different places and for different reasons: whether it is the British, French, and Greeks from the European Union or from the euro, or Catalans and Scots from their state. However, what does it mean to leave? Are the ones who leave the ones who leave or do those who remain also, paradoxically, leave? Leaving is not possible, if we understand that operation as a clean cut in which one fully recovers one's identity and sovereignty, while that which one leaves behind continues being what it was. Both groups suffer certain transformations that should be kept in mind and pondered with strategic criteria. In the age of universal connections, a new political topography is being built out of what we call interdependence with approaches we must understand and manage. No one remains completely outside or, at least, the separation does not return sovereignty nor does it afford immunity in the face of any contact. Those who share spaces, projects, and resources, who are in a manner of speaking inside, are not truly part of us—unless we have completely renounced the ideal of democratic self-government—without continually renegotiating the advantages and responsibilities that such a belonging implies.

Let us say it in a less abstract manner. What happens, on the one hand, with those who leave? Let us begin with Greece. In spite of the typical rhetoric, those who leave do not recover their sovereignty, except formally and at a time that is both very intense and of limited consequence (in terms of sovereignty). The referendum in Greece did not give the people their voice back but transferred the responsibility to them. It was not an exercise in sustainable sovereignty but a gesture that dramatized it and, in the aftermath, the Greek people are going to have even less power than they had beforehand. The Greeks voted no but they wanted to remain inside the Eurozone and, of course, inside the European Union. They suspect correctly that outside the EU there may be more sovereignty but less protection from the multiple restrictions of globalization. It is possible that the no vote has placed them even further on the periphery, but it does not necessarily mean no to the euro, much less to Europe, even though that is what those in favor of the yes vote, with Jean-Claude Juncker in the lead, attempted to conclude.

Let us think about the countries that have considered joining the European Union but have decided not to: through rejection in a referendum (Norway in 1972 and 1994 and Switzerland in 1992 and 2001) or by withdrawing the candidacy they had previously presented (Iceland in 2015). These rejections appeared to safeguard their respective sovereignties, but they also robbed them of the ability to co-determine the project of integration. It does not strike me as exaggerated to affirm that from many points of view (to the extent that they form part of the Schengen Agreement or the European Economic Area), it is the European Union that defines the scope of self-government in Norway, Switzerland and Iceland (Eriksen and Fossum 2014).

Let us move on to the UK. I remember asking a British politician what he thought about the referendum about remaining in the European Union and his ironic response: but are we in it? Considering those who defend the referendum, a few do so in order to leave, a few more to remain and the majority to gain more advantages when it comes to renegotiating their continuation. Some people use this rather cynical argument in order to advise the UK against leaving: it is better to be inside the union and have some influence than to be outside and nevertheless continue under its influence (Chalmers 2013). Not being a member has certain advantages, but there are also a not insignificant number of disadvantages that stem from not being able to intervene in decision-making processes.

Mutual dependence in Europe reaches such heights that some have been able to propose the following mental experiment. Even if a state were to leave the union, most of the European norms and regulations would continue to affect it (as is the case for many other countries that have signed commercial agreements and legislation that come from Europe), and they would not be released from the obligation to continue collaborating with the rest of the members. Iceland, Norway, and Switzerland have seen the extent to which they are affected by EU pressures and the opportunities it represents for them. They have had—and will continue to have—to adopt many of the measures decided by a club to which they do not belong.

Let us consider an idea which has been called ‘internal enlargements’, the possibility that nations without states abandon the state of which they are a part but remain within the European Union: Scotland, Catalonia, Flanders, and so on. In this article, I am not going to address the question of whether this operation of ‘leaving in order to stay’ is legally possible. I will simply point out some paradoxes by looking at the Scottish process.

Those in favor of independence did not question their belonging to the British monarchy, the pound as the common currency or belonging to the EU; in other words, they expected a situation that is not substantially different from the current one. Additionally, if the yes vote had won, a long process of negotiation would have been set in motion that would have led to accommodations between the respective goals. But the largest paradox is that without the participation of the Scots, the British would end up leaving the European Union. To remain in Europe, Great Britain needs the Scots, a large percentage of whom do not want to be British, but are overwhelmingly in favor of continuing to be European.

And what happens with those who stay, with the remainder, after a process of self-determination on the European or infra-state level? Fundamentally, they are no longer exactly what they were nor are they where they were. The British example shows the extent to which one could sustain that the ones who have left are everyone else, just like the anecdote of the fog on the British Channel: England would run more of a risk of being left outside the European Union than Scotland. An exit does not leave the abandoned remainder intact. Good proof of that is the series of efforts by the euro countries to shield themselves from the consequences that would arise from a Grexit, establishing firewalls and protecting themselves from contagion. That strategy stems from the fact that the eventual exit of Greece would lead the rest of the Eurozone to modify its situation, and it would become more vulnerable. There would be a weakening of the euro because from that moment the euro would be a currency that it is possible to leave. It is curious to see the effect that the behavior of a country that only represents 2 percent of the Eurozone economy can have on the rest of the member states. And while the mechanisms for euro protection have improved in comparison with the possible exit that was considered at the beginning of the crisis, the geopolitical risks that Greece's exit would imply for the rest of the European Union reveal that the protection is very limited. The logic of new political spaces implies a connectivity from which it is very difficult to remove oneself, as much for those who leave as for those who remain.

Instead of thinking that the operations of entering and exiting are exceptional events, we would better understand what is happening if we thought of them as operations that we all perform continuously to the extent that we redefine the conditions of common life and co-belonging. There are those who would like to fossilize the current circumstances (continuing with the irrevocable logic of furtive integration in the

European space or calling upon constitutional frameworks that are supposedly unchangeable in the domestic sphere) and those who openly and without many nuances support disintegration or secession, but we would understand what is going on better if we accepted the fact that what the great majority wants is to improve their situation. The entire succession of political actions that are associated with the exit—carrying out a referendum, preventing it, protecting oneself in order to exit or to reassure those who remain, and so on—all of that is nothing but a part of a process through which all of us aspire to redefine and renegotiate our conditions of belonging. It is not the exit that is in play as much as the conditions of remaining.

The territorial pluralism that currently exists in Europe is a crystallization of that struggle: we have the Schengen area, the Eurozone, all the rest of the union, the European Economic Area that allows certain states that are not part of the union to participate in its internal market, as well as a multiplicity of bilateral treaties. In addition to growing diversification because of differentiated integration, there is the ambiguous space of the European Neighbourhood Policy and reinforced cooperation. We maintain a special relationship with Switzerland and Norway, with whom there is flexible, timely and informal integration. There are, additionally, 'small exits' or 'opt-outs', such as for example, the Schengen agreement, which was unilaterally broken by Denmark to reintroduce border controls.

If the distinction between inside/outside, even if real, is not as conclusive or as useful as claimed by those who understand it best, then we will have to give more sophisticated solutions to the problems with which political co-existence presents us. Of course, there will always be people who insist on demanding answers that are clearer than the social reality to which they refer, you must say yes or no, you must stay or leave, but if you stay, you accept conditions over which you have no decision-making ability. This is not a good time for nuances, the widely reviled ambiguity, the middle ground or gray areas, in spite of the fact that we all comprehend that political life always flows along those paths, in the imprecise zone between the inside and the outside.

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CHAPTER 9

How Social? The European Deficit of Justice

The history of European integration is the history of its promises, explicit or taken for granted. The construction of Europe is based on the standing that its citizens have afforded certain expectations that are associated with integration. The citizenry has accepted successive or overlapping institutional modifications or cultural transformations implied by the integrative process because they associate those changes with a series of common benefits: the attainment of peace and security, the formation of a single market (with the creation of the euro as its greatest innovation), the consolidation of European democracies, especially in the south and in the east (which was the great justification for EU enlargement) or the attempt to assert itself as a global power in the face of the United States or the emerging powers.

Without attempting to make a judgment at this point about the extent to which those objectives have been met, what I would like to suggest is that those promises are currently expired and the success of a good number of them is precisely what now makes them useless for legitimacy. The achievement of a lasting peace may have allowed the EU to achieve the Nobel Peace Prize in 2012, but it will no longer help it attract new members or encourage new steps toward integration. In addition, maintaining peace in Europe had not been the exclusive achievement of the EU but of other institutions, and the reality that there have been no wars between European states has more to do with the fact that military adventurism is

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less interesting than other types of competitions in open and knowledge economies (Zielonka 2014, 77–78). On the other hand, promises of a great future well-being have been shattered with the economic crisis, and future generations see how socioeconomic realities refute it. All legislation related to the single market and European policies on competition have had a liberalizing and deregulatory effect, which is somewhat aggravated by the conditions that were imposed for bailout credits during the economic crisis (Fossum and Menéndez 2014). Regarding the consolidation of European democracies, no one believes they are truly under threat and that their guarantee stems from membership in the Union; just the opposite: many people claim—with more or less accuracy—that EU demands are eroding the democraticity of member nations. Finally, a series of geostrategic transformations, but also and principally their own inability to take joint advantage of the opportunities that the new global environment offered, have weakened the role that Europe could fill in the new global scenario.

What factors do we have left, then, that can mobilize the will of the citizens? We only have the social promise—which is always present in the integrative project, but is insufficiently realized and currently broken—if we want to provide European institutions with the legitimacy and acceptance without which Europe cannot confront the challenges it will face in the future. In recent years, we have worried more about the democratic deficit than about policies (Cramme 2012, 162). It is not that democratic challenges are not important, but the social construction of Europe is essential to assure popular acceptance at this time. Only a Europe in which the state and market—politics and the economy—were not decoupled would allow the activation of elements of social protection at the European level. If Europe offered that, then nationalist calls to strengthen the states would fail, since behind this appeal there are, in my opinion, more issues that are social than national. The problem is nothing more and nothing less than determining the extent to which and the conditions under which the EU can configure itself as a post-national alternative to the policies of the welfare state. Social policy is increasingly important because, without it, it would be impossible to maintain the support of citizens and workers. We can see proof of this in the fact that the social realm has become a space of opposition among national and supranational interests (Kleinman 2002, 82).

1 A Social Europe

The European Union has followed a model of social engineering that is a bit rudimentary: a functional ideology of integration by the markets would presume that social integration was going to be produced automatically hereafter. But we are now aware that this automatism is not being produced—quite the opposite—and we have reached a point where certain decisions are no longer neutral from the perspective of justice, and they imply majoritarian elements, such that they will not be socially accepted and legitimated without an explicit social contract and criteria for distributive justice (Maduro 2006). That which is social can no longer be the mechanical result of economic integration, nor is it created without express decisions, as the economic and euro crises have revealed. What can a social Europe mean today, when we are conscious that the preponderance of free markets on European social conditions is a problem for which the EU has still not found a convincing solution?

European integration centered almost exclusively, for well-known reasons, on economic integration. It was a question of developing an internal common market that was open and competitive. The objective was not to establish a market in the sense that neoliberalism would later understand it, of course, but in the way that was then understood as a social market economy. The rules of the market were established for services, economic agents and capital, but not for a type of redistribution through social policy or the instruments of the welfare state. The disparity between legal and political integration processes in regards to redistribution in social policies has created many of the ambiguities in this field. "As the European project moves further towards the goal of political integration and beyond economic integration, questions about the nature and scope of the EU's social dimension, about the EU's 'social identity', become more pressing" (Maduro 2000, 336). The EU's social deficit stems from the discrepancy between advanced unification of the common market and insufficient cooperation in the spheres of social security, labor law and fiscal policies. While the member states have managed to come to an agreement about the steps necessary to configure a common market, such as liberalization of competition, the privatization of public businesses, the standardization of financial policies or the creation of a single currency, they have been rather inefficient when it comes to establishing binding criteria regarding worker protections, social security and taxes (Guibbione 2006).

In the foundational treaties, the concept of "social policies" only referred to worker rights (labor law) and to some questions about legal equality; social policy was originally conceived as a confirmation of the responsibility of member states regarding their own regulatory areas. The integration of other states' systems of social security was meant to assure the free movement of workers in Europe; it was an element of economic integration, not social integration.

The Treaty of Maastricht (1992) introduced for the first time previsions related to the area of regulatory policy, even though it excluded European-level alignment and only promoted cooperation between member states. It also coincided with the fact that the 1980s and 1990s had been the years of the liberalization of the public sector. The Treaties of Amsterdam (1998) and Nice (2001) were disinclined to promote greater social integration in the EU, especially in the area of redistributive social policies, emphasizing their limited powers at that level and explicitly prohibiting any alignment. The Charter of Fundamental Rights adopted in Nice was not binding until the Treaty of Lisbon entered into force. The Constitutional Treaty (2003) was also insufficient from the social point of view; its first articles include many appeals to social values and seek a balance between the economic and the social, but as far as principles go, they do not provide legal instruments for a positive integration around those objectives at the European level.

At the European level, there is only a fragmented and limited system of redistribution, through structural funds and cohesion funds, while the Pact of Stability tend to limit government options in their own domain. In many domains, the Union's political preferences are constitutionally pre-programed. There are numerous examples of this: monetary policies focuses on price stability instead of full employment; non-discrimination policies refer to access to the labor market instead of human dignity in the workplace; the European Court of Justice's interpretation of Article 125 of the Lisbon Treaty connects financial assistance to the fulfilment of a series of conditions and not to solidarity; situations of excessive deficit confront austerity programs instead of Keynesians solutions, and so on (Dawson and Witte 2016).

One could summarize all of this by saying that legal integration has destroyed the connection between the nation state's labor relations and the European economic constitution without reconstructing the European tradition of the welfare state at the European level (Joerges 2013). Since then, there has been an increase in cases presented to the European Court

of Justice, which has had a growing tendency to subjugate member state welfare systems to European law. Because of these lawsuits presented by private actors, there has been notable pressure to avoid the future dismantling of those welfare systems. If we add to this the neo-liberalization from the 1980s and the ways in which the management of the euro crisis has eroded the commitments of the welfare state, what we end up with is a renouncement of the social ambitions that were expressed in the Treaty of Rome.

That said, is the European integration project necessarily liberal? In my opinion, no, but it seems as if it is. As Scharpf reminds us, even before World War II, Hayek sustained that European integration would be good for market liberalism because it would reduce the state's institutional capacity to govern the economy and would take away the weight of a broad welfare state (Scharpf 2009). But intentions are one thing and results another.

Let us review various historical realities that can give us some clues as to whether the neoliberalization of the EU is inherent and inevitable or just one potentially distorted version of the original project. The emphasis that the Treaty of Rome placed on negative integration and the Treaty of Maastricht's idea that monetary policy was a non-political issue that should be delegated to independent experts have been interpreted by some commentators as evidence of the liberal or neo-liberal character of communitarian institutions. However, the fact that liberal policies were carried out in its name or that the majority of current European governments are conservative does not imply that institutions arising out of integration are as well. It is sufficient to examine the history of post-war Europe to realize the weakness of this interpretation. In the 1950s, more than liberalism, there was a general agreement about the desirability of planning and public regulation policies. For all these years, integration has been carried out by leaders on the left and on the right, sustained by countries with different political ideologies, from liberals to socialists. Some of the liberalizing measures have come less as a consequence of an ideological impetus than as the result of having realized that the integration of highly regulated markets would have been impossible without an effort to liberalize their economies. It is true that the European jurisdiction has basically been focused on defending a regime of free trade in the face of protectionism. However, the rules to assure competition and avoid monopolies do not serve ideological but utilitarian reasons: the impossibility of integrating a group of strongly regulated economies without limiting national

governments' interventionist tendencies and their attempts to subsidize their own industries and products. The protection of competition in the face of state aid is not the result of a neoliberal obsession but a response to the desire to confront the damage caused by export subsidies in industries from import countries. The project of monetary unification was not driven by a desire for neoliberal depoliticization, but a markedly political project, which is why Great Britain, the most neoliberal of member countries, refused to join it or why many liberal German economists opposed monetary unification. The neoliberal way of managing the single currency—the non-political nature of managing it, its separation from fiscal policy, the complete independence of the European Central Bank or the absolute priority of price stability—is in open contradiction with the profoundly political nature of a construction of that type. What is neoliberal is not monetary integration but the way it has been carried out. European Treaties and communitarian policies are much less liberal than their critics assume.

It is true that the European social dimension is going to coincide for a time with practices that contradict it, that will not have much coherence (de Burca 2005) and that the Union's socioeconomic diversity excludes the construction of a uniform social model (Joerges 2014). However, there is no reason that the advance of European integration must follow a logic of neoliberal deregulation and there is a reason to suppose that, if we want it to recover popular support and the legitimacy it requires, it should offer social protection in accordance with its nature, something that it seems incapable of providing in its current form.

2 The Struggle Against the Economic Crisis

When one assesses reality, it is advisable to respect the principle that the severity of the judgment must be proportioned to the difficulty of the task. In the midst of the most complex economic crisis of the history of humankind, the European Union has made a series of decisions that have in fact encouraged the process of integration probably out of sheer necessity rather than conviction. The deepest transformations in the history of European integration have been taking place during the past months, as a consequence of the decisions the different European states have been forced to adopt to face the economic crisis. In particular with the outbreak of the crisis of sovereign debt, projects aimed at reinforcing the economic union by means of mutualizing its risks occur rapidly at the same time as

they make it evident that the European Union is more evolutionary than its critics lamented.

Are we going too fast or too slow in this process of handing over sovereignty? There are those who think that the euro crisis has reacted with extraordinary speed (Gottwald 2012), and others who believe those efforts have been completely ineffective (Mügge 2012). I am one of those who would go for a higher speed and more definite support of federalization, but this does not prevent me from admitting, when faced with non-refined criticism addressed at the European Union, that we have made a certain amount of progress that would have been unthinkable in calmer times. The following example may be enough to keep the restless at ease. Almost a year went by between the agreement of the European Council in Copenhagen (April 1978) and its implementation (March 1979). The aim was to fix some kind of parity between the different local currencies in the EEC in order to reach "a zone of monetary stability in Europe". The nine countries that were then part of the Union had taken seven years to reach some previous agreement. In 2010, four months were enough to go from divergences to an agreement on EU policy to face the sovereign debt crisis. In the meantime, there is undergoing discussion as well as expectations that the European Central Bank can play a more significant role in the management of the financial crisis. By means of their guarantee funds, the 17 countries in the Eurozone and the 27 in the EU have implemented a system of budgetary solidarity and, above all, unmistakable tools of budgetary federalism.

It is a good idea to assess those advances within their historical context and on the basis of certain inertias that are probably heavier than what would be desirable. The European Union is an association of post-nationalist national states. Considered from the perspective of five centuries of modern and contemporary history, European integration is a true revolution; from the point of view of the urgencies posed by globalization, however, this integration turns out to be very slow. This slow pace can of course be explained because European citizens neither can nor want to break from those five centuries of history. Mutualizing 27 sovereignties is an unprecedented process in the history of humankind. It is, no doubt, a process with a clearly universal scope. But, logically, it goes hand in hand with slowness, hesitation, backward steps and deviousness.

What needs to be done is to complete the project of the euro with a true economic government in the Eurozone. The mechanisms of European governance have proved to be dramatically inadequate. On the occasion of

the Greek problem, it was especially manifested that a monetary union demands true mechanisms of budgetary coordination. We can now perceive the problems resulting from having created a single currency without enough budgetary and political coordination. We do not have the necessary solidarity, either, and generally speaking the rules of the Stability Pact have not been respected. When the 2008 crisis broke out, the EU counted on an unfinished money institution, weak economic growth and considerable private and public debt, together with a lack of agreement concerning the economic, political, and strategic decisions to be adopted.

But there is something more serious for the single currency: the Eurozone includes countries with diverging economic paths: as an exporting country, Germany focuses on labor costs to the detriment of internal demand; France, on the contrary, maintains its growth on the basis of private consumption; Greece is a service-based economy, little exporting in itself; Spain is rooted in the real estate market. What can be done about this heterogeneous EMU space when divergence stresses particular interests, when transit towards new stages in the cooperation would involve decisions that affect certain deeply rooted commitments in the personality of each and every state and their respective social contracts?

The relentless pressure of markets on certain countries of the Eurozone is largely due to the fact that the crisis has touched a monetary area of fragile integration. In fact, the acclaim of capital markets ended after 2008 when investors began to fear that central European countries might not want or be in any position to assume responsibility for the debts of the periphery countries. That is why interests were raised, public debt was increased and the risk premium began to rise spectacularly. In order to understand the reasons for this fury in the markets it may be useful to wonder why Greek or Irish debt has not been tackled in the same way as the debt in Louisiana or California. On January 13, 2010, Standard & Poor's downgraded California, which had serious repercussions in terms of the conditions to fund its cash requirements. However, the dollar was not attacked. There was no announcement of a plan of adjustment for American public finances, even though the weight of California in the United States is heavier than that of Greece in Europe. The United States has a very high public debt problem but, if handled seriously by the authorities, it cannot be subject to speculative attacks with the same intensity as the euro, a young currency in a more uncertain environment.

What is the reason for such a different attitude in the two cases? The answer has to do with the fact that, in the United States, economic unity

goes beyond the federal states, a sense of identity which Europe lacks. The markets do not acknowledge the unity of the Eurozone, and this weakens us. Jean-Claude Trichet complained that international investors could neither understand the European decision-making mechanisms nor the historical dimension of the European construction. But one cannot hold this against financial markets, as they are only stating a fact. We are a monetary federation, but we lack the corresponding budgetary federation in terms of the control and monitoring of the implementation of public finance policies. As a general rule, the countries belonging to the Union enjoy a high level of regulation of the financial markets, but to date, those mechanisms are not sufficient and, above all, do not materialize in a given authority that ensures their respect. Therefore, the problem is the lack of economic coherence in the Eurozone and its weak governance. This weakness has become more evident under the impact of the crisis (Featherstone 2011; de Grauwe 2011; Eichengreen 2012). The euro is definitively an "unfinished currency" (Mayer 2012), and we now pay the asymmetries between the strong European monetary order and weak constitutionalized social and democratic rights (Eder and Giesen 2001; Schieck et al. 2011).

How will this crisis transform Europe? Up to now, even though it could be improved, European coordination has been crucial. Markets speculate on the divisions perceived when intergovernmental management is chaotic. Thus, it is necessary to take steps toward mutualization of economic risks at the same time as the monetary system is completed by means of a recognizable authority. It is urgent to rebalance both political deliberation and the reality of markets. Europe is also an interesting project inasmuch as it is an attempt to build a space for political, economic and social reconciliation.

3 A Politics for the Euro

The euro crisis is the typical example of what ends up happening when a technological advancement (such as the introduction of a common currency) is not accompanied by a corresponding social innovation (in this case, governance that balances the monetary side with other criteria of a political or social nature). Technologies without an accompanying social aspect are non-intelligible and ineffective constructions. A currency unit without political integration involves sharing vulnerabilities while solidarity is insufficient; it reproduces at a European level the incongruence that

exists on the global level between the unification of financial markets and minimal global governance.

The first plans for monetary union in the 1970s were already polarized around those who defended the idea that a fiscal union and greater economic coordination were essential parts of a common currency and those who believed that a fixed exchange rate and transfer mechanisms in the case of large imbalances were sufficient. In the debates about the introduction of the euro, the second position won. One of the strongest voices in this debate was the reductive vision of economic affairs imposed by the Ordoliberals, for whom monetary policy is a non-political realm that is focused on assuring price stability as something objectively given and managed by independent experts. The monetary union was carried out at a time when there was strong support for the mercantilist prejudice, which seemed unaware of the imperfections in the functioning of real and financial markets, in a context of maximum appreciation for competitiveness and deregulation. Its creators fell into the illusion of believing that an economic union can be an apolitical union when it is a question of defining and managing public goods. Even though it is because of the negative experience of the crisis, we now know that the euro is not a simple economic construction but a political project and that it should be managed as such. A depoliticized Europe has had to be on the brink of the precipice to understand that it is not a technical or merely economic question, but a question of a doctrinal and political nature.

There are those who have attributed the crisis to the clichéd irresponsibility of the southern countries, as if they were unaware of the disastrous results of the previous bailout plans as well as the economic benefits that the single currency has generated for northern European countries. In addition, it makes no sense that if a member state needs assistance because it has been assailed by markets speculations related to circumstances for which it is not the only responsible party, that bailout should be balanced by drastic structural reforms that only affect that particular member state (Menéndez 2013, 133). There are many things that need to be reformed in the southern European countries, of course, but we must also reform the faulty design of the euro and its defective governance.

The roots of the current crisis must be viewed within the contradiction between a single currency and national economic policies, a contradiction that does not seem resolvable with the simple coordination that is mentioned in the Treaty of Lisbon. A currency that is not bolstered by a truly federal structure presents doubts about its future (Dyson 2008; Torres

et al. 2006). We are paying the consequences for what could be called the "asymmetry of Maastricht": a combination of transnational European policy with national fiscal and economic policy (Tuori 2012). Maastricht was a type of postmodern construction that challenges the forces of gravity (Tsoukalis 2013, 53). A monetary union cannot survive in the long run without some type of fiscal union, without its own budget, automatic stabilizers and certain exchanges, without common unemployment insurance, fiscal incentives tied to national reforms and the mutualization of risks in relation to the banking system.

Ultimately, the euro crisis reveals the limits of intergovernmental Europe in the face of federal Europe. We have long since stopped seeing ourselves as a laboratory to shape a common will and we have become a simple place for arbitration between national interests. The states have preferred to stick with the coordination of national policies instead of moving toward greater integration, even though that is what was demanded by monetary unit.

The union has wanted to square the circle and reconcile a single currency with maintenance of economic sovereignties. It is true that the European treaties foresee multilateral supervision of national economic policies, but they maintain the pre-eminence of the intergovernmental. The Stability Pact has many mechanisms in this regard, but until now, they have not been effective. The reason for this ineffectiveness resides in the fact that decisions are in the hands of the Council, in other words, in the hands of state governments. Even if the Council establishes a qualified majority for these questions, the member states prefer to negotiate rather than putting into motion procedures that make them confront each other. It was always possible to recur to the Court of Justice, for everything except questions of budgetary discipline.

The economic crisis has had a paradoxical effect because if, on the one hand, it has revealed the differences between member states as well as the weaknesses of European economic governance, on the other hand, it has made them understand the profundity of their interdependence and the need to find common solutions. It has become evident that the euro without a corresponding economic government is a weak framework with which to confront a market that is not self-sufficient or that has risks derived from regulation that tends to be minimal or little respected and threatened by national economic patriotism.

The euro crisis can be understood as an opportunity to confront defects in the governance of the euro that were not addressed during the creation

and first years of the common currency (Heipertz and Verdun 2010). The great transfer of sovereignty required for a true economic union was politically impossible in the 1990s, which led to the EMU's asymmetry: monetary integration without economic integration. Until now, we have circumvented these difficulties with ambiguous formulas that allow us not to make a decision. But sooner or later, we will have to make a political decision about how much sovereignty we are prepared to yield to Europe and what democratic mechanism will allow us to justify these transfers of sovereignty. The true challenge we are confronting is that a single currency demands greater transfers of sovereignty than we have been willing to realize until this point.

4 The European Rescue of the Welfare State

The only source of functional legitimacy that Europe retains is the recuperation of the balance between that which is political, social, and economic, the political *rattrapage* of the economy, at a time when we have a runaway economy and ineffectual policies. We have successfully used integration to make war in Europe seem far-fetched, but we have not been able to harness the economic dynamics that have been unleashed with the liberalization of the market. It would be a question of reconciling economic and political rationality rather than simply trying to adapt policies to the economic reality. This would be possible if we made economic prosperity go hand in hand with social inclusion. Europe needs a social and caring dimension if it wants to once again count on broad sectors of public support.

The task is none other than attaining a post-national version of the welfare state, which does not mean replacing the functions of the nation state on a European scale or merely coordinating self-sufficient systems of protection and redistribution. "It would be a mistake to think that distributive justice pertains only to policies involving direct transfers of income" (Beitz 1999, 271). We will need large-scale social innovations for this to happen because we do not know how those types of functions are carried out in a new context and what narrative can be put into place to gather citizen support. Pessimists point out the lack of "redistributive identity" (Vobruba 2001, 115), and it is not easy to foresee where the necessary normative resources will be found to achieve a redistributive impulse within the sociocultural heterogeneity of the EU. Optimists do

not help much either when they tirelessly repeat that problems and crises create structural and functional conditions that were needed in order to overcome them, in a type of Münchhausen effect that would allow us to await the institutional self-creation of corresponding normative resources. The required solidarity is probably both a resource and a result—in other words, both a reality that precedes its institutional form and a result of the institutions that should produce it. In the midst of this paradox, we must start working to produce something we still do not have and that cannot be conceived of as the automatic result of institutional mechanisms.

Even though it is true that we have a rudimentary social model (Scharpf 2002, 648) and even though the ability to harmonize different models of social policies is limited, the EU must secure effective mechanisms of social protection especially once the abilities of its member states have been limited. As a consequence of the measures adopted to confront the economic crisis, general public perception is that the EU is an inhospitable place, which nurtures some people's expectations that only a return to national spaces can provide the social protection promised by autarchic national states. The European conundrum has made visible a peculiar divide between the national welfare state and European economic liberalism; while the first establishes a redistributive relationship among its members, the second appears to be responsible for an impulse toward economic competitiveness, which destabilizes the states' social successes (Puntscher-Riekmann 2013, 251).

It is difficult to counter this perception by remembering, for example, that a significant number of domestic redistribution cases have come about because of European law or by outlining the social situation in which we would find ourselves if the European Union did not exist. We do not have a captivating narrative that would allow us to magically change public perception, but it is possible to do some things to modify that which, both from the actual as well as the normative point of view, is a gross simplification. We can begin by recalling the limitations regarding social politics that the nation states have had and will have *etsi EU non daretur,* even if the European Union did not exist. Even the largest states are too small to guarantee security and welfare under the conditions of globalization. It is true that European institutions do not have the power or the mechanisms to intervene in the welfare of their people, but member states draw up and implement their policies in a framework of supranational laws and institutions.

What narrative can we elaborate in order to galvanize identification with European integration, its constraints, and its opportunities? It does not seem that we are in any position to generate "master narratives", and we will probably have to trust in stories that are less epic than those that legitimized the nation building of modernity. Among the possibilities we have before us, I believe the consideration of the EU as a "risk community" is the most adequate (Beck 1986; Bauer et al. 2008). Contemporary societies—and in a very particular fashion, European societies—produce social, economic and ecological risks, and those societies should be organized in such a way that those risks can be managed jointly. This is particularly necessary in areas characterized by complexity and the density of interdependencies, where the limits of sovereign action are more obvious. The European Union can be understood as a space for governing the risks that its members confront. A risk community implies the recognition that there are similar threats to be faced that can only be confronted together. The objective of a social Europe understood as a risk community would be none other than sustaining European welfare states at a systemic level by protecting, for example, their asymmetrical vulnerabilities in the face of powerful global instabilities (Broucke 2015, 192).

In addition to remembering member state limitations when it comes to social policies, we can formulate the European social promise in a way that generates realizable expectations. Europe is well suited to protect its citizens in the face of the effects of economic globalization. Doing so requires coordination of those areas of social policies in which we can identify positive effects. Miguel Maduro has proposed a social model of Europe in which EU functions regarding redistributive policies would not consist of establishing or exercising a redistributive role but only serving as a norm or yardstick for the protection of social systems on a national level (Maduro 2006, 133). In fact, it is very likely that the survival of the welfare state on the national level will depend on some type of transnational welfare regime in the future (Erikson and Fossum 2000, 22).

The economic aspects of globalization—from financial volatility to market pressures and including transformations in the workplace—currently play a noteworthy role in the perception of such risks. In fact, the single currency—whose flaws and insufficiencies are more apparent to us after the impacts of the financial crisis—is a regional response to the international monetary confusion designed to provide stability that will benefit all Europeans.

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CHAPTER 10

Who Decides? The Transnational Self-Determination

A president of the German parliament, who liked to make his official visits in countries where there was something to hunt, had a disconcerting experience in the former German colony of Togo. While he was being driven from the airport to the city, the crowd was shouting something whose meaning intrigued him. His host explained that the word they were chanting, "uhuru," meant independence, which the guest did not understand since Togo already was independent. The Togolese president explained: "Yes, but that was a long time ago, and people have gotten used to it" (Blumenberg 1998, 41).

The world has gone through many changes in the last few years, but many people continue to insist on their own particular tune, as if nothing had taken place. Even though our rituals seem not to acknowledge this, the Westphalian world has changed a lot in these nearly 400 years. A series of transformations of political spaces are currently taking place according to which the relatively simple world of the states is being complemented by new spaces with different social and political relevancies. In this changing world, there are many things that have either stopped making sense or only make sense if the context, scope and meaning are modified from what used to constitute fact. Concepts like sovereignty, constitutional frameworks, territorial integrity or self-determination need to be reconsidered if we do not want to offer the same spectacle that astonished the German traveler. The nation state has become a semi-sovereign actor. A good deal

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of the politics carried out by nation states is designed to simulate activities that are limited to a defined territorial context and to conceal the implications and extraterritorial relationships in which they are trapped. The fiction of national unity and the reality of transnational dependence are in play. We are living at a time of profound changes in the history of humanity, with the unusual situation that certain ways of organizing life in common are becoming unusable faster than our ability to invent others. The aging of concepts is more rapid than our ability for replacement. At these historic times, between the "no longer" and the "not yet", human beings offer diverse performances that could make the Togolese laugh, because there are those who demand what they already have, those who defend what is not in force and those who promise what cannot be achieved.

When we make extensive historic comparisons, we tend to simplify to the point of stereotype that which used to exist but no longer does. For the sake of expository clarity, I suggest that we momentarily give in to the charm of simplification. My proposal consists of making a brief comment about what we could call the Westphalian world, drawing our attention to the ways in which it is currently breaking boundaries, and suggesting a principle that will allow us to think of the classic principle of democratic self-determination in present-day circumstances. I conclude by asserting that we must reconstruct the idea of self-determination under current social and political conditions, within the environment of current complexities. The difficulty of the matter consists of safeguarding the normative nucleus of democracy—the self-government of the people—in a deterritorialized or transnational world.

1 Goodbye to Westphalia

Traditional notions of sovereignty and self-government presupposed a homogeneous concept of the people and a closed idea of political space. I am referring to the world that consecrated certain states where internal sovereignty prevailed and exported chaos to the outside. The principle of territorial sovereignty translated into internal homogeneity and external rivalry between the states. Even Rawls, to whom we owe the most sophisticated formulation of democratic justice, imagined the participants in a hypothetical original position as "a complete and closed social system" (Rawls 1993, 40). This Westphalian conception could be summarized through principles of (a) homogenization; (b) externalization; (c) net distinction between what is ours and what is someone else's; and (d)

congruence between social spaces and decisional environments. Let us see how these assumptions were conceived and the extent to which they have been eroding.

(a) The End of Homogeneity

Modern states were not built with the rationality and fairness presupposed by the theory of "constitutional patriotism". These states are not only the logical result of equitable and pluralistic processes but have been constructed based on the preconception that unity is only possible if difference is suppressed. This way of conceiving social configuration has often been debunked and its incapacity to articulate plural societies is becoming increasingly obvious. There are many political phenomena that respond to the desire to understand and organize societies differently: the horizontalization of society, the questioning of representation and institutions, the increase in anti-establishment movements, the demand for participation, the calls for recognition, federal claims, and so on. Everything seems to indicate that societies have lost that innocent homogeneity in which they had cloaked themselves at other times, sometimes unfairly ignoring the differences they contained.

The current political environment presents a very complicated topography. The anthropologist Clifford Geertz (1963) summarized this situation with the idea that countries are not nations and cultures are not shared systems of life. There are nations that do not coincide with states and states that house various nations. There are very few countries today that coincide exactly with a homogeneous community: Japan, Norway, perhaps Uruguay, if we disregard the Italians who live there, perhaps New Zealand, if we set the Maoris aside (which is a lot to set aside, when we are discussing human beings). At the same time, cultures are crisscrossed by profound disagreements and confront a series of conflicts that are far from the idea of a united and harmonious civilization that would peacefully gather together around shared values.

The obsession with standardization has given way to a better articulated heterogeneity, the center loses its previous meaning, constitutions give up their traditional rigidity, new possibilities of self-organization are developed. We find ourselves in the novel position of conceiving of identities that do not exclude, flexible entities that do not need to assert themselves in contrast to the value of difference.

Democratic procedures should be institutionally configured in such a way that they allow the determination of the subject of self-determination, placing it at the disposition of a plural and decentralized subject. For complex systems, it is a question of how to avoid blockades, interferences or incompatibilities, without reducing the opportunities for asserting a plurality of interests.

(b) Externalization as Powerlessness and Injustice

The modern world made the principle of territoriality the linchpin of political communities, without any previous solidarity or duties beyond it. The principle of sovereignty implied the configuration of the exterior as a space without obligations, ruled by a pure balance of power.

This approach collides with actual and normative limits. States *cannot* maintain this indifference and are obliged to cede some portion of their sovereignty to external bodies in order to guarantee the provision of certain common goods. They surrender sovereignty to Europe, on behalf of certain international institutions, or accepting the logic of transnational cooperation. The legitimacy of transnational institutions consists precisely in making the states able to act regarding areas and issues they would not address with instruments of sovereignty.

But the states *must not* consider that which is external to them as being outside of their areas of concern. Because of global interdependence, certain national decisions have extraterritorial effects that can be very burdensome for others. As Beitz (1979) has revealed, theories of justice that are based on the principle that the responsibilities of justice are only valid for those who live within a particular political community or who are subject to the same constitution are now less helpful than ever. The desire for self-determination is the same as the attempt to establish a congruence between the economy, society and the state, which obviously cannot be realized at the heart of the nation state.

Heterodetermination today acquires forms that are quite different from those of colonial imperialism or state homogenization; it is carried out through the externalities that come from many political decisions with cross-border impacts. Extraterritorial effects of state policies jeopardize other countries' ability to self-govern. Let us think about the case of the German and British governments that did not implement certain environmental protection measures during the 1970s, causing a high mortality rate in Scandinavian fishing. Swedish fishermen could not participate in

the shaping of political will in the UK or Germany. This is only one of many possible examples of externalizations that constitute true injustices. We could add that they involve a democratic deficit even if they are fully respectful of their *own* electorate.

The states have to move from a contractual responsibility regarding their citizens to a sovereignty that commits them toward the external world when certain common goods are in play. It would be a question of democratizing the impacts, indirect effects, unfair growth and determinant desynchronizations that, rather than the direct oppression or lack of liberty of the past, are now the cause of our greatest democratic disturbances. It is the new way of thinking about old imperatives of autonomy, inclusion and generalization.

Democracies—particularly in Europe—have stopped limiting themselves to interactions with their own electorates. They must open up to foreign interests, examining the costs they impose on others when they adopt certain decisions. "To the extent that borders and jurisdictions set the terms of democratic arrangements, they must be open to democratic deliberation" (Bohman 2007, 17). Under conditions of interdependency, there is no national justice without some type of transnational justice, nor democracy without a certain inclusiveness of non-voters. The republican non-domination principle can only be respected if it also refers to those who, while not forming part of the national *demos*, are affected by our decisions.

The EU is precisely an instrument to decrease the intensity with which some states are determined by others to the extent to which they are obligated to respect certain reciprocal obligations. Membership in the Union has introduced these commitments into the very nature of the member states. As Thomas Risse notes, France, Germany or Poland are no longer simple member states, but states of the EU whose statehood is increasingly defined by their nature as members of the EU (Risse 2004, 163). It is impossible to understand them without noting that their distinctive nature is inseparable from the practice of limiting their power as states based on their commitments and obligations beyond the state (Bickerton 2012, 53).

(c) Ontology of Deterritorialization

From the point of view of political ontology, the principle of territoriality is at the heart of almost all the distinctions that have guided us: between

internal and external affairs, between our issues and other people's, between the domestic and the international. The political order of modernity has followed a binary way of thinking, strict delimitations that unambiguously distinguished friends from enemies, competence from piracy, the ruler from the ruled.

Therefore, the changes we are experiencing as a consequence of deterritorialization have generated a complexity that affects what Luhmann has called "primordial experiences of difference", dualities along the lines of close/far, mine/someone else's, familiar/strange, friend/enemy (1981, 195). These experiences that used to guide us now require redefinition, which particularly affects the distinction between us and them. Of course, there are still limits that allow us to establish the corresponding distinctions, but these limits are more imprecise and porous, less operative. In any case, they do not interrupt interdependence, do not function as "*Interdependenzunterbrecher*" (Mau 2006, 116) and force us to think about belonging, what we have in common and self-government in another way. "The limit is nothing but the method and the realization of its operations that individualize the system" (Luhmann 1997, 76).

Globalization challenges constitutionalism and democracy, among other things because the "we" whose identity is defended and that is self-determined has lost its fixed reference to a stable framework of identification and management, such as the environment of the nation state or of a clearly delimited community. This community overflows and becomes individualized, at the same time as the subjects to which it can refer are expanded and fragmented. There are movements that force us to consider that there are more of us than those of us who are here (emigration, processes of integration in broader political spaces, globalization), while at times we find ourselves needing to focus on specifics and attend to a poorly noted plurality (processes of decentralization, attention to minorities, affirmative action). In both cases, the delimited political framework is challenged from the inside or overwhelmed by "unbundled communities" (Elkin 1995) that configure what we have in common by virtue of shared interests and risks, and not by stable membership within a state framework. To the extent to which interactions beyond the established limits increase, the idea of self-government in a delimited space seems unsustainable or at least in need of profound revision.

In the space of globalization, with porous and multiple identities, in the midst of complex interactions, where contagion and interdependency reign, when everything is contaminated and there is no protective space,

the category of "us" is characterized by great indeterminacy. The nation state, as a political form of the us, is overrun by global poverty, the obligation to protect others, the overriding need for common goods, the complexity of global agreements regarding climatic or financial matters. In a space of common goods or common evils, any delimitation between us and others that is too rigid is inappropriate. Of course, the voters should be delimited, but that does not imply that they should be closed in the name of popular sovereignty. We should think of ourselves in an open and even potentially universal fashion. At the same time, we must construct new systems of responsibility that are operative and reflect the complexity of an interdependent world.

(d) Politics of Deterritorialization

Delimited territories secured state jurisdictions that, because of this delimitation, were constituted as decision-making arenas, security spaces, instruments of control and the undisputed basis for civil obedience. The current set-up is characterized by the fact that we are filled with ways of thinking and flows that contradict the principle of territoriality. We are attending an expansion of levels of territoriality, rather than the old logic of mere juxtaposition, which does not mean that one plane suppresses the other, but that they are superimposed, and it is not easy to establish which arena should take precedence, who has to decide or who we consider responsible. One of the more notable consequences of that is that the relationship between right and territoriality is becoming ever more contingent.

This new arrangement also conditions the assumptions of our decision-making systems. The ancient congruence between those who make decisions and those who are affected by them, authors and target groups, nation and democracy, territory and sovereignty have disappeared. Those who are affected by public decisions should have something to say in the decision-making process (Held 2004, 98). The principle of self-determination is harmed because the range of validity of legitimate political decisions and the social contexts in which those decisions are inscribed and upon which they act do not coincide. "The absence so far of a fully developed transnational political community is incongruous with the existence of transnational social spaces" (Zürn 2004, 260). At the same time, national democracies cannot satisfy our desire to participate in the political decisions that affect us. They do not control and may never have fully controlled the impact of other political decisions on their citizens.

Democracies barely have instruments to assure that "outside" identities and interests are taken into account in their decision-making processes. The legitimacy of transnational institutions stems from the attempt to mitigate these deficiencies, which constitutes a correction to the nation state, to overcome their shortsightedness and include the recognition of other people in their own political structures (Joerges and Neyer 1997). Self-determination today, under current conditions, means accepting the effects that the decisions of other nation states have on us to the extent that we have had the opportunity to make our interests heard in "their" decision-making processes and, inversely, to be ready to make other citizens the subject of our decisions. "We have to work for a system of collective multi-level governance, in which national democracies open themselves to the concerns of foreigners. Otherwise, the external effects of the internal practices of our democracy will impose illegitimate costs on foreigners, or, if foreign democracies do so, on us. Under conditions of interdependence, therefore, it is clear that transnational justice and national democracy mutually support and necessitate each other" (Neyer 2010, 918). Without entering into a discussion now about what these might entail, we can see that governance of the Union or the supremacy of European law is a call to identify rules and principles that assure the coexistence of different electorates and their compatibility with the common objectives that they share.

If we want to put the principle of democratic self-government into effect, we have no choice but to move toward a new post-territorial congruence between the authors of decisions and the parties who will be affected. When we are facing new processes and ways of thinking, we must determine whether they are impositions that should be resisted or opportunities we can use. Current debates about the future of the European Union should be considered in light of these circumstances. They may help us discover the extent to which the EU is called upon to carry out an essential role in the management of risks implied by the interactions between diverse territories, allowing a degree of collective control over externalities. The popular authoriality of laws or political self-determination in a European context must be more indirect than what we are accustomed to in the state framework, which does not necessarily mean that they are less democratic. The Union's true democratic deficit would consist of not being able to surpass the framework of the national democracies.

In the end, the problem is not whether global environments admit democracies similar to those configured in nation states, but how to overcome the incongruence between social spaces and political spaces. It is essential that there be legitimate government or governance; it is less important to determine whether democratic requirements can be extended globally, since these requirements only work, strictly speaking, for delimited spaces. In this way, international institutions (as well as the European Union, which is not truly an international organization but something broader) make it possible for politics to regain the ability to act in the face of denationalized economic processes.

2 Governed by Others

We live with the sensation of being governed by others. There are powerful external pressures (from the uncertain authority of the markets to the growing intrusiveness of what is called the international community, passing through the current instabilities of the European Union which have established German hegemony, or the simple fact of influences, contagion and the mutual exposure that are part of our global condition), and all these pressures seem to convert the ideal of democratic self-government into a promise that current conditions do not allow us to fulfill.

Numerous decision-making materials are being disconnected from the realm of state and democratic responsibility, which presents difficulties of legitimacy and acceptance. There are increasing numbers of intrusive policies that public opinion has a hard time understanding and accepting (from military interventions stemming from the "responsibility to protect" the people to the control of the economies of other countries with which we share a common destiny). How can we democratically justify speculative market pressures, prohibitions against certain countries developing particular weapons, or European demands for budget austerity? Who has the right to tell Greece, Syria or Iran what they must do?

(a) Inevitable Heterodetermination

It was probably illusory to think that the world was made up of "container states" (Ulrich Beck); the norm has probably always been mutual conditioning, pressure and even open interference in the affairs of others. What globalization has done is give a new shape and greater intensity to the type of conditioning taking place between societies that are ever more open

and less protected. Our perplexity in the face of this new interconnectedness makes us incapable of differentiating its liberating aspects from its illegitimate uses, distinguishing those times when it represents a demand for transnational cooperation from moments when it is simply a new mask for old hegemonies.

The Westphalian world (self-sufficient states, the sovereignty of the electorate, the principle of territoriality) has been useful for the construction of a democratic legitimacy that clearly distinguished between what is internal and external, between our own free decisions and illegitimate external interferences, but in an interdependent world—particularly in integrated Europe—these basic political categories can only be maintained if they are profoundly transformed. Perhaps the idea that most urgently needs to be reconsidered is the self-referential conception of political authority that we have considered an unquestionable principle up until this point. We must rethink our conception of democratic decision-making if we do not want to end up confronting unsolvable paradoxes.

This mutual dependency reaches such levels in Europe that some people have even considered the following mental experiment. Even if a state left the Union, many European norms and regulations would continue to affect it, as they affect many other countries that have signed commercial and legislative treaties coming from Europe. This is what is called the "Brussels effect" (Bradford 2012/13, 3). Not being a member affords some advantages but also a good number of inconveniences that stem from not being able to intervene in these decision-making processes.

This new organization obeys processes of global scope and the very dynamic of European integration, which are both phenomena that respond to the growing interdependence between societies and the necessity of governing these realities in some way. On the global level, there is the formation of more vigilant worldwide public opinion and a more intrusive international community, with errors of over-involvement (such as the invasion of Iraq in 2003) and under-involvement (such as the doubts about Syria in 2013). Regarding the European Union, we need only examine the dominant lexicon in order to understand that the customary style of self-determination is a thing of the past: we do nothing but talk about supervision, coordination, reconciliations, shared risks, intervention, demands, vigilance, binding agreements, credits, regulation, rescue, discipline, sanctions, and so on.

How can we define this new situation? In the first place, we should avoid generalizing and considering all interference as negative and

democratically unacceptable. It is an ambivalent phenomenon, positive in some cases and negative in others, like almost everything human. The way austerity is imposed in Europe is an example of the erosion of our democratic community, while the current democratic vigilance over Hungary constitutes a duty to safeguard the values of the European Union and liberal democracy (Müller 2013). Now that the European Union is gambling with a shared destiny and the United Nations has introduced an obligation to protect civilian populations that are suffering certain aggressions, we need a new principle of sovereignty to replace the classical idea of sovereignty as non-interference.

Let us being with the positive. The idea that there are responsibilities between nations is a fact and, at the same time, a value from which a good number of institutions, common rules and binding laws are derived. The reality of our common destinies has given us new responsibilities. To the extent that interdependence is intensified, the responsibilities of justice are no longer circumscribed to the singular framework of the nation state. In addition to a contractual responsibility to their citizens, states (and their citizens) are now also responsible for considering external consequences regarding goods such as the environment, peace or development.

This emergence of new responsibilities is particularly intense in the European Union, whose member states have less and less "internal affairs". We are not a federal state, but the constraints that weigh on countries are greater than in many federal states. Member states should open their democracies to the citizens and interests of other member states. If it is true that thanks to the process of integration, states have recovered an ability to intervene in transnational processes that would escape their control, they have also imposed on themselves a series of party lines, the majority of which focus on the obligation to recognize and use justice criteria to deliberate the impact that one's own decisions can have on others (Maduro 2012b, 77). The logic of integration consists of its members benefiting from being able to manage within a European context certain issues that were beyond their abilities as sovereign actors and, at the same time, recognizing that certain domestic errors are better corrected when there are particular external constraints.

It is an error to think that the strengthening of the European Union and international institutions necessarily means a threat to democracy. It is a question of understanding the balance between national, European and international arenas as a challenge to extend democracy to new processes. Economic and social interdependence (most particularly in Europe) makes

some groups' decisions have effects on others in such a way that the sharing of risks and even the intervention of other groups should be understood in the context of our own democratic responsibility. Sovereignty, which used to be a means for shaping democratic societies, now only functions when it is transformed and shared. In an interdependent world, we must move from sovereignty as control to sovereignty as responsibility (Deng et al. 1996). From this perspective, it makes sense to legitimize intervention in spaces that sovereignty prefers to see as exclusive spaces. With all the necessary guarantees, the same argument that has been developed to legitimize the protection of peoples in the face of violence should also be advanced when it is a question of economic risks that can immerse people in catastrophic consequences.

The idea of community or common goods cannot be exclusively carried out through the self-determination of its member states, but as an "inclusion of the other" (Habermas 1996). Belonging to the EU relativizes the us/them dichotomy. The political contribution of the EU consists of making something improbable institutionally possible: for citizens of member states to allow themselves to be governed by "others" and to see it as something normal, because in the constitutionalization of the us/them relationship, they recognize an expansion of their political existence (Preuss 2010, 338).

(b) The European Construction of Reciprocity

The other side of the coin of this new interference is that we have not yet placed it in a context of just reciprocity. That is why there is a great deal of asymmetry, pressure, discretion without rules or simple threats. The first problem that this presents is the lack of equity in decisions that require shared efforts, the lack of a framework of governance designed with a criteria of justice meant for redistribution without hegemonies and beyond the national realm. The second problem consists of how to overcome the minimal consideration that member states afford to the question of the impact their decisions can have on others. In order to respect the democracy of some people (the German electorate, for instance), they irresponsibly ignore what we could call "collateral damages of democracy itself".

Being responsible only to one's own electorate can be a form of irresponsibility when it harms the interests of other people who, in some way, are part of our own interests. Was Angela Merkel acting in accordance with democratic principles when she attempted to assure reelection at the

expense of serious social damages to the countries with which she shares a project of integration and a long trajectory of cooperation? In the same way that certain businesses outsource part of their work to other parts of the world with minimal salaries and limited rights, it is unfair for Germany to secure their welfare state by imposing burdens that erode the social contract of other European democracies.

Interference, direct or indirect, ordinary or exceptional, is nothing new in the history of the EU, from the multilateral supervision of the Stability and Growth Pact, with the hard sanctions foreseen in the Amsterdam Treaty, to the "open method of coordination" that presumed the absence of any power differential between actors and replaced them with the mutual training period and mutual revision without sanctions, guidance, time-lines, objectives and references, which were no more than "peer pressure" (Regent 2003). However, the measures adopted in relation to the euro crisis have taken this interference to limits that required express legitimation. The final result, in fact, has been an asymmetrical configuration between a governing center and a governed periphery.

Therefore, mutual conditioning, the "government of others", is a reality that presents both opportunities for democratization and threats to justice. What are the conditions to make that which is inevitable also just? Fundamentally, it is a question of introducing criteria of reciprocity into relationships that are currently ruled by asymmetry and unilateralism. The new language of interdependence, especially in the heart of the European Union, should be articulated by concepts such as deliberation, balance, sharing, solidarity, self-limitations, confidence, compromise, responsibility, and so on. A compound democracy should really be a system of "anti-unilateralist decision-making" (Fabbrini 2007).

The fact that the decisions of a country have immediate effects on the citizens of other countries without the citizens of the secondary countries being able to vote or having any right to co-decision-making in the first country is at the heart of the European democratic deficit: the incongruence between *polity* and *policy:* that a *polity* (Germany, for example) determines European *policy* on a large scape. From this point of view, we can interpret the fact that the parliaments of some creditor states are de facto determining many of the conditions within which the parliaments of the debtor countries are acting (Benz 2013). In this regard, a criticism that one could direct toward German constitutional jurisprudence is its unwillingness to consider the impact of its decisions on other jurisdictions (Everson and Joerges 2013). A logic corollary of the duty of "sincere

cooperation" contained in Article 4 of the Lisbon Treaty is the obligation of the national courts to take into consideration the constitutional principles and the rights of the other member states.

During the euro crisis, this "imbalance" (Dawson and Witte 2013) was accentuated to the point of reaching a situation that can without exaggeration be called "euro-zone fiscal colonialism" (Legrain 2014). This all occurs within an asymmetrical banking union, the supervision of which is Europeanized while there is no corresponding mutualization that would resolve the crisis situations (Fossum and Menéndez 2014, 15).

Solutions must include recovering a logic of reciprocity. The creation of a budgetary power for the Eurozone and the transfer of prerogatives of economic policy to the European level, for example, would be more faithful to the European tradition than either the current asymmetry or more drastic, and therefore less democratic, interference in the political decisions of member states. Discussions about fiscal policy, macroeconomic imbalances, the financial sector, structural reforms to increase growth only make sense as part of an interactive process in the context of the European Semester. Conditionality can only work if the actors are in agreement about objectives and pursue them cooperatively, in other words, replacing the logic of order and control with the logic of cooperation (Joerges 2015, 91).

In the framework of this desirable reciprocity, it makes perfect sense that lending countries are less and less prepared to approve financial transactions if they do not have the ability to co-determine the economic policies of debt countries, but it also makes perfect sense that the countries on Europe's outer circle insist that the austerity requirements directed at them should be balanced by Germany's stimulation of their domestic demand and that responsibility should go hand in hand with solidarity. What makes no sense is that if a member state needs assistance because it has been attacked regarding an arrangement for which it is not the only responsible party, the bailout should be compensated by some drastic structural reforms in that member state alone (Menéndez 2013, 133). There are already some interesting proposals to correct this imbalance regarding the bailouts. For example, conferring on the European Parliament the power of scrutiny coordinated with other Eurozone parliaments. This would be similar to the conference of budget specialists suggested in Article 13 of the *Fiscal Compact,* who were given the authority to review every packet of conditions that the EU establishes when giving this type of assistance and checking to see whether the conditions are

compatible with the right to democratic self-determination of the corresponding state (Crum 2013).

The demanded reciprocity is not going to be an easy construction because of the fact of benefiting from the advantages of the common currency and having to take on responsibilities derived from sharing a space that is also common. Donor countries should explain to their voters why financial assistance between states is necessary when they coincide with internal spending cuts and receiving countries should be capable of understanding that renouncing the competitive devaluation of one's own currency does not allow the surreptitious introduction of devaluations in the form of social spending cuts (which are nothing but the functional equivalent of "internal devaluations", which in neoliberal jargon are called "structural reforms").

The EU is the best laboratory to carry out these forms of shared government, to institutionalize procedures of transnational self-determination to the extent to which mutual supervision is allowed and justifications are demanded when certain national decisions have a particularly negative impact on other groups. Madison already noted that in order to guarantee reciprocal control between institutions, the principle of separation could not be applied without giving those institutions at least an ability to act within the sphere of action of the others (Grofman and Wittman 1989). The type of reciprocal obligations that are, according to Weiler, at the heart of this "constitutional tolerance" configures the constitutional organization of the European Union. "'It is a remarkable instance of civic tolerance to accept to be bound by precepts articulated, not by 'my people,' but by a community composed of distinct political communities: a people, if you wish, of 'others'" (Weiler 2002, 568).

Operationally, this type of shared sovereignty turns into a reflexivity about their mutual dependence, their common vulnerability, and the obligation to keep in mind effects upon their neighbors when solving their own problems (Scharpf 1999, 181). Trade law, for example, with their non-discrimination provisions, encourages legislators to be conscious of the interests of the citizens of other member countries; the right to free competition limits domestic subsidies to prohibit an unjust distortion of competition; the European authority that regulates monetary policy attempts to counterbalance the dominant position of the *Bundesbank*. In these and other areas, European law acts as a means to convert foreign interests into internal interests, with some inclusive procedures that point

toward reestablishing European congruence between authorship and affectation.

If democracy in Europe is incomplete, it is not because there is excessive opacity, distance or a lack of participation, although all of this can and should be corrected. There will be no democracy in Europe until we understand the communal, collective dimension of a European political community, which implies working on a concept and a praxis of self-determination that makes sense and on a deeper theory of sovereignty (Haltern 2007, 51).

The delimited spaces of sovereignty are no more: we must begin to get used to other people telling us what we have to do, which is only bearable if we can also intervene in their decisions. In an interdependent world, especially in an integrated Europe, it makes sense that we make increasing demands upon each other, regarding human rights, protection of the environment, economic governance or global equity. In the particular case of Europe, requirements for budgetary balance and austerity have increased, and this increase has created problems not so much because "others" demand them (this hetero-determination is inevitable and, under certain conditions, just), but because they are not decisions taken with strict reciprocity. They imply another type of commitment in the opposite direction, and they should respond to decisions adopted without unilaterality. However, it is one thing to say that these interventions must be justified and balanced by a logic of reciprocity and another thing entirely for us to be able to return to a relationship of sovereign subjects.

Why do we have to pay the consequences for the extravagances of our neighbors? What right do other people have to tell us what we need to do? Two questions that synthetize our current confusion because the distinction between us and them has stopped being obvious and operative when we continuously benefit and harm one another. It would be a profound error to waste these possibilities for interaction or not to establish mechanisms to avoid letting these influences become vulnerabilities. We must take advantage of this organization to give a democratic and just shape to these interdependencies. This could be formulated as a new right to transnational self-determination in which the "we" that governs itself also finds a way to include others. This demand for reciprocity is another way to insist on the need to institutionalize interdependence, which is nothing but the will to institutionalize the plexus of responsibilities that mutually connect us and the stabilization of procedures to decide together in a balanced manner.

Our democratic ideal would be completely unreal if we thought about it as a permanent plebiscite of the "us", without any intervention of the "them". If democracy could be nothing but popular, sovereign and proximate, if it were unthinkable beyond the spaces and the matters for which self-determination has been effective until this point, then we could bid farewell to any adventures beyond the nation state and return—if this were possible—to simpler societies in delimited spaces. Paradoxically this retreat would not help global problems be resolved with better democratic criteria; instead they would simply be abandoned to their fate, which is the least democratic option.

3 The Transnational Construction of Democracy

A society is not sufficiently self-determined when it is only nationally self-determined. This deficiency makes some sense if we keep in mind the political conditions in which today's societies find themselves. The more determined that life is for citizens because of interdependence, the less their demands for self-determination are limited to the arena of the nation state. The rights and responsibilities of self-determination require us to abandon the "parochial focus" of political representation (Gutmann and Thompson 1996, 146). The open character of democracies would be betrayed if the deliberative community were always coextensive with the *demos* of formal procedures of decision-making, with national citizens or the electorate itself.

This is true to the extent that we can speak without exaggeration of a deficit of democratic legitimacy when a society cannot intervene in the decisions of others who condition it, but also when it prevents those others from intervening in its own decisions that condition them. In an increasingly interdependent world, the idea of "democracy in a single country" makes no sense, which does not mean that a deterministic logic makes democratic contagion inexorable or that the exportation of democracy is always just and effective. Formulating it instead in a negative fashion, we can see that when a democracy in one country is achieved *at the cost of* no democracy in another country with which it maintains an interdependent relationship, harming its right to its own determination, that conditioning undermines the opening and inclusion that should characterize all democracies. Unlike the modern world of democratic states that do not need democratic environments—and those that could even benefit from a terrible external world or an antidemocratic enemy to maintain

their own cohesion—in the current world, a democracy that does not promote—and we must strip this of any colonial echo—democracy beyond its own borders is unthinkable. It is a systemic, structural question, not a civilizing mission.

In any case, this principle of transnational self-determination cannot be effective without great institutional innovation, which would continue to provoke resistance and even the declaration of impossibility by those who maintain the national framework as the only normative reference, whether through self-interest or through simple conceptual conservatism.

(a) The Self of Self-Determination

The principle of self-government is undisputed in political philosophy; there are a variety of opinions about the method and, particularly, what is problematic about identifying the "self" of self-determination (Schmalz-Bruns 2011; Innerarity 2014). The identification of the subject of self-determination is especially difficult in fluid, transnational spaces, which are neither isolated nor set apart with incontrovertible limits by community enclaves or state frameworks. There are always others who can discuss the negative effects of our common good (requirement for external justification), and there is an increasing amount of internal plurality, which makes it more difficult to reach a consensus in complex, plural, and compound societies (internal differentiation).

The subject of self-determination adopts a decentralized, polycentric and transversal form; it extends across various levels and in different directions, both vertical and horizontal. The "self" of the determination is not of an unquestionable size, but is always contextualized and elastic, like the limits of those we consider our own, depending on interactions that have been established. "The logic of political representation, which cannot include without excluding, implies that, at all levels of the legal order, a polity is continuously confronted with the question about unity. This is not a question that a polity can choose to leave unanswered. To the contrary, every polity must time and again take up a position regarding the legal content of this unity, precisely because it is confronted with a plurality of representations of unity" (Lindhal 2003, 105). We are "us" because there is something that constitutes us as such when it affects us, for which we are responsible, because we protect each other, we share the same fear, because we are equally threatened, and so on. A focus of this type would

allow us to overcome the paradigm of consensus and contract in order to think about us as a result of what is in play.

The "mutual opening up of democracies" (Nicolaïdis and Shaffer 2005) begins with the consideration that the subject that self-determines must be sufficiently indeterminate so as to include others in every case. Democratic indeterminacy must be open in order to allow some involvement in our decision-making processes by those who we understand to be concerned by our decisions, to the extent to which a relationship of interdependency is in fact established. It is a question of opening the door to the hybrid figure of "my aliens", in other words, those who are both "alien" and "mine" (Shaw 2003).

From the perspective of a global theory of justice, Nancy Fraser has noted the fact that the reference to the Keynesian territorial state allowed us to answer the question about the "what" of justice, while avoiding questions about the "who", in other words, who belonged to the community to which something was owed. This framework is irreversibly destroyed at the moment in which we are not dealing exclusively with the relationship between citizens of one state, but with transnational actors who begin addressing the international community without specific territorial outlines. The rules of the question of justice are modified from the moment in which we no longer need to ask what we owe each other as members of a fixed community, but which is the relevant community in every case and who should be considered a member of that community. This explains the new demands for representation and justification that become present in the global public space. "Above and beyond their other demands, these movements are also claiming a say in a post-Westphalian process of frame-setting. Rejecting the standard view, which deems frame-setting the prerogative of states and transnational elites, they are effectively aiming to democratize the process by which the frameworks of justice are drawn and revised" (Fraser 2005, 84).

(b) A Republican Horizon

The normative nucleus of representative democracy centers on the fact that representatives are required to report to those they represent—and only to them—because it was presumed there were no effects worth

considering toward the "outside", that could not be sheltered by reasons of state or undervalued as a neutral externality. As the interaction between states and their mutual responsibilities increases, there is an increase in the number of parties before whom political decisions must be justified to the extent to which they are significantly affected, since they can no longer be disqualified as mere externalities. The integration of a national political process in multilateral contexts expands the political audience before whom political decisions must be justified (Neyer 2012, 69). That which is public—the realm of justification and decision—is not equivalent to that which is delimited by the state, but includes "everyone affected by a problem" (Dewey 1988). The idea of transnational self-determination presents precisely a conceptual framework to think how we should make decisions when they reach beyond the state framework; it references this additional level of governance that is necessary to give a structural pathway for those who are affected by the decisions of others or, inversely, to internalize the external effects of their own decisions.

Democracy implies a certain identity between those who decide and those who are affected by those decisions. Respecting this criterion means that the effects of the decisions of other nations are unacceptable if we have not had the opportunity to assert our affairs into "their" decision-making process and if we have not been prepared, reciprocally, to take other citizens into consideration in our decisions. We are all obligated to redefine our own interests by including the interests of our neighbors in them in some way, especially when we are connected with them not only by physical proximity or general interdependence, but by the institutional community, as is the case with the European Union. The promise of national democracy to promote self-government can only survive Europeanization if at this level of interdependency there is a demand for a justifying discourse that credits the systematic respect for the external effects of their decisions as something relevant for domestic decisions (Joerges and Neyer 1997). The Union's failure to solve the current economic crisis is due precisely to the gap between political instruments and the nature of the problems, to the fact that the states have been incapable of internalizing the consequences of interdependence and continue imposing externalities on each other and are unable to regulate the transnational forms of power that slip from their control (Maduro 2012a).

The principles of reciprocity, justification, participation and interiorization of externalities point toward a republican horizon as the way to understand the configuration of polities, their decision-making systems

and their legitimizing processes. The idea of transnational self-determination has been inspired in the republicanism of Pettit (1997), which others have developed along the lines of thinking something like "transnational non-domination" (Bohman 2008; Nicolaïdis 2012).

The republican hypothesis does not believe, as liberalism does, that individuals and societies have rights regardless of their status as members of a polity. Liberals are obsessed with validity, while republicans are obsessed with realization. Of course, liberals are correct in saying that rights are valid even if they are not framed within a political community and are even better guaranteed if there is no community interference, but the republican question for the community where they are realized has the advantage of allowing us to modulate our rights and responsibilities depending on the community formed by those who are affected by the decisions that are in play, thus referring to a community that could be larger or smaller than the strict national community. At a time when policies are not circumscribed to closed frameworks, we should not understand this community that is fulfilling rights as identity membership but as affectation and responsibility. Republican deliberation, given the indeterminate character of the interlocutors—who are not only compatriots or even contemporaries—can overcome the exclusive and self-contained notion of the democratic society (Cheneval 2011, 59). Habermas seems to point along these lines when he sustains that deliberation has no subject, because the deliberative community is bigger than the political community (1992, 365). Obviously, this indetermination is problematic if it does not imply a formal concretizing of participants and procedures, but its open character is more in agreement with the also open processes of transnational affairs.

The principle of taking everyone affected into account (Bohman 1996; Dryzek 2001; Gutmann and Thompson 2004) can be a rigorous obligation or an unrealizable lack of moderation, it can range from the mere requirement to inform to the strict obligation for co-deciding. In any case, what is important about this principle is that, defining the reach of the deliberative community by those affected and not by its formal members makes the space for political decision-making less formal and breaks its closure into constituted state frameworks. The principle of affectation challenges the institutional closing of communities that are thus decentralized, open and revisable in each case. It is clear that this then presents a problem of indeterminacy, but it prevents the closure of the community that privileges its members, the aristocracy of the belonging that tends to

crystalize in an electorate that is incapable of taking any responsibility in relation to others.

Democracy is weakened when many of those affected by a decision have no say in decision-making, which happens in the space and time when decisions made within one country have a large impact in another or when they significantly affect future generations, whose interests should be anticipated in some way. The justification owed by representatives is not merely resolved in the heart of the electoral base, it cannot halt with their own immediate interests. Instead, it points toward a general obligation of justification that includes those affected by the decisions and their consequences. Although it is not always easy to demarcate this range, the obligation is potentially universal to the point that what must be justified is the reason we stop at a particular "us." We have here a reference that can help us understand the frequently referenced democratic deficit in Europe in another way.

(c) The Complexity of Self-Determination

How do we incorporate procedures that will allow a complex, fragmented, polycentric and interdependent people to continue being sovereign? Is it possible to maintain the normative content of democratic self-determination while in the process of denationalizing politics?

If there is transnational democracy, there should be a right to transnational self-determination. The rise of a post-national level of politics and democracy can refer the self-government of citizens to more mediated normative and institutional frameworks without this necessarily meaning a loss of democracy, in the same way that the movement from Athens to Westminster cannot be automatically interpreted as a loss of democracy (Ferrara 2011, 78). The existence of a supranational level does not mean fleeing from power toward an abstract no-man's land; instead, it multiplies the places of negotiation and the need for cooperation, which affords states and sub-state entities participatory possibilities (Bohman 1996). This mutual opening has a democratic potential that the closed or hegemonic state cannot achieve. The apparent loss of national self-determination is compensated by greater transnational participation, which ends up increasing, even though it is indirectly, national self-determination (Bogdandy 2004, 885). Transnational self-determination understood in this manner presumes an initial self-limitation and an increase in the area that we consider the object of our responsibility, which finally become an

increase in our own possibilities (in terms of security, well-being, protection, etc.). To perceive this improvement, we should become accustomed to thinking about democratic conditions as something more complex and less direct than what, in the best-case scenario, is realized in nation states.

The self-government of complex societies does not have to follow the domestic model, but can be inspired in polycentric and indirect democratic criteria. If a self-governing community becomes part of various communities—national, state, supranational, global—then the place of democracy is most similar to a puzzle (Held 1995, 225). Local, national, regional, and supranational areas should be articulated in such a way that no level is imposed or closed off to another without sufficient reason.

In the same way that individual self-determination has to be achieved through a compromise with fellow citizens, collective self-determination (on the sub- or supra-state level) has a lot of limitations that stem from its complexity, both because of the network of relationships that should be redefined according to criteria of justice, as well as because of the difficulty of implementation when many factors, levels and elements intervene. In the concrete case of transnational self-determination, we would basically be moving in normative areas or regulative principles. These principles suggest that political actors should interiorize the externalities and begin considering—in the face of what has been a routine inscribed in the logic of the nation state—that a self-interest pursued at someone else's expense is illegitimate and, when there is a dense relationship of interdependency, it is ineffective or unachievable in the long run. Like all counterintuitive ideas (my self-determination seems to imply inconsiderateness toward others), it requires a vision that goes beyond the short term or immediate self-interest. But it is not merely an appeal to morals because its construction finally implies an expanded horizon of action in which a good number of benefits can be obtained.

To the extent that interdependencies are increased, self-determination becomes more complex, both in space and time. We must move toward a transnational self-determination of space in the same way we should point toward intergenerational self-determination as the normative horizon of time (Innerarity 2012). Self-determination is a principle that is not simply articulated by a spatial or temporal delimitation. Making self-government more democratic today means making it more complex so it can include the interests of distant places and times with which we maintain conditioning relationships and, therefore, certain responsibilities of justice. Self-determination continues to be a basic principle and, without it, democracy

would be inconceivable; the problem is that in a world where there is overlap and conditioning, it requires thinking with greater subtlety than when the subjects of those rights (peoples, generations, cultures) were more or less delimited units and could exercise their sovereignty in an isolated manner.

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CHAPTER 11

Conclusion: What Can We Hope? European Promises After Its Crisis

The most tireless optimists will correctly remind us that crises are in no way unusual in European Union history. The European integration process has been flooded by diverse crises, many of which have served as an impetus and even a stimulus for integration. The history of European integration is lined with political crises, including the 1954 failure of the European Defense Community, the 1965–1966 French "empty chair" crisis that arose over negotiations on agrarian policy, and the 2004 constitutional crisis, when the constitutional treaty was rejected in French and Dutch referendums. The resolution of these crises did not bring the process of integration to a halt. The first of these crises paved the way for the Treaty of Rome, the French challenge was resolved with what is called the Luxembourg compromise and the Treaty of Lisbon was established to take the place of the constitutional plebiscites.

This has especially been the case with crises of an economic nature, which have resulted in a deepening of integration. Fluctuations in exchange rates in the 1970s led to the founding of Exchange Web Services (EWS) in 1979; economic stagnation stimulated the project of galvanizing the internal market in the mid-1980s; the Economic and Monetary Union was completed at the beginning of the 1990s in view of the instability of the EWS and the uncertainty generated by German unification; the current acceleration of the integrative process of the financial markets and the Lisbon Strategy can be interpreted as a reaction to the weakness of

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European competitiveness. In all these cases, the failure of what was initially projected forced us to find an alternative, in such a way that we could console ourselves with categories from the philosophy of history and conclude that critical events are a necessary condition for progress. From Jean Monnet on, it has been continuously said that European integration has progressed because of its crises and that it will be the sum of its solutions to these crises (Monnet 1978, 417).

I am going to examine the extent to which the European crisis has debunked certain images of Europe and disseminated new ones. I will try to summarize the stages of this symbolic tour through (1) furtive and mechanical Europe, (2) the remoteness of non-salient Europe, (3) the Europe that hopes and the Europe that fears, (4) headstrong Europe, which claims that crises are necessarily opportunities, and then (5), the Europe with which I identify the most: contingent Europe, which could exist or not exist or exist in another fashion, and whose interest lies in that it is an uncertain product of our conditioned freedom and which, for that very reason, we can consider (6) a politicized Europe.

1 Stealth Europe

The Monnet method of bureaucratic integration has been mechanical and furtive, dominated by necessity. This is revealed by the language of integration. Let us examine for a moment the vocabulary of community: permissive consensus, benign despotism, stealth integration, automatic politicization, spill over, *faits accomplis*, irresistible increase, *acquis communautaire*, de facto solidarities, irreversibility, and so on. Jean Monnet saw a dynamic process in the Union's foundational treaties which would gradually push the European policies through an *engrenage*, which is a French term that refers to being trapped in the gears of a machine, translated by the British as "spillovers" and by the Americans as "mission creep" (in other words, a gradual change in objectives during the course of a military campaign, often because of a non-planned decision about the long term). The result is a situation in which the original goal can only be achieved by increasing the number of actions, which in turn create conditions that require even more actions (Lindberg and Scheingold 1970). In Aaron Wildavsky's expression, "policy becomes its own cause" (1979, 72).

The principal leaders of integration, on the right and the left, have been driven by a crude determinism that presumed that economic development

would inevitably lead to desired institutional improvements. The hiding hand of functional imperatives has been more important than reflection and choices, as if integration could be carried out without the need to make express decisions of the kind that are contained in constitutional moments. All of this has given way to an incrementalism without explicit decisions, which the least benevolent among us could interpret as a directionless process.

The integration strategy consisted of conceding primacy to processes over results and assuming that success was guaranteed (Majone 2014, 216). 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 agreed upon as an irrevocable commitment (Tsoukalis 1993). The Delors Commission that designed the euro in 1989 also conceived of the EMU so that the integration process would be irreversible. It remains a paradox that, while the Treaty of Lisbon (Article 50) admitted for the first time the possibility that a member state might leave the Union, even if only temporarily, membership in the Eurozone continues to be irreversible. No appropriate instruments have been designed to manage crises; some instruments increment the risk of future crises in favor of immediate short-term advantages while others leave many technical and institutional problems unresolved, which is especially noteworthy in the case of the design of the euro without the corresponding political union. When there have been crises, European leaders have not known how to do anything other than convince their electorates that there is no alternative; their rhetorical strategy has consisted in replacing the habitual absolute optimism for catastrophic visions of what would happen if integration or the monetary union were to fail. 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 has said, "I often cycle in Oxford, and if I stop pedaling I do not fall; I simply put my feet on the ground", cited by Zielonka 2014, 73). Incrementalism seemed justified by the complexity of the processes but, all things considered, it was a terrible simplification.

All of this was understandable, and I am not going to discuss either its historical convenience or the effectiveness of its results at this point; instead, I will focus on questions of its future utility. What is essential about its limitations is the fact that a system designed to minimize decision-making cannot make it completely superfluous, in part, because there are

always implicit decisions, in the same way that technology always conceals some political motivation. That is why it has been affirmed that there is, in integration, a "veiled constitutionalism" (Wiener 2004) and even a new *raison d'état* (Wolf 1999). In the 1960s and 1970s, at the time of "permissive consensus", when its principal policies were distanced from people's daily problems, the European project seemed not to need the express favor of the public. In the current, very different context, the type of discourse that is apparently most mobilizing (appealing to the necessity with which processes lead to established ends, betting on the winning need, completing what was started, appealing to something unstoppable and irreversible, insisting that there is no other possibility, etc.) is also and precisely what is most irritating for the citizenry.

2 Europe, With or Without Salience

In the golden age of integration, the image of a technocratic and distant Europe did not imply any type of reproach but a neutral observation or even something expressly meant to help achieve the objectives of integration. There was no need to count on the explicit support of the citizenry because they did not seem concerned about matters of integration, nor did they understand them. Former European Commissioner Pascal Lamy expressed it in this way: "Europe was built in a St. Simonian [i.e., technocratic] way from the beginning, this was Monnet's approach. The people weren't ready to agree to integration, so you had to get on without telling them too much about what was happening" (cited in Ross 1995, 194).

The Europe of "permissive consensus" was not democratic because many of its institutions that had greater autonomy—such as banking governance, courts of law or regulatory agencies—have a high degree of independence and delegation; they are particularly protected in the face of protests and less open to participation (this is, incidentally, similar to the states, although the states offset protected areas with other institutions that are much more responsive). The whole discussion about the EU's "democratic deficit" has to do with the fact that it manages affairs in which the degree of delegation is greater than in national affairs (Moravcsik 2006, 239). While some things take place that citizens cannot see or about which they are not terribly concerned, the democratic legitimacy of the EU is taken for granted. That is why there was so little discussion about its democratic credentials until the beginning of the 1990s (Rittberger 2005).

But this is not our situation. Europe continues to delegate, of course, but it cannot function without a greater degree of tacit democratic consent. The EU is no longer a collective of technocratic institutions and agencies that resolve problems of coordination between democratically legitimized governments without the people taking an interest in them (Kahler 2004). It is no longer true that supranational affairs lack political salience for the citizenry, at least not in the era of a globalized economy, climate change or global migration. There are public discussions not only of the decisions adopted by European institutions but also of the non-decisions, because those, the omissions and ineffectiveness, have consequences in the daily life of Europeans as well.

One indicator of the success of integration, which the transfer of sovereignty, although partial, has verified, is the fact that the relationship between member states and the Union is no longer what it once was. One cannot continue to claim that the matters handled in the European Union have no political salience while the states maintain the decisions that truly interest us. It is no longer true that "critical decisions remain national" (Moravcsik 2006, 225). Even if it displeases the intergovernmentalists or they simply do not see it this way, there are more and more decisive questions that play out on the European level, while the relevance of national discussions is decreasing. Of course, the instinct that seeks domestic refuge in the face of global turbulence is still in place, but we know well that the states protect less than they would like and we would hope. We must also realize that the instruments to resolve our principal problems need to be implemented in a transnational space.

One of the indirect effects of the 2008 crisis has been the politicization of European affairs. As Habermas noted, "the ingenuity of economic sense(lessness) has placed the question of the future of Europe on the political agenda" (2012, 42). By virtue of the crisis, it is not possible to continue affirming that EU politics are principally regulatory without taking their redistributive effects into consideration. If anyone had any doubt, the crisis has made our interdependence more obvious. The economic crisis has probably brought about a politicization of European affairs that the constitutional process barely achieved.

3 The Europe of Hope and Dread

In the preamble to the Constitutional Treaty that was affirmed in the Treaty of Lisbon, Europe solemnly defines itself as a "special area of human hope". Many of the hopes sparked by the European Union have been satisfied, especially the hope that war between those who had sustained long and cruel conflicts among themselves has become unlikely. If the EU wants to regain popular acceptance, the hope that citizens have the right to direct its way should now have a very different focus. It must focus fundamentally on a type of social protection that states are in no position to provide in a globalized world in which the economy appears to be an uncontrolled reality.

The current economic crisis has placed into question the EU's ability to fulfill its promise to become a space of solidarity. It would not be fair to denounce it without also questioning, even if merely hypothetically, what would have become of us if we would have had to confront the turbulence of the financial crisis on our own. But it is also true that nothing destroys hope more than unfulfilled promises. Let us recall one of the examples that has provoked the most discussion. European leaders promised that by the year 2010 the Union would become "the most competitive and dynamic knowledge-based economy in the world". In order to justify such an ambitious goal, it was assumed that the EU would grow at an annual average rate of 3 percent, so as to create 20 million new jobs, while maintaining a commitment to solidarity and equality and, of course, respecting the environment. The 2010 target was set by EU leaders in the heady days of the new century when the European economy was booming, although its basic structural problems remained largely unresolved. The experts knew all along that the goal was in fact unfeasible: it would have required an annual growth rate of productivity of around 4 percent. Instead, in recent years, productivity in Europe had been growing at about 0.5 to 1 percent, while in the U.S. productivity growth had been about 2 percent per annum. As with the EMU, expert warnings about the Lisbon Strategy were simply ignored. Eventually, the Lisbon Strategy was declared dead in 2011 by Commission President Barroso who, instead of explaining the reasons for the failure, used the occasion to announce the launching of a new "Europe 2020" project.

In any case, the hopes of the Europeans cannot be formulated in a messianic fashion (Weiler 2012), not even in a secularized form that presents it as a demand for charismatic leadership. A Europe of multiple actors,

damaged by the crisis, mired in political indifference, complex in its configuration and not uncritical in its political culture cannot trust forms of government based on pre-democratic ingenuity. We should have been capable of promising and trusting in a fashion that would not weaken the democratic power of mistrust (Innerarity 2012).

But what if the greatest source of European legitimacy was not so much hope (which is always rather indeterminate) but fear (which refers to more visible realities)? Paul Valéry once said: "we hope vaguely, we dread precisely" (1927, 27). Fear is more intelligible, mobilizing, and unifying than hope. We owe more to fear than we do to hope. As Michael Walzer affirms, "the things we admire in a particular historical arrangement are functionally related to the things we fear or dislike" (1997, 5). The greatest influence in the history of European integration is the fear that the horrific events from our history would reoccur or uncertainty in the face of a future confronted alone, and there is nothing that leads us to believe that this will change in the future.

Even if the preamble to a treaty would not be the place to affirm that Europe is "a special area of human dread", it is true that understanding ourselves as a "risk community" (Bauer et al. 2008) has and will continue to place in motion more procedures of reasonable cooperation than any discourse full of positive aspirations. There is another type of "negative integration" that is due to the fact that fears mobilize more than hope does; Europe owes its integration more to risks than to projects (Beck 1986). Contemporary societies—and very particularly European societies—produce risks—social, economic, ecological—and should be organized to manage them together. This is especially necessary in environments characterized by complex and dense interdependencies, where the limits of sovereign action are patent. The European Union can be understood as a space for governing the risks that its members confront. A risk community implies recognizing that one is being threatened by similar threats that should be confronted together.

Since 1945, we Europeans have not been as conscious of sharing a common destiny. The decisive question is how to transform shared effects into shared action, convert the passivity of those who suffer the same destiny into an appropriate method of collective organization in order to confront that destiny.

4 Europe's Crisis as an Opportunity?

Today's management manuals and self-help books repeat that we should not waste a good crisis. This way of thinking has a mechanical tone, a coactive and not very political use of language. Like a pop version of dialectics, this slogan has the Hegelian resonance of that "immense power of the negative" ("*ungeheuer Macht des Negativen*") and "comprehension of need" ("*Einsicht in die Notwendigkeit*") that Engels gathered in his famous writing known as the *Anti-Dühring* (Engels 1962, 106). Is all this confidence in the benefits of "dire straits" justified?

Self-help manuals for European affairs have also studied innumerable permutations of the idea that crises are the true causes of the progress of European integration. Jean Monnet formulated it with the solemnity of the founders: the history of integration is the history of its crises (1978, 46). In this way of seeing things, critical circumstances would be windows of opportunity to pursue new objectives (Pierson and Skocpol 2002; Beck 2011). In the midst of the euro crisis, on November 18, 2011, the German Minister of Finance Wolfgang Schäuble declared in the *New York Times*: "we can only achieve a political union if we have a crisis" (Kulish and Ewing 2011). Can this be said about the current crisis through which the European Union is passing and should we hope that it turns into a great opportunity to delve deeper into integration (Böckenförde 2012)? Is the crisis the normal state of integration (Preuss 2014)?

In the first place, some things have not survived their crises, so addressing their beneficial potentiality is only one part of history, the part which is told by the survivors. There are examples in humanity's history of crises that have literally finished off that which should supposedly have been revived. As Paul Valéry noted, we now know that civilizations (in other words, institutions, organizations, projects) are mortal, which means that there are things that did not survive specific crises. Since we only know those that did survive, we forget that many possibilities were destroyed. Only time will tell whether the agitation produced by the crisis is sufficient to renew a democracy as complex as the EU's, in other words, to accept a certain form of government of *the others* and share responsibilities of justice beyond the national realm.

In any case, it is clear that the momentum of need or the fear of the abyss is, at least, an impetus for accelerating decisions, even if this does not assure their rationality. From the most banal to the most dramatic, the experience of sharing a destiny with others has increased our scales of

reference, not only in Europe, but on a planetary level, strengthening our emotional identification and expanding our sense of responsibility. In a post-Westphalian configuration, the component parts are not isolated and self-sufficient units that wear out identities, with exclusive policies and a net distinction between internal and external affairs. Overlap is less the exception and more the norm, and the type of politics that should be carried out is only understood if we keep the profound interrelation that exists between component parts in the foreground.

The future of Europe is not written. European actors have managed on more than a few occasions to take productive advantage of crises to increase integration, which does not guarantee that they will continue to do so in the future. Crises are constellations of great uncertainty, moments of change and decision-making, in which great errors can also occur. Presuming that the history of integration provides us with good arguments to be optimists, no one points out that this time may be different and that the shrewdness that tends to make its appearance in the midst of anguish does not share in the opportune moment.

The economic crisis has been revealed as a decision-making space in which the urgency of the moment and the convenience of a long-term vision coincide; if the former promotes a save-yourself-if-you-can mentality, the latter feeds our cooperative intelligence. This is probably one of the most piercing paradoxes of the current economic crisis: that while the convenience of revising the whole system of values that has led us here is obvious, the same instability seems to advise us to leave things as they were. Crises are moments of change for the same reasons that they can be moments of conservation. Our choice of one or the other is not required by any manual for escaping crises, but depends on the decisions we adopt, freely but with conditions.

Walter Hallstein, the first president of the European Commission, could state that, when dealing with European issues, those who do not believe in miracles are not realists (Hallstein 1979, 467). It is true, determinism and credulity get along well together; they need each other to make up for that which they are unable to explain. Why not conceive of Europe beyond necessity and miracle, as a task that appeals to our freedom, as a contingent reality that demands our endorsement and free decision?

5 Contingent Europe

My favorite image of Europe is the one that knows it is contingent, even if it is convinced it is the best project for the citizens that make it up. This conjunction between the best and the improbable is the only thing that can position the European project in an area of free decision-making again. The Europe that could be different is, for the same reasons, the one that is not condemned to success, as the crisis has revealed to us, after decades of calm necessity. The first sign of alarm may not have been the 2005 rejection of the Constitutional Treaty by French and Dutch voters, but the fact that we were so surprised by it; our surprise revealed that we were not thinking about a free and, therefore, reversible process that was open to scrutiny and even failure. "The fact that the European Union is not perfect does not mean it cannot get worse" (Jolly 2007, 245). Replacing our conviction that every change is necessarily for the better with the contingency that things could go downhill is the only perspective that allows us to once again place political projects in the realm of liberty.

In the famous *Federalist Papers*, Madison recommended that we understand constitutions as a result of "reflection and choice" rather than as a matter of "accident and force" (Madison 1987, 87). But a choice implies contingency, in other words, that consent cannot be assumed to be given once and for all (Weiler 1999). While it may seem paradoxical, those who understand the logic of human constructions know it is not: "only a sense of freedom toward European integration will bring trust to go further and deeper in European integration" (Cheneval 2013, 15).

Of course we should not underestimate the determining and limiting context in which European integration moves, with multiple actors and a good number of constrictions in play, but neither should we underestimate the force of human freedom. The current debate oscillates between the functionalism that has, until now, done without citizen decisions in every possible way, on the one extreme, and the illusion of trusting everything to social spontaneity or the foundational moments of a constituent nature. What both groups seem to fail to recognize is that, like any process of a political nature, European integration should be governed, should be situated between functional imperatives and the immediacy of decisions.

It would be a question of understanding the usefulness of greater political integration as the democratic response to interdependence and not as a reason imposed by the logic of integration. Integration is a free option and not the inevitable consequence of a process that escapes our control

(Maduro 2012). The future of Europe is a matter of choice, it depends on free decisions, even though the decisions must be taken by "weak, uncommitted and cross-pressured national leaders squeezed by national problems, populist movements, EU constraints and global markets" (Mény 2012, 164). But the fact that the decisions are adopted in the midst of many restrictions does not mean that they stop being free decisions.

I do not have a magic formula to manage the full democratization of Europe, but I would like to make a modest proposal of democratization centered on the type of discourse we must maintain. It is possible that we cannot do much, but let us at least begin by speaking about this properly or, better yet, not speaking as if everything referring to the European Union were necessary and inevitable. This would at least allow us to alleviate the intelligibility deficit to the extent to which we stop suggesting that nothing related to European integration has anything to do with free decisions and responsibility.

Let us then begin by abandoning the functionalist language (Hoogue and Marks 2008) of the irresistible and of imperative needs with barely any discourse that appeals to our free command over the future. The practices of the European Union, which are, on the one hand, consensual and gradual through procedural accommodations, also constitute a system that favors concealed or covert democratically non-authorized decisions, sometimes in the form of non-decisions or subjected to technocratic objectivities (Majone 2005). Even Altiero Spinelli's "federate or perish", while it may be true, speaks the language of coercion. Our lexicon is all one of pure necessity; none of it speaks to the citizenry's free decision; it is flammable material in the hands of the populists who seek motives to denounce a conspiracy of elites. The search for popular adherence begins with the use of a language that appeals to liberty, which sets aside inevitability, threats and irreversibility.

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. Presented in terms of integration, the debate always leads to an impasse because, as Ulrich Beck (2012, 33) pointed out, in this way the states, whose authority decides the degree of integration, are situated at the center and national interests are established above those of the citizens, as if citizens were fully represented by the states and not open to the consideration of something in common. If the history of Europe has taught us anything it is that neither state

nationalisms nor integration can claim they have history on their side, which also means that it is dangerous for either side to present themselves as the only option without any other choice (Fahrmeir 2014, 72). In both cases, the state is the protagonist—as a point of departure or a point of arrival—and the possibility of thinking in a less deterministic fashion, a way that is more political and open to the imagination of new possibilities is blocked.

6 Politicizing Europe

The process of integration is not a unique and homogeneous process, but instead a collection of political-institutional, social, and economic dynamics, rarely measured, in a variety of contexts that obey different and even contrasting logics. The European style of integration has had foundational moments of constitutional singularity, but it has generally responded to a succession of ambiguities, tensions, and improvisations in a process in which there was as much design as compromise, adaptation, and "muddling through", with more aggregation and incrementalism than planning, with political spheres that, rather than being measured or subordinate, are in many ways autonomous, or they compete among themselves.

In this context, in the midst of this particular complexity, how can we conceive of Europe as a political object, in other words, as a space configured by free decisions? As its discourses reveal, some intergovernmentalists and some transnationalists have become ensconced in a comfortable historical determinism, from which a comfortable division between the vanguard and rearguard has been established (Piris 2012). Both groups take it for granted that this is the one and only possible point of confrontation. They are only differentiated by the direction they thought they could divine in that determination: whether in the insuperability of the framework of interstate negotiation or in the inevitability that this framework is going to be overrun. In the face of these forms of surrender before a supposed historic need, the only democratically acceptable imperative is that Europe needs to be politicized (Hutter et al. 2016). And politicizing a process—at least in the republican conception that I share—means reducing immutable conditions and increasing the arena in which things should be decided in common, but without being ingenuous enough to think that all these things are being carried out in a void that is completely compliant to our decisions.

From this point of view, the existence of conflicts, questioning, and tensions should not be considered as a symptom that politics is not working well, but as an opportunity for politicization. The fact that decisions are not adopted or accepted easily is what makes them decisions that are, strictly speaking, political, beyond unquestionable technical documents. The existence of strong disagreements indicates that we are moving from "permissive consensus" to "binding dissensus". Politics returns to Europe not as a neutralization of tensions and conflicts but because of them (van Middelaar 2015, 244).

Let us begin with an acknowledgement that reminds us of the extent to which political questions combine aspects of human initiative with processes that are only partially governable. "There is nothing in the world of politics which does not spring from human activity, although there is much that is not a consequence of human design" (Oakeshott 1996, 20). Recent European history is the history of free beginnings and not so much that of an inevitable process to which we must submit (van Middelaar 2012). No institutional device, no theory of democratic governance can anticipate or take the place of the creativity of history or predetermine adequate solutions to political problems we are going to confront.

The European project currently vacillates between voluntarism and deception, and we will only escape this schism when we situate it within the conceptual coordinates of politics, which is a free action developed in the midst of multiple constraints. As Habermas suggested, it would be a question of awakening from the dream of finding some "mechanisms" that make the formation of political will superfluous (2012, 7). There is no secret key, a suitable rail upon which to abandon the European process to its own logic, but neither is it a question of only needing the will or leadership that is demanded by some analysts who seem rather disrespectful of the complexity of these matters. Presuming that governments need nothing more than "political will" to do what they should do implies underestimating the power of the conditions that limit our action and overestimating the power of our will. There are objectives that are not achieved only through the will to achieve them, and even less so when it is a question of coordinated wills, with interests that the actors may not think coincide, even when they do.

A few years ago, there was an interesting debate about the politicization of the EU. The argument focused on how to make European affairs intelligible and involve the citizenry in its construction (Hix and Bartolini 2006; Magnette and Papadopoulus 2008). The proposals revolved around

known categories such as recuperating the antagonism between the left and right or introducing procedures of direct participation, which are both properties that presumably characterize national politics. If the debate did not afford terribly novel results, it was, on the one hand, because it limited itself to recommending the transfer of national categories to the European plane (precisely at a time when those categories had run their course on the national level) and, on the other, because it was assumed that politics can only be an interesting reality if it includes moments of exceptionality, something lacking, for many of those who participated in the discussion, in the consensual and complex politics of the Union. Only in this way would the emotion, the antagonism, and the exception that seem characteristic of the political be possible. While the federalists long for these properties to revitalize that which is communitarian, the intergovernmentalists believe they are irreproducible on the placid and technocratic European level. Without delving into the depths of this question with all the exhaustiveness that it undeniably deserves, I would like to simply point out that there are other ways of politicizing, within what I would call "the normality of liberty" characteristic of "post-heroic" politics (Innerarity 2012).

It is odd to confirm the extent to which we are indebted to Carl Schmitt's exceptionalism when we think about how to revitalize the public space. In exceptional crises, Schmitt's followers expand as if they had been returned to the only scenario in which they know how to develop. At these times, the idea that politics is the power to define the state of exception tends to recover a degree of plausibility. I personally prefer to understand politics as the ability to return as soon as possible to normality, and for that reason, I am rather skeptical about a supposed return to good sense thanks to history's exceptional upheavals. I believe that "the political" in Europe should be sought in another arena, closer to freedom than to necessity. Either we hit the mark when politicizing Europe—making it intelligible and interesting—in a way that does not need to be epic and dramatic, or we will not manage to do so at all.

When we talk about the future of Europe—as with anything whose future strikes us as particularly unpredictable—we tend to respond with psychological devices such as the one that gives the protagonism of the discussion to optimists and pessimists. Regarding the articulation between nation states and the European Union, the mood tends to function like communicating vessels: those who are pessimistic about the possibilities of greater integration are pessimistic because they have greater optimism

regarding the ability of the nation state to fulfill the functions we give it and vice versa; those who regard the future of the Union with optimism tend to be pessimistic about the future of the nation states. In this debate, everyone is optimistic about one thing and pessimistic about the other. Some people overestimate the power of the nation states, and others tend to overestimate the power of the Union (Champeau 2014).

Politicizing our attitudes about the European construction essentially means not failing to recognize its limits or its complexity. A political culture of total optimism would imply a total disregard for the many constraints—technical, economic, political, institutional, cultural—that severely limit the range of feasible choices for democratically accountable governments. One of the most important tasks of policy analysis is to identify all the important constraints, evaluate their significance for different implementation strategies, and estimate the costs and benefits of relaxing the constraints that are not absolutely binding (Majone 2014, 224).

Optimism and pessimism can be two different ways of surrendering to necessity. The language of liberty is instead a language that speaks to us of an indeterminate future, of uncertainty, openness and unpredictability, of what can end well or poorly, like any human feat throughout history. Politics is conditional liberty, choices in the midst of constraints. Politics is always freedom in context, even and particularly within frameworks that are as complex as the EU.

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