

**Demoicracy in Europe: Some Preliminary
Thoughts**

by

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Demoicracy in Europe: Some Preliminary Thoughts

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Abstract

What does the neologism demoicracy mean? If democracy is the “government” of the “people”, can there be a government of peoples? Within the last decade, the idea of demoicracy has developed considerable traction, especially within the political science literature on the European Union (EU). Yet what exactly is demoicracy conceptually supposed to mean in this context; and what models of demoicracy have developed to describe or prescribe the institutional structures of the European peoples governing together? This article offers a constitutional overview of the potentially democratic or demoicratic elements within the European Union and critically presents the three models of demoicracy that have developed in the contemporary literature on the European Union. It subsequently introduces a—new—fourth model called “republican federalism”, which sees the core feature of demoicracy in a majoritarian government among the peoples of Europe.

Introduction

Beginning in the Greek world of city states, the composite word “democracy” combined *demos* (people) with *kratos* (rule) to refer to the “rule” or “government” of the “people”. The government of the people thereby meant the rule of the “many”—the majority of the people; and this model of democracy, as direct democracy, can still be found today. Yet with the spectacular rise of the territorial state, the idea of democracy underwent a major “translation”. For mass democracy to work, it had to rely on the idea of representation; and once this idea was applied to elected assemblies, the idea of parliamentary democracy was born. Within that new model of democracy, the people would no longer rule through a majority among themselves; they would, instead, delegate their powers to an elected “few” in parliament where a parliamentary majority now came to represent the will of the people. This new model of parliamentary democracy—a contradiction in terms for the ancients—has come to completely dominate the political imagination of us “moderns”.

With this definition of democracy in mind, what could the neologism “demoicracy” mean? If democracy is the “rule” of the “people” (via representative institutions), can there be a government of peoples? Are international organisations, like the United Nations, demoicracies¹; and what about the European Union? Within the last decade, the idea of demoicracy has developed considerable traction, especially within the political science literature on the European Union. Yet what exactly is demoicracy legally supposed to

* Professor of European and Global Law. This article is written in memory of David Held (1951–2019) and was supported by a Leverhulme Major Research Fellowship.

¹ The United Nations Charter was adopted on the authority of “*We the Peoples* of the United Nations” (Preamble, emphasis added). For a critique of the—wrong—use of “demoicracy” here, see: H. Kelsen, “The Preamble of the Charter—A Critical Analysis” (1946) 8 *Journal of Politics* 134.

mean here; and what models of democracy have evolved to describe or prescribe the institutional structures of the European peoples governing together?

This article aims to explore the ambiguous concept of democracy in the context of the European Union. A first section starts by offering a constitutional overview of the potentially democratic or democratic elements within the European Union. Can its pluralistic founding or its institutional system of government be explained in democratic terms; and how do both dimensions relate to the *no-demos* thesis often voiced in academic discussions and national jurisprudence? A second section critically presents the three main models of democracy that have developed in the contemporary literature on the European Union. What characteristics have they given to the idea of democracy; and in what ways do they differ from each other? The third section introduces a—new—fourth model called “republican federalism” and compares and contrast it to the three alternative models of European democracy discussed earlier. We shall see there that the distinctive feature of the fourth model is majoritarianism,² both in relation to constitutional amendment and democratic government. Finally, the Conclusion makes an argument in favour of this fourth model from an empirical-institutional and a normative-social point of view.

Democracy and democracy in “Europe”: a preliminary exploration

In the Flaubertian dictionary of received ideas two such ideas have become, ever since its creation, associated with the European Union. First, the Union is a *sui generis* object that eschews all (inter)national comparisons; and secondly, the Union suffers from a “democratic deficit” that is rooted in its very “DNA”.³ These two commonplaces can of course hardly co-exist together⁴; and without wishing to mock the *sui generis* idea once more,⁵ this first section aims to explore the democratic or democratic elements within the European Union. Following the classic division between popular sovereignty and popular government, we shall begin with a brief examination of the normative foundations of the Union, and then move to an analysis of its institutional system of government in a second step.

Founding government: we, the European people(s)?

Skipping over the 1951 European Coal and Steel Community and the (failed) 1953 European Political Community, the formal starting point of today’s European Union is the 1957 European Economic Community. The latter’s birth certificate was an international treaty, unanimously ratified by its founding States, that was designed “to lay the foundations of an ever closer union among the *peoples* of Europe”.⁶ Behind the EU Treaties thus stood a plurality of peoples—organised as states; and only the ratification by all national parliaments, as representatives of their state peoples, did bring the European Union to life.⁷

² Importantly, whenever this article refers to “majoritarianism” or majority voting in the following pages, it always only means the opposite of unanimity. It consequently includes qualified or super-qualified majorities and even “consociational” forms of decision-making, as long as the latter do not result in unanimity.

³ J.H.H. Weiler, “Deciphering the Political and Legal DNA of European Integration” in J. Dickson and P. Eleftheriadis (eds), *Philosophical Foundations of European Union Law* (Oxford: Oxford University Press, 2012), p.137. For a historical challenge to this claim, see: B. Rittberger, *Building Europe’s Parliament: Democratic Representation Beyond the Nation State* (Oxford: Oxford University Press, 2005), esp. pp.98–107.

⁴ This point has first been made by V. Schmitt, *Democracy in Europe: The EU and National Policies* (Oxford: Oxford University Press, 2006), p.8. What is meant is this: you can only identify a “deficit” when compared to how something should “normally” operate; and for this you need a “norm” that the Union can be compared to—which contradicts the *sui generis* idea.

⁵ For my thoughts here, see: R. Schütze, “On ‘Federal’ Ground: the European Union as an (Inter)national Phenomenon” (2009) 46 C.M.L. Rev. 1069.

⁶ EEC Treaty 1957, Preamble (emphasis added).

⁷ It is difficult—if not impossible—to accept that “the founding treaties as well as each amendment agreed upon by the governments appear as the *direct expression* of the common will of the [national] peoples of the Union” (I.

Genetically, therefore, the EEC Treaty as well as all subsequent EU Treaties were not constitutional treaties that were ratified by the state peoples acting directly; they were international treaties concluded by a plurality of peoples acting indirectly through their state parliaments.

And yet: their international origins have not prevented the EU Treaties from *becoming* constitutional treaties. How did this normative transformation come about? It came about through informal “changes” to the EU Treaties.⁸ First and crucially, the European Court of Justice categorically insisted on the *non*-reciprocal and *non*-contractual status of European law: a violation of European Union law by one State could not justify its infringement by another.⁹ Secondly, by creating a direct link between the Union and individuals (through the doctrine of direct effect), the Union legal order did—increasingly—acknowledge a passive form of Union citizenship. This passive status was, twenty years later, “activated” by offering Europeans direct political rights through which an independent democratic will was created within the Union. Thirdly, the Union has come to insist on the supremacy of all Union law over all national law¹⁰; and with the rise of (qualified) majority voting in the Union legislature, this supreme European law could also be adopted against the “sovereign” will of a single Member State.

The question thus arises: if much European law no longer derives its validity from the individual consent of each State, what stands behind its—constitutional—legitimacy? Who, in other words, is or are its popular sovereign(s)? For some Member States, all validity and legitimacy continue to be seen as deriving from their own *national* decision to join the Union. Each state (people) has remained a “master” of the EU Treaties by retaining its “competence-competence”.¹¹ This view is, however, hard to square with the empirical and normative reality of the European Union today. For as long as a *Member State* voluntarily stays within the Union, it simply is not legally competent to *unilaterally* determine the limits of its own competences. True, the Union also cannot formally appropriate new competences without the consent of the *collectivity* of its Member States, yet even this admission does not mean that each and every Member State can individually act as a “master”—in the singular—of the EU Treaties. The EU Treaties can only be formally amended through the unanimous consent of *all* the Member States¹²; and it is therefore only the Member States *in the collective plural* that are the formal “masters”—in the plural—of the EU Treaties.¹³ It is for this reason that, constitutionally, the EU Treaties stand above each Member State *individually* yet below all Member States *collectively*.

The *founding* authority behind the Union is, however, not the whole picture. For with the acceptance of majority decisions within the Union, a “general will” has been created via European institutions and, especially, through the European Parliament (to be discussed below). This European political will has developed alongside the particular political wills of the Member States; and, as a result of this development,

Pernice, “Multilevel Constitutionalism and the Treaty of Amsterdam” (1999) 36 C.M.L. Rev. 703 at 717 (emphasis added)).

⁸ On formal versus informal constitutional amendments, see the third section below.

⁹ See *Commission of the European Community v Luxembourg and Belgium* (90/63 and 91/63) EU:C:1964:80; [1965] C.M.L.R. 58.

¹⁰ See *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* (11/70) EU:C:1970:114; [1972] C.M.L.R. 255.

¹¹ For the German (and British) conceptions here, see for example: R. Schütze, *European Union Law* (Oxford: Oxford University Press, 2021), Ch.6, s.2.

¹² For a discussion of the unanimity rule for EU Treaty amendments see the third section below.

¹³ After *Van Gend en Loos*, a critical distinction must be made between the individual national decision to ratify the (amendment to the) EU Treaties, and their coming into effect once all (!) the Member States have ratified them. For it is, importantly, solely the *collective* decision of all the Member States in favour of a Treaty (amendment) that establishes the validity of the EU Treaties. Not the individual (national) ratification act but the *collectivity* of the Member States ratifying the EU Treaties underpins the validity of EU primary law; and, once that primary law exists, it is directly applicable in all the national legal orders.

constitutional conflicts over the question of sovereignty and supremacy have arisen in the past 60 years.¹⁴ The co-existence of a plurality of (popular) sovereigns within the Union has, in the past two decades, been conceptualised through the prism of “constitutional pluralism”; yet a better historical and comparative analysis here leads to the (American) tradition of federalism.¹⁵

Such a federal conceptualisation has also led to arguments for a “*pouvoir constituant mixte*” for the Union.¹⁶ This Habermasian proposal appears, at first sight, to suggest that the authority behind the EU Treaties lies in a compound power mixing national and Union elements; yet following the methodological individualism inherent in classic social contract theories, his conception, on the contrary, hypostatises the popular sovereign behind the Union to be each and every individual.¹⁷ The reference to the mixed nature of Europe’s constituent power is therefore misleading, because it is not a mixture of national “peoples” (or States) and the European citizen (or their representatives) that combine into a single *pouvoir constituant*. Habermas’ “pluralist constitutional subject” is rather conceived as the “totality of individual persons” even if each person is divided into two *personae*.¹⁸ There is much to disagree with in his ideal-theoretical conception, yet this cannot be the place to do so in any detail.¹⁹

Be that as it may, once we accept the idea that the European Union is characterised by the co-existence of two popular sovereigns (whether in the Habermasian-individualist or my own collectivist conception), what should this mean for the question of withdrawing from the Union? The Union legal order expressly and unconditionally recognises such an exit right in art.50 TEU: “Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.”²⁰ How can this right be justified from a philosophical point of view? Habermas’ conception of the *pouvoir constituant mixte* here affirms, albeit in mysterious ways, a unilateral exit right as “an expression of the partially retained

¹⁴ For a discussion of some of these conflicts, see Schütze, *European Union Law* (2021), Ch.6, s.2. For one of the more recent conflicts here, see the German Constitutional Court’s “Weiss Judgment” at https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2020/05/rs20200505_2bvr085915en.html [Accessed 19 December 2021].

¹⁵ For this point, see: R. Schütze, “Federalism as Constitutional Pluralism: ‘Letter from America’” in M. Avbelj and J. Komárek (eds), *Constitutional Pluralism in the European Union and Beyond* (Oxford: Hart Publishing, 2012), p.185.

¹⁶ For early expressions of this philosophical idea, see J. Habermas, *Zur Verfassung Europas* (Suhrkamp, 2011), pp.62–74; and more recently: J. Habermas, “Citizen and State Equality in a Supranational Political Community: Degressive Proportionality and the Pouvoir Constituant Mixte” (2017) 55 J.C.M.S. 171. See also M. Patberg, “A Systematic Justification for the EU’s *pouvoir constituant mixte*” (2017) 23 E.L.J. 441.

¹⁷ Habermas, *Zur Verfassung Europas* (2011), p.67. The important point for Habermas is that, like in classic social contract theories, the primary subjects of the constituting power are individuals—not (national) collectivities.

¹⁸ Habermas, “Citizen and State Equality in a Supranational Political Community: Degressive Proportionality and the Pouvoir Constituant Mixte” (2017) 55 J.C.M.S. 171, 176.

¹⁹ Let me voice one major objection here. To me, the extension of Habermas’ “rational reconstruction” approach to the concept of the *pouvoir constituant* seems bound to fail if the latter is to refer to a founding “moment”—whether real or imagined. For the process of rational reconstruction appears to be dynamic in that normative principles are recursively re-constructed from existing (and changing) social practices (J. Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Polity Press, 1997)), whereas the classic function of the concept of the constituent power has been to offer a constitutional account of a singular and fixed expression of sovereignty at a particular historical time. The relationship between sovereignty and constituent power is thus analogous to the distinction between “language” and “speech”: the former is recursively and dynamically reconstructed, whereas a particular utterance is, as an event and “act”, connected to its historic time. The concept of constituent power, when contradistinguished to sovereignty, should indeed refer to *concrete* speech acts establishing a *concrete* form of government. There is no recursive or retrospective constituent power—there are only historically situated and disjunctive expressions(!) of it. For a recent critique of Habermas’ idea, see also in this journal G. Duke, “European Constitutionalism and Constituent Power” (2019) 44 E.L. Rev. 50.

²⁰ Article 50(1) TEU.

sovereignty of the Member States”.²¹ A much clearer justification of such an exit right however comes from the federal idea of the European Union founded on a constitutional *treaty* between peoples (organised as States). For the very idea of a *constitutional treaty* as a *social contract* normatively implies that each Member State may exit from the Union as a last resort.

Dual democracy: democracy within the institutions of government

What are the democratic elements in the Union’s system of government? The 1957 Rome Treaty had originally charged the Council with the task of governing the Union.²² In terms of its composition, the Council was—and remains—a State organ:

“The Council shall consist of a *representative of each Member State* at ministerial level, who may commit the government of the Member State in question and cast its vote.”²³

Each ministerial member here represents his or her State; and where decision-making is by unanimity, the sovereign equality of the Member States is respected in line with classic international law. Yet from the very beginning, the EU Treaties also envisaged procedures that broke with the idea of sovereign equality. They permitted the Union to act by a (qualified) majority of States—even if a constitutional convention superimposed unanimity in the first decades of the life of the Union.²⁴

With regard to majority voting, the Council originally followed a system of weighted votes.²⁵ All votes had to be cast *per Member State*; and a (qualified) majority was deemed achieved once a certain threshold of votes had been reached.²⁶ At the outset, these votes ranged from 4 to 1 and thus followed an—extremely—crude (degressive) proportionality as regards a Member State’s share in the Union’s overall population. Over the course of time, this representational system got more refined in that the most populous States would enjoy 29 votes, while the smallest Member States had 3 votes; yet the discrepancy between the votes given to larger States and the proportion of the EU population they represented grew ever further apart.²⁷ To counteract this development, the idea of a direct EU population threshold was introduced. Accordingly, each vote in the Council needed to be backed up by 62 per cent of the total Union population. Yet this unsettled the smaller Member States and they consequently insisted that a majority of votes within the Council must also be cast by a majority of the States *as States*. The traditional voting arrangement in the Council was thus based on a triple majority: a majority of States, representing a majority of the Union population, had to cast a majority of weighted votes.

This triple majority requirement was replaced and simplified after 2014, when the Lisbon reforms abolished the weighted votes system. The latter had always been an indirect compromise between State

²¹ Habermas, *Zur Verfassung Europas* (2011), p.71. The difficulty, in my view, with Habermas’ position is this: how can his “individualist” account of the *pouvoir constituant* ever arrive at this conclusion if secession rights are “collective” rights of a group that also bind those citizens that voted against leaving the European Union? So, if Habermas were serious about dividing sovereign power “at its root”, namely at the level of the individual natural person and if he accepts, as I think he does, changing political identity configurations, then, I cannot see how a majority decision within a group of a seceding “people” can bind those outvoted citizens whose preference configuration has come to shift—in an existential manner—to the other side.

²² Ex-Article 145 EEC.

²³ Article 16(2) TEU (emphasis added).

²⁴ For a well-known discussion of the Luxembourg Compromise, see: J.H.H. Weiler, “The Transformation of Europe” (1990–91) 100 *Yale Law Journal* 2403.

²⁵ J.-C. Piris, *The Lisbon Treaty: A Legal and Political Analysis* (Cambridge: Cambridge University Press, 2010), p.215: “In the original E[E]C of six member States in 1957, the system of weighted votes in the Council was based implicitly on a rough balance of demographic, economic and political elements.”

²⁶ Over the course of the last sixty years, this threshold lay somewhere between 70–75% of the votes cast (Piris, *The Lisbon Treaty: A Legal and Political Analysis* (2010), p.219).

²⁷ Piris, *The Lisbon Treaty: A Legal and Political Analysis* (2010), p.217.

equality and population *inequality*; and by henceforth building on these two dimensions directly, the EU Treaties today demand a dual majority of 55 per cent of the States comprising 65 per cent of the Union population for the Council to decide.²⁸ What is the political authority standing behind this—mixed—formula? The Council does not, strictly speaking, represent the collectivity of the Member States—a notion that would imply their *equality*. Nor does it represent the European citizens directly. The best way to conceptualise the dual majority requirement within the Council is therefore to see the Council as representing the state *peoples*, with the latter acting in their dual capacity as autonomous collectivities and as part of the overall Union demos.

Within the contemporary Union, the Council however only constitutes one of two branches of the bicameral Union legislature. For under the Union's ordinary legislative procedure, the European Parliament today enjoys symmetric and equal powers with the Council.

What political authority stands behind the European Parliament? The composition of the Parliament has fundamentally changed over time. At the outset, it was an assembly of “representatives of the *peoples of the States* brought together in the [Union]”.²⁹ This semantic formula had initially been chosen because Parliament consisted of “delegates who shall be designated *by the respective Parliaments from among their members* in accordance with the procedure laid down by each Member State”.³⁰ With the introduction of direct elections in 1979, the European Parliament is however meant to *directly* represent the European citizens; and the EU Treaties have today recognised this in art.10(2) TEU: “Citizens are directly represented at Union level in the European Parliament.” It is therefore mistaken to still claim that the European Parliament represents the national *peoples* in their collective capacity. The European Parliament is *not* a *democratic* institution in that sense; on the contrary, it represents a—constitutionally posited—European people that gradually emerges through a dialectic process of collective self-constitution.³¹

This “constructivist” argument has been famously rejected by the “no-demos” thesis. In its most assertive variety, this is not an empirical-sociological but a normative-conceptual thesis. Accordingly, the Union cannot have a “people” that could ever legitimise European democracy so long as there are national peoples. This either-or logic can especially be found in the work of Dieter Grimm—whose anachronistic conception of the “state”, “constitutionalism” and “democracy” have, in the past two decades, revived the “nationalist” understanding of these concepts as defined by the nineteenth-century *Staatsrechtlehre*.³² Yet by insisting on a pre-existing people, as popular sovereign, before a democratic system of government can operate, the political cart is put before the historical horse. For sociologically and culturally, national communities were not pre-existing “natural” entities. They were the result of an arduous and lengthy

²⁸ There are a number of additional requirements (Piris, *The Lisbon Treaty: A Legal and Political Analysis* (2010), pp.221–225) that will not be discussed here.

²⁹ Ex-art.137 EEC (emphasis added). France preferred this symbolic formulation; and to further safeguard the indivisibility of the French Republic guaranteed under art.1 of the 1958 Constitution, the idea of a “representative mandate” was also rejected by the Constitutional Council in its 1977 decision on the 1976 European Parliament Election Act (J.P. Jacqué, “La Souveraineté française et l’élection du Parlement Européen au suffrage universel direct” in A. Bleckmann and G. Ress (eds), *Souveränitätsverständnis in den Europäischen Gemeinschaften* (Nomos, 1980), p.71).

³⁰ Ex-art.138 EEC (emphasis added).

³¹ See especially: J. Habermas, “Remarks on Dieter Grimm’s ‘Does Europe Need a Constitution?’” (1995) 1 E.L.J. 303 at 306: “The ethical-political self-understanding of citizens in a democratic community must not be taken as an historical-cultural *a priori* that makes democratic will-formation possible, but rather as flowing contents of a circulatory progress that is generated through the legal institutionalization of citizens’ communication.”

³² D. Grimm, “Does Europe Need a Constitution?” (1995) 1 E.L.J. 282. In a similar vein: C. Offe, “Democracy and Trust” (2000) 96 *Theoria* 1 at 4: “The only precondition worth keeping in mind is that in order to have a democracy, one needs a state first.”

process of political construction and imagination³³; and, as the history of the United States shows, there can be conceptions of *dual* “peoplehood” and *dual* citizenship in which a federal demos co-exists in parallel with state *demos* in a “republic of republics”.

This constitutional reading of the European Parliament as an “agent” of a European people has, equally, been contested from a second perspective: its composition.³⁴ For, according to art. 14 TEU, the seats within the European Parliament are not allocated in a purely proportional manner; instead, the European electorate is refracted via a representational method known as degressive proportionality. Each State will have a minimum number of six parliamentarians, while the maximum number of seats is limited to 96.³⁵ But does this mean that there can never be a European *people*? This has been the infamous conclusion reached by the German Constitutional Court’s Lisbon decision: due to the breach in the “one person, one vote” logic, “the European Parliament is not a representative body of a sovereign European people” but continues to represent the peoples of the Member States.³⁶ This reasoning is, however, prisoner to a number of misunderstandings and mistakes.³⁷ Indeed: the degressive distortions within its composition, while not ideal,³⁸ hardly destabilise an—empirical—reality in which MEPs simply do not vote in national blocks

³³ In this sense, “Italy” preceded the “Italians”; as much as republican France had to “create” its citizens (E. Weber, *Peasants into Frenchmen: Modernization of Rural France 1870-1914* (CA: Stanford University Press, 1976)). For Germany, see: J. Heinzen, *Making Prussians, Raising Germans: A Cultural History of Prussian State-Building after Civil War 1866-1935* (Cambridge: Cambridge University Press, 2017). For a generalisation, see: R. Dahl, *Democracy and its Critics* (Connecticut: Yale University Press, 1989), pp.3-4: “Advocates of democracy—including political philosophers—characteristically presuppose that ‘a people’ already exists. Its existence is assumed as a fact, a creation of history. Yet the facticity of the fact is questionable ... The assumption that ‘a people’ exists, and the further presuppositions of that assumption, thus become a part of the shadow theory of democracy.” On the empirical credentials for and against an emerging European identity and demos, see only: M. Jolly, *The European Union and the People* (Oxford: Oxford University Press, 2007) as well as K. McNamara, *The Politics of Everyday Europe: Constructing Authority in the European Union* (Oxford: Oxford University Press, 2017).

³⁴ A third critical perspective shall not be discussed in any detail here: the size of EU parliamentary constituencies. Bellamy, for example, criticises their magnitude of about 675.000 voters, which he unfavourably compares to the much smaller Westminster constituencies of about 70.000 voters. (R. Bellamy’s *A Republican Europe of States: Cosmopolitanism, Intergovernmentalism and Democracy in the EU* (Cambridge: Cambridge University Press, 2019), p.84 mentions the figure of 10.000 voters per British MP but that must be a printing mistake?) Yet it is worth recalling that the average US House constituency is over 700.000 voters, so even if one accepts that there is a European democratic dilution in terms of formal voter power, it is certainly not a *sui generis* feature of the Union.

³⁵ Article 14(2) TEU. This means that the voting power of a Maltese citizen is twelve times that of a German citizen. The average German constituency for the European Parliament is about 860.000 citizens, whereas a Maltese constituency has about 70.000 citizens.

³⁶ *Lisbon Decision* BVerfGE 123, 267 at [280].

³⁷ My main problem with the German Court’s thinking is this: if its line of reasoning is followed, who does a “German” national elected in, say, a “French” (or “Italian”) constituency of the European Parliament represent? His German people, the French people; or both?

³⁸ For a recent “idealisation” of degressive proportionality within the European Parliament, see: J. Habermas who has tried to legitimise the status quo by reference to his idea of a *pouvoir constituant mixte*. His general EU law thinking is subject to a number of objections; but, due to space, I shall only mention one here. Alas: how can his *individualist and constructivist* conception of the constituent power lead to the proposition that degressive proportionality “can be justified democratically on the grounds that each of the national peoples involved in the constitution-building process wishes to keep open the possibility of lending its national interests greater weight if need be” (Habermas, “Citizen and State Equality in a Supranational Political Community: Degressive Proportionality and the Pouvoir Constituant Mixte” (2017) 55 J.C.M.S. 179). Does this mean that the dually sovereign individual is split not in half, but in 2/3 national citizen and 1/3 European citizen; and even if we accept this as empirically correct today, why should that division remain stable over time? Would it not follow from Habermas’ own premises that this balance may dynamically evolve as loyalty intensities and political allegiances may shift from one level to the other? Habermas’ celebration of the present system seems to me arbitrary and apologetic. For similar criticisms, see J. von Achenbach, “The European Parliament as a Forum of National Interest? A Transnationalist Critique of Jürgen Habermas’ Reconstruction of Degressive Proportionality” (2017) 55 J.C.M.S. 193.

representing their “people”, and in which European citizens are also allowed to vote and stand for a seat in *another* Member State than their own.

What about the state-peoples within the European Union and its system of government? They are, it goes without saying, primarily represented by and in their respective state parliaments. For the European Union is, like the United States,³⁹ built on the idea of a *dual* democracy in which legislative powers are divided between two levels of government: Union democracy takes place at the European level and, principally, through the European Parliament; while state democracy takes place at the state level and, primarily, through national parliaments. The two levels may sometimes even cooperate under a “composite” parliamentary procedure; and an interesting illustration of such vertical cooperation can be found in the context of the principle of subsidiarity which asks national parliaments to be institutionally involved in the legislative process of the European Union.⁴⁰ The most remarkable horizontal co-operation, however, takes place through the principle of mutual recognition—a fundamental principle of European Union law that will be discussed, together with the idea of dual citizenship, in the next subsection.

Dual citizenship: fundamental rights and mutual recognition

The idea of dual democracy finds its individualised corollary in the idea of dual citizenship: every citizen of a Member State is also a citizen of the European Union. State citizenship implies Union citizenship—with Union citizenship being derivative of State citizenship.⁴¹ And, like in the US American case,⁴² the two citizenships are distinct and different in what fundamental rights and freedoms they offer: State fundamental rights apply within and against the State, whereas EU fundamental rights will, in principle, only apply vis-à-vis the Union.⁴³

This dualist separation into two distinct citizenship statuses is nonetheless complemented by a federal principle connecting the two. Indeed, the most important EU fundamental right demands that each Member State must collaterally open its national rights to citizens from other European States moving to its territory. This right of non-discrimination on grounds of nationality constitutes the very heart of European citizenship⁴⁴; and the European Court of Justice has rightly underlined that point.⁴⁵ In the European Union, the status of EU citizenship has however gone beyond non-discrimination. Indeed, those EU citizens moving to another Member State may not merely claim to be treated *as if they were citizens of the host state*; under the principle of mutual recognition, they may even be entitled to be treated *as if they continued to live under the regime of their home state*.

³⁹ For a discussion of US federalism, and its philosophical and constitutional elements, see: B. Ackerman, *We The People—Volume I: Foundations* (Cambridge MA: Harvard University Press, 1991); as well as his *We The People—Volume II: Transformations* (Cambridge MA: Harvard University Press, 1998).

⁴⁰ For a comprehensive analysis, see: K. Granat, *The Principle of Subsidiarity and its Enforcement in the EU Legal Order* (Oxford: Hart Publishing, 2018).

⁴¹ Article 20(1) TEU: “Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.”

⁴² For the classic US Supreme Court case here, see *Barron v Mayor & City of Baltimore* 32 US 243 (1833).

⁴³ This general principle has however become qualified, both in the US and the EU, by a doctrine of fundamental rights “incorporation”. For a comparison between the US and the EU here, see: R. Schütze, “European Fundamental Rights and the Member States: From ‘Selective’ to ‘Total’ Incorporation?” (2012) 14 *Cambridge Yearbook of European Legal Studies* 337.

⁴⁴ See M. van den Brink, “EU Citizenship and (Fundamental) Rights: Empirical, Normative, and Conceptual Problems” (2018) 25 E.L.J. 21 at 33: “EU citizenship may indeed look rather meagre when considering solely its vertical dimension, but it is the horizontal dimension which provides it with real substance”.

⁴⁵ *Grzelczyk v Centre Public d’Aide Sociale d’Ottignies-Louvain-la-Neuve* (C-184/99) EU:C:2001:45; [2002] 1 C.M.L.R. 19 esp. at [31].

An excellent illustration of the principle of mutual recognition in this context can be found in *Coman*.⁴⁶ The case concerned the question whether each State had retained the power to determine, within its territory, the meaning of “marriage”; and, in particular, whether its definition of the concept of “spouse” could exclude same-sex couples. In the past, the answer to this question had depended on the particular state where a couple lived.⁴⁷ But did this imply that a marriage legally concluded in one state might not be recognised in another? Concretely: could the Romanian authorities deny the validity of a Belgian same-sex marriage within Romania; or, would the refusal to recognise Belgian law violate EU citizens’ fundamental right to move without hindrances in the European Union? The European Court of Justice thought so. For while Romania remained, under European Union law, entitled to not recognise gay marriage for its own citizens, it was under “the obligation to recognise such marriages, concluded in another Member State *in accordance with the law of that state*”.⁴⁸ A Belgian right could here be invoked against the Rumanian authorities; and this horizontal extension was, importantly, the result of the vertical—federal—status of EU citizens.

Theorising EU democracy I: the standard model and its two rivals

How can we conceptualise the institutional picture that was described above for the European Union; and can it be associated with the idea of “demoiracy”? The European Union has, since its beginning, aimed at laying “the foundations of an ever closer union among the *peoples* of Europe”; and the Union makes, bar one soft exception,⁴⁹ no reference to a “We, the European people”.⁵⁰ With the formal introduction of EU citizenship by the 1992 Maastricht Treaty, however, the spectre of “a change in the very telos of European integration from a union among the peoples of Europe to a people of Europe” had emerged.⁵¹ For many constitutional traditionalists, this was a serious mistake: there simply was no European people; and in its absence, the European Union was, by definition, structurally *un-demos*-cratic.

Starting out from this “no-demos” thesis and heeding the call “to reinvent the key institutions of modern political democracy”,⁵² the term “demoiracy” was coined to conceptualise the democratic potentialities (and limits) of the European Union as a union of multiple *demoi*.⁵³ Most prominently here has been Kalypso Nicolaïdis’ attempt to stake semantic dominance over the concept.⁵⁴ Her normative model of demoiracy

⁴⁶ *Coman v Inspectoratul General pentru Imigrari* (C-673/16) EU:C:2018:385.

⁴⁷ For the Union legal order, consider art.9 of the EU Charter: “The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.”

⁴⁸ *Coman* (C-673/16) EU:C:2018:385 at [45] (emphasis added).

⁴⁹ Declaration 52 “On Symbols of the European Union”—speaking of a “sense of community of the people in the European Union and their allegiance to it”.

⁵⁰ This was even true for the two most “political” and “constitutional” projects of European integration in the past—both of which failed. The 1953 European Political Community began its preamble with “We, the peoples of the Federal Republic of Germany, the Kingdom of Belgium...”; and its founding treaty described the EPC as a “union of peoples and States” (ibid., art.1) and its Parliament-to-be as the “Peoples’ Chamber” (ibid., art.11). The 2004 Constitutional Treaty also identified the political will behind it with the “peoples of Europe” (preamble); yet its art.I-1 CT signalled a subtle shift by referring to “the will of the citizens and States of Europe”.

⁵¹ J.H.H. Weiler, “European Models: Polity, People and System” in P. Craig and C. Harlow (eds), *Lawmaking in the European Union* (London: Kluwer Law International, 1998), pp.3, 23.

⁵² P.C. Schmitter, *How to Democratize the European Union ... and Why Bother?* (Washington CD: Rowman & Littlefield, 2000), p.1.

⁵³ The term “demoiracy” seems to have first entered the constitutional vocabulary of European integration in 1997 when Philippe van Parijs advocated a shift from “demoi-cracy to demos-cracy” in light of the post-Maastricht Union’s increased involvement in questions of social justice. See: P. van Parijs, “Should the European Union Become More Democratic” in A. Føllesdal and P. Koslowski (eds), *Democracy and the European Union* (NL: Springer, 1997), p.287, esp. pp.298–299.

⁵⁴ There is a long list of articles on demoiracy that Nicolaïdis has published since 2003. The following seemed to me the most relevant: K. Nicolaïdis, “Our European Democracy: Is this Constitution a Third Way for Europe?” in K.

has today become the “standard model” in political science discussions on the democratic “ontology” of the European Union. In the last decade, however, two alternative models of democracy have also emerged. This section aims to critically present these three normative models by analysing their respective definitions of democracy as well as the EU processes or institutions that are seen as concrete manifestations of democracy within the European Union.

The standard model: democracy as the non-majoritarian “third way”

The standard definition of democracy, offered by Nicolaïdis, is this: “European democracy is a Union of peoples, understood both as states and as citizens, who govern together but not as one”.⁵⁵ Each of the three key elements of this definition (“Union of peoples”, “govern together”, and “not as one”) are ambiguous and are never suitably defined.⁵⁶ Leaving her abstract definition therefore in vital need of further concretisation, what are the concrete manifestations and normative commitments behind Nicolaïdis’ conception of democracy? Examining her articles on the subject, stronger contours vaguely emerge; yet the task of the critical analyst is emphatically not an easy one.

Nicolaïdis’s core thesis is this: wishing to break away from the “Cartesian tyranny of dichotomies”,⁵⁷ a third way between “intergovernmentalism” and “supranationalism” must be found. And contending that the two classic EU integration philosophies are “state-centric”, they are, in turn, claimed to represent “two sides of the same coin”. For both are said to rely on the “sovereignist notion [of] a single demos”: intergovernmentalism insists on the (exclusive) existence of a sovereign demos within each state, whilst supranationalism is charged with aiming to create a single European demos replacing the national demoi

Nicolaïdis and S. Weatherill (eds), *Whose Europe? National Models and the Constitution of the European Union* (Oxford: Oxford University Press, 2003), p.137; K. Nicolaïdis, “We, the Peoples of Europe...” (2004) 83 *Foreign Affairs* 97; K. Nicolaïdis, “The Idea of European Democracy” in J. Dickson and P. Eleftheriadis (eds), *Philosophical Foundations of European Union Law* (Oxford University Press, 2012); K. Nicolaïdis, “European Democracy and Its Crisis” (2013) 51 J.C.M.S. 351; K. Nicolaïdis, “Epilogue: the Challenge of European Demoi-cratization” (2015) 22 *Journal of European Public Policy* 145; F. Cheneval and K. Nicolaïdis, “The Social Construction of Democracy in the European Union” (2017) 16 *European Journal of Political Theory* 235; K. Nicolaïdis and M. Watson, “Sharing the Eurocrats’ Dream: a Democratic Approach to EMU Governance in the Post-crisis Era” in D. Chalmers et al (eds), *The End of the Eurocrats’ Dream* (Cambridge: Cambridge University Press, 2016), p.50; K. Nicolaïdis and J. Viehoff, “Just Boundaries for Demoicrats” (2017) 39 *Journal of European Integration* 591; and K. Nicolaïdis, “Sustainable Integration in a Democratic Polity: A New (or not so new) Ambition For the European Union after Brexit” in U. Staiger (ed.), *Brexit and Beyond: Rethinking the Futures of Europe* (London: University College London Press, 2018), p.212.

⁵⁵ Nicolaïdis, “The Idea of European Democracy” in *Philosophical Foundations of European Union Law* 254.

⁵⁶ What distinguishes a union of *peoples* from a union of *states*? As we shall see later on, for Nicolaïdis it cannot be that in the former, the peoples act as populations of different sizes, as opposed to peoples acting as sovereign and equal states, because this would contradict her preference for the equality of peoples; and it may be for that reason that her later definitions of democracy silently drop the reference to peoples “understood both as states and as citizens” (Nicolaïdis, “European Democracy and Its Crisis” (2013) 51 J.C.M.S. 351). Be that as it may, does a union of peoples, understood as equal peoples, then mean that the “people” themselves ought to adopt the Union? This would make the United States a democracy but not the European Union; and it therefore cannot be the meaning she has in mind. Secondly, what institutional arrangements are envisaged behind the elusive phrase “govern together”; and is the principle of mutual recognition a form of governance? The absence of any clear commitment to institutional arrangements, which ought to define who and what governs the Union of peoples, is, in my view, the major shortcoming within Nicolaïdis’ model; and M. Ronzoni in “The European Union as a Democracy: Really a Third Way?” (2017) 16 *European Journal of Political Theory* 210 is right to call out Nicolaïdis’ general ambiguity here (esp. 226 and 229). Finally, what does “not as one” mean? Does it refer to the “no-demos” thesis implying that the Union does not have a “people”?

⁵⁷ Nicolaïdis, “Our European Democracy: Is this Constitution a Third Way for Europe?” in *Whose Europe? National Models and the Constitution of the European Union* (2003), p.140.

within the Union.⁵⁸ For Nicolaïdis, neither is capturing the European Union: “The EU is neither a *union of democracies* nor a *union as democracy*; it is a union of states and of peoples—a ‘demoicracy’”.⁵⁹ Importantly, and paying tribute to pluralism and cosmopolitanism,⁶⁰ this third-way solution ought nevertheless not be seen as “something ‘in between’”; demoicracy is, on the contrary, said to be “ontologically” distinct from both intergovernmentalism and supranationalism.⁶¹

In what ways, then, is the European Union, as a demoicracy, ontologically distinct? For Nicolaïdis, three conceptual shifts are responsible for this. They are: first, “seeking the mutual recognition of all the members’ identities rather than a common identity”; secondly, “promoting a community of projects, not a community of identity”; and thirdly, “sharing governance horizontally, among states, rather than only vertically between states and the union”.⁶²

Let us explore each of the three conceptual shifts and the resulting “ontological” uniqueness of the Union, as seen by the standard model, in turn.

First, the standard model demands that there cannot be a European demos,

“one is not to cross the Rubicon which separates a European Union ruled by and for multiple *demoi* from a Europe ruled by and for one single *demos*”.⁶³

Demoicracy is to take “to their ultimate logic the implications of pluralism and the rejection of identity politics”; and this, in particular, means that “[i]n political terms, a demoi-cracy is not predicated on a common identity, European public space and political life”.⁶⁴ The EU is about multiculturalism through free movement *between* States; a normative reduction that makes the quest for a complementing normativity or European identity obsolete. “We do not need to develop a ‘common’ identity if we become utterly comfortable borrowing each other’s.”⁶⁵ Not a *common* political identity undergirding all national identities, but the differential sharing of national identities is what demoicracy wants. The concrete manifestation Nicolaïdis cites in this context is the EU Treaties’ commitment that EU nationals may use each other’s consular services which, according to her, permit, say a Spaniard, “to be a bit Italian or a bit British when traveling outside the Union”—but never do they feel European a such. The Union is, and ought to be, a community of *others* not a community of *brothers*.⁶⁶

⁵⁸ This characterisation of supranationalism is mistaken and only serves Nicolaïdis to claim third-way status for her own theory. It is simply historically incorrect to claim that “supranationalists” have insisted that the Union ought to be “merging into a single polity that expresses its will through traditional state-like institutions”, as she does (Nicolaïdis, “We, the Peoples of Europe...” (2004) 83 *Foreign Affairs* 101). This is not “supranationalism” but the old “federalism”, as expounded in the early years of European integration.

⁵⁹ Nicolaïdis, “We, the Peoples of Europe...” (2004) 83 *Foreign Affairs* 101.

⁶⁰ Nicolaïdis, “Our European Democracy: Is this Constitution a Third Way for Europe?” in *Whose Europe? National Models and the Constitution of the European Union* (2003), p.144.

⁶¹ Nicolaïdis, “European Demoicracy and Its Crisis” (2013) 51 J.C.M.S. 352 et seq., and especially 353: “contrary to a *via media* [demoicracy] is normatively antithetic to both”. For an excellent criticism of this view, see: Ronzoni, “The European Union as a Demoicracy: Really a Third Way?” (2017) 16 *European Journal of Political Theory* 210.

⁶² Nicolaïdis, “We, the Peoples of Europe...” (2004) 83 *Foreign Affairs* 102.

⁶³ Nicolaïdis, “The Idea of European Demoicracy” in *Philosophical Foundations of European Union Law* (2012), p.247.

⁶⁴ Nicolaïdis, “Our European Democracy: Is this Constitution a Third Way for Europe?” in *Whose Europe? National Models and the Constitution of the European Union* (2003), p.145.

⁶⁵ Nicolaïdis, “Our European Democracy: Is this Constitution a Third Way for Europe?” in *Whose Europe? National Models and the Constitution of the European Union* (2003), p.145.

⁶⁶ Nicolaïdis, “The Idea of European Demoicracy” in *Philosophical Foundations of European Union Law* (2012), p.256. Importantly, her universalist commitment implies “no othering”; and Nicolaïdis subsequently uses her universalist philosophy to criticise Habermas (Nicolaïdis, “The Idea of European Demoicracy” in *Philosophical Foundations of European Union Law* (2012) p.270): “It is for this reason that when [Habermas] chose to uphold the ideal of a European Union defined *against* that of the United States, it is fair to say that Habermas stepped outside the demoicratic ethos.”

This categorical rejection of a European demos constitutes the normative foundation of (almost) all existing models of EU democracy⁶⁷; and this should, in theory, also imply a rejection of the very idea of *Union* citizenship. A citizen simply cannot be a member of a national political community while, at the same time, considering herself to be a member of the European political community, because such “[a] theory of the duplicity of the citizen effectively opposing each other within the same citizen” is to lead to “insanity” in the same way as “Dr B” in Zweig’s famous “Chess Novel” is gradually driven mad by playing against himself:

“European citizens involved in a game in which they have to oppose themselves as national vs. EU citizens could only escape from the insanity of this project by stopping to be involved in politics”.⁶⁸

The idea of dual citizenship, in the sense of emotively “belonging” and simultaneously owing two political “allegiances” to the Union and a Member State, is thus discarded as incongruent with democracy.

This brings me to the second conceptual shift advocated by Nicolaïdis: the European Union is not a union of identity but a union of *projects*. Since the Member States are seen as “Masters of the Treaties”, *each* is said to have remained free to *individually* determine the projects it wishes to partake in. Democracy is here enthused with the philosophy of differential integration according to which each national people can pick and choose the parts of the EU Treaties with which it wishes to engage.⁶⁹ The union of projects conception also naturally entails and affirms a unilateral right to withdrawal. For Nicolaïdis, democracy is, in fact, most emblematically expressed in each Member State’s right to withdraw from the Union; it is indeed celebrated as “the ultimate mark of *democracy*”.⁷⁰ The European Union as a union of projects is therefore nothing but what each state takes out of it—an à la carte community of projects in which you can opt-in and opt-out on the day,⁷¹ and from which you can leave whenever you so desire.⁷²

What are the concrete institutional expressions of democracy? The third conceptual shift evocative of democracy returns to an early interest in Nicolaïdis’ scholarly work: the principle of mutual recognition. “[T]he European Union requires its many peoples not only to open up to one another but to recognize mutually their respective polities and all that constitutes them”.⁷³ Horizontal in operation, mutual recognition is here understood as a legal instantiation of non-domination. As a form of “transnational” governance, it stands in opposition to a “supranational” government that hierarchically imposes its common solutions. Instead of European harmonisation, mutual recognition thus favours the coordination of diverse national

⁶⁷ For this point, see especially: F. Wolkenstein, “Democracy, Transnational Partisanship and the EU” (2018) 56 J.C.M.S. 285. The notable exception is J. Lacey’s excellent *Centripetal Democracy: Democratic Legitimacy and Political Identity in Belgium, Switzerland, and the European Union* (Oxford: Oxford University Press, 2017), esp. p.85.

⁶⁸ Cheneval and Nicolaïdis, “The Social Construction of Democracy in the European Union” (2017) 16 *European Journal of Political Theory* 243. For the opposite idea, namely that political “schizophrenia” is an integral part of every federal union, see especially: J.S. Mill, “Considerations on Representative Government” in J.M. Robson (ed.), *The Collected Works of John Stuart Mill, Volume XIX* (University of Toronto Press, 1977), p.556: “Under the more perfect mode of federation, where every citizen of each particular State owes obedience to two Governments, that of his own State, and that of the federation”.

⁶⁹ This link is, for example, also expressly made by Bellamy, *A Republican Europe of States* (2019), Ch.6: “Differentiated Integration and the Democratic Constitution of the EU”.

⁷⁰ Nicolaïdis, “We, the Peoples of Europe...” (2004) 83 *Foreign Affairs* 105.

⁷¹ Nicolaïdis, “European Democracy and Its Crisis” (2013) 51 J.C.M.S. 363.

⁷² Nicolaïdis, “European Democracy and Its Crisis” (2013) 51 J.C.M.S. 362: “Peoples as states must have the *de jure* right, but also *de facto* capacity, to choose to enter or exit the Union, or parts of the Union”.

⁷³ Nicolaïdis, “The Idea of European Democracy” in *Philosophical Foundations of European Union Law* (2012), p.248. See also: K. Nicolaïdis and G. Shaffer, “Transnational Mutual Recognition Regimes: Governance without Global Government” (2005) 68 *Law and Contemporary Problems* 263 at 317: “Mutual recognition represents the acceptance of other systems and approaches as valid, having parallels with multiculturalist goals within polities.”

solutions (with only the most minimalist central interference).⁷⁴ The public mission of the Union is consequently reduced to a conflict-of-law task: “European policies and laws should deal with tensions between home and host country jurisdiction *through conflict-of-law approaches and managed mutual recognition*.”⁷⁵ Or, as an oft-quoted passage, better explains:

“A demoi-cracy should not be based on a vertical understanding of governance, with supranational constitutional norms trumping national ones and supranational institutions standing *above* national ones. Instead, our demoi-cracy ought to be premised on the horizontal sharing and transfer of sovereignty. It involves a dialogue rather than a hierarchy between different legal or political authorities such as constitutional courts ... national and European parliaments, national and European executives. It is about multi-centered not only multi-level governance, with decision made not *by* Brussels but *in* Brussels as well as elsewhere around Europe. When it comes to rules, procedures and institutions, a European demoi-cracy is neither national nor supranational but *transnational*.”⁷⁶

But what exactly are, concretely, the institutions, procedures and modes of transnational governance here advocated? Drawing on the republican idea of non-domination, all governmental arrangements that do not respect the sovereign equality of national peoples are suspect within the standard model. One of the Union’s “greatest failing”, in institutional terms, is therefore seen in the move, as regards the Council, towards a population requirement (discussed above) because the latter upsets the sovereign equality between states.⁷⁷ Where does this leave the European Parliament? The democratic legitimacy of the European Parliament is, for Nicolaïdis, questionable, because “without a single European demos, a ‘European majority’ could be undemocratic if it overrode the will of a large number of national majorities”.⁷⁸ The true institutional manifestations of democracy are *national* parliaments within the European Union. It is they, and only they, who offer the democratic substance behind the formal principle of mutual recognition; and the same is true for their involvement in monitoring the principle of subsidiarity, which “respects the spirit of *demoi-cracy* by having directly elected national representatives police the boundary of union powers in the name of national majorities”.⁷⁹

Let us, then, try to sum up the essential contours of the standard model. Its normative heart lies in a conspicuous *anti*-majoritarianism at the European level: “the lack of a European *demos* means that *European citizens will not and should not accept to be bound by a majority of Europeans*”.⁸⁰ And condemning (almost) all forms of EU majoritarianism as forms of hegemonic domination,⁸¹ the European Union ought to be governed by national parliaments through a “decentralized model represented by the mutual

⁷⁴ Nicolaïdis, “European Democracy and Its Crisis” (2013) 51 J.C.M.S. 363: “In a Democracy, shared projects (for example, Single Market, Single Space, Single Money) do not require harmonised standards, but minimal compatibility and maximal recognition.”

⁷⁵ Nicolaïdis, “European Democracy and Its Crisis” (2013) 51 J.C.M.S. 364 (emphasis added). This argument has excellently been criticised by J. Sievers and S.K. Schmidt, “Squaring the Circle with Mutual Recognition? Demoi-cratic Governance in Practice” (2015) 22 *Journal of European Public Policy* 112.

⁷⁶ Nicolaïdis, “Our European Democracy: Is this Constitution a Third Way for Europe?” in *Whose Europe? National Models and the Constitution of the European Union* (2003), p.146.

⁷⁷ Nicolaïdis, “We, the Peoples of Europe...” (2004) 83 *Foreign Affairs* 107.

⁷⁸ Nicolaïdis, “We, the Peoples of Europe...” (2004) 83 *Foreign Affairs* 107. The last conditional sub-sentence injects a philosophical ambivalence as to whether a European majority could be democratically legitimate *if it overrode only a small number of national majorities*.

⁷⁹ Nicolaïdis, “We, the Peoples of Europe...” (2004) 83 *Foreign Affairs* 105.

⁸⁰ Nicolaïdis, “European Democracy and Its Crisis” (2013) 51 J.C.M.S. 356 (emphasis added).

⁸¹ Nicolaïdis, “European Democracy and Its Crisis” (2013) 51 J.C.M.S. 363: “A democracy seeks to counter the drift to majoritarianism inherent in modern democratic logic, be it as majorities of states or majorities of EU-wide population”.

recognition approach”.⁸² For the standard model, therefore, democracy is necessarily confined to the national sphere—even if the principle of mutual recognition opens and “pluralises” national democracies horizontally. From a vertical point of view, however, democracy means decisional intergovernmentalism with regard to positive integration,⁸³ as well as EU Treaty reform and amendment.⁸⁴ And the rise of the consensus-based European Council, and the “New Intergovernmentalism” in the wake of the Euro-crisis, are therefore welcomed as fully in line with the democratic ethos.⁸⁵ In essence, Nicolaïdis model shares a great family resemblance with intergovernmentalism; yet its insistence on mutual recognition justifies her associating it with the related concept of transnationalism.⁸⁶

This model has today come to dominate contemporary political science discussions of democracy in Europe. Two important shortcomings may nonetheless quickly be identified (and will be discussed further below). The greatest *normative* weakness of the standard model is, in my view, its inability to conceptualise and justify the—supranational—principle of mutual recognition from within its chosen democratic point of view.⁸⁷ The enormous disconnect between the standard model’s normative prescriptions and the Union’s real-existing governmental procedures, however, constitutes a second major fault. For despite all of her lip service to “normative inductivism”,⁸⁸ the theoretical propositions of Nicolaïdis’ model are so far

⁸² Nicolaïdis and Shaffer, “Transnational Mutual Recognition Regimes: Governance without Global Government” (2005) 68 *Law and Contemporary Problems* 307–308: “In the mutual recognition context, democracy will work primarily at the national level through creating constraints on national administrators... It makes more sense to expand accountability beyond the polity not through creating elected legislative bodies at the global level, but rather through expanding other accountability mechanisms, such as those used traditionally in national administrative law.”

⁸³ Nicolaïdis, “The Idea of European Democracy” in *Philosophical Foundations of European Union Law* (2012), p.272—with express endorsement of Weiler’s equilibrium theory.

⁸⁴ Nicolaïdis consequently criticises the “bypassing of the unanimity rule for treaty revision in 2012” when the British government infamously objected to the fiscal compact (Nicolaïdis, “European Democracy and Its Crisis” (2013) 51 J.C.M.S. 363).

⁸⁵ Nicolaïdis, “European Democracy and Its Crisis” (2013) 51 J.C.M.S. 355: “If the Rome Treaty had provided an original institutional matrix faithful to the core tenets of a democratic vision, it was improved by sequential amendments, from the institutionalisation of the European Council, to the right of exit clause or the role of national parliaments in the Lisbon Treaty.”

⁸⁶ Nicolaïdis, “Epilogue: the Challenge of European Demoi-cratization” (2015) 22 *Journal of European Public Policy* 146. For an overview of the similarities and differences between intergovernmentalism and transnationalism, see Table 3 below.

⁸⁷ What I mean is this: if “[m]utual recognition arrangements, like any governance mechanism, are subject to power asymmetries” (Nicolaïdis and Shaffer, “Transnational Mutual Recognition Regimes: Governance without Global Government” (2005) 68 *Law and Contemporary Problems* 310), how can it be said to be the best expression of democracy as republican non-domination? Yet more critically: what legitimises the European “imposition” of the principle of mutual recognition onto Member States (or do the national parliaments unilaterally and voluntarily decide to mutually recognise each other’s national solutions)? For the principle is not all about expanding “rights”—that is allowing private exporters to sell goods in a foreign market or allowing “nomads” (as Nicolaïdis puts it) to move and work in another country; indeed, the principle of mutual recognition imposes corresponding “obligations” on those “settlers” (her word), that have stayed in their home state and who must henceforth accept that different normative solutions apply also to them—for example being subjected to lower consumer rights or a different professional standard—even though this is not what they have decided for themselves in their own state. If a national community has thus found “its” legislative compromise for various interests (consumer rights v. free market), why ought it accept previously “illegal” solutions within its territory? If, indeed, the shift from host-state to home-state control implies “a horizontal transfer of sovereignty”, why should the “settlers” (the overwhelming majority of people within the Union) accept this? Is this vision of constitutional tolerance towards “others” not simply a conscious or unconscious neoliberal plea for competition between legal orders in which the “market” ultimately decides? I shall return to this point in the Conclusion below.

⁸⁸ Nicolaïdis, “European Democracy and Its Crisis” (2013) 51 J.C.M.S. 357 as well as “The Idea of European Democracy” in *Philosophical Foundations of European Union Law* (2012), p.261 et seq.

removed from what the Union is actually “doing” that the only way to make her philosophical “theory” match legal reality is to exit the Union or to re-found it on intergovernmental principles.⁸⁹

Out of these two flaws within the Nicolaïdis’ model, two alternative models have grown. They can be labelled the “republican intergovernmentalism” model—today chiefly propounded by Richard Bellamy; and the “popular sovereignty” model prominently defended in the work of Francis Cheneval. The former takes the non-domination emphasis within the standard model to its logical conclusion (by marginalising the supranational principle of mutual recognition). The latter has, by contrast, helpfully injected a degree of empirical realism into the European discussion of democracy (by accepting majoritarian decisions at the Union level).

Let us look at both alternative models in turn.

Bellamy’s “intergovernmentalism”: democracy as national sovereignty

Bellamy’s “republican intergovernmentalism” model offers—without a doubt—the most radical sovereigntist model of democracy. It unconditionally accepts the absolute primacy of national communities and thus propagates a voluntarist and intergovernmental reading of the Union.⁹⁰ Its normative vision is that of a “republican association of *sovereign* states” that facilitates and enables nation states “to regulate their *external* sovereignty in non-dominating ways”.⁹¹

In this neo-Kantian “federal republic”, states ought never to give up parts of their sovereignty; and, as the “republican” counterpart to “liberal” intergovernmentalism,⁹² the Bellamy model also rejects all differences in power between states. The central core of this democratic model is the sovereign *equality* of all states in an “international governance” arrangement that opposes all forms of domination. In this way, states “preserve both popular and polity sovereignty”⁹³; and republican intergovernmentalism therefore categorically rejects the view of “the EU as an independent constituted order with a direct relation to citizens” and in which EU institutions make “laws” that the Court of Justice enforces “in a hierarchical, top-down manner”.⁹⁴ And it almost goes without saying: each state must of course always be free to leave the European Union whenever it so wishes.⁹⁵

What does all that mean for the Member States peoples governing “together”? Like the standard model, this second model aims to limit all majoritarian elements in the Union because they are seen to contradict the spirit of democracy.⁹⁶ All majoritarian choices, whether made by the European Parliament or the

⁸⁹ This point applies to the “standard model” as well as the “republican intergovernmentalism” model, see Wolkenstein, “Democracy, Transnational Partisanship and the EU” (2018) 56 J.C.M.S. 291.

⁹⁰ See especially: R. Bellamy, “‘An Ever Closer Union Among the Peoples of Europe’: Republican Intergovernmentalism and Democratic Representation within the EU” (2013) 35 *Journal of European Integration* 499; R. Bellamy, “A European Republic of Sovereign States: Sovereignty, Republicanism and the European Union” (2017) 16 *European Journal of Political Theory* 188; and now: *A Republican Europe of States* (2019).

⁹¹ Bellamy, “A European Republic of Sovereign States” (2017) 16 *European Journal of Political Theory* 190 (emphasis added).

⁹² Bellamy, “‘An Ever Closer Union Among the Peoples of Europe’” (2013) 35 *Journal of European Integration* 500.

⁹³ Bellamy, *A Republican Europe of States* (2019), p.90.

⁹⁴ Bellamy, *A Republican Europe of States* (2019), p.91.

⁹⁵ Bellamy, *A Republican Europe of States* (2019), p.69: “The democratic legitimacy of EU level decisions, therefore, would depend on them meeting a dual standard. These decisions must not only reflect the consent of each of the *demos* to whom they apply but also must not undermine the capacity for those *demos* to give of or withdraw their consent. As such, this approach operates as a form of ‘republican intergovernmentalism’”.

⁹⁶ Bellamy, *A Republican Europe of States* (2019), p.194: “Towards the Democratic Constitution of the EU: Overcoming Constitutional Supremacy and the Allure of Majority Rule”.

European Court, and through which Union rights are granted against national majorities “undercut democracy at the member state level”.⁹⁷ Worse,

“for a popularly sovereign polity to incorporate under a supranational or transnational sovereign authority, even of a partial character, *would be self-contradictory and a denial of the moral values that existing systems instantiate for their members*”.⁹⁸

Republican intergovernmentalism thus insists on the full “internal sovereignty” of each people within the Union; and employing the intergovernmental logic of “two-level” games,⁹⁹ each national demos is seen as an essentially closed civic association whose own choices must never be contradicted by other states—hence: no supranational mutual recognition—or by the European Union.

What does this specifically mean for *parliamentary* government within the Union? For republican intergovernmentalism, thought to its logical conclusion, the European Parliament represents an anomaly that ought, in the final analysis, be abolished—or at least be marginalised. For not only can it never generate the necessary loyalty from its citizens,¹⁰⁰ the democratic re-constitution of majoritarian institutions at the European level could not “but be a diminishment of democracy”.¹⁰¹ The sole and exclusive way to realise democracy between Member States is to task their—national—parliaments with “governing” the European Union. The horizontal co-operation between national parliaments therefore constitutes, for Bellamy, the paradigmatic democratic mechanism for republican intergovernmentalism.¹⁰² The concrete procedure for their international cooperation remains here unspecified; but considering the model’s emphasis on non-domination and national sovereignty, we should assume that only a unanimous and non-majoritarian decision among all the national parliaments could generate the democratic legitimacy that republican intergovernmentalism demands.

Finally, what about each state’s external sovereignty? Bellamy here concedes the principle of non-discrimination¹⁰³; yet his republican intergovernmentalism cannot generate, let alone justify, the federal principle of mutual recognition. For the latter interferes with the *internal* sovereignty of States.¹⁰⁴ The only way to introduce this principle would be via an international agreement, whereby “the rules governing their mutual relations are under the *equal* influence and control of the elected representatives of *those states*”.¹⁰⁵

⁹⁷ Bellamy, “An Ever Closer Union Among the Peoples of Europe” (2013) 35 *Journal of European Integration* 512.

⁹⁸ Bellamy, “A European Republic of Sovereign States” (2017) 16 *European Journal of Political Theory* 203 (emphasis added).

⁹⁹ See especially: R. Bellamy and A. Weale, “Political Legitimacy and European Monetary Union: Contracts, Constitutionalism and the Normative Logic of Two-level Games” (2015) 22 *Journal of European Public Policy* 257.

¹⁰⁰ Bellamy, *A Republican Europe of States* (2019), p.86.

¹⁰¹ Bellamy, *A Republican Europe of States* (2019), p.10.

¹⁰² Bellamy, *A Republican Europe of States* (2019), p.125. See also R. Bellamy and S. Kröger, “Domesticating the Democratic Deficit? The Role of National Parliaments and Parties in the EU’s System of Governance” (2014) 67 *Parliamentary Affairs* 437.

¹⁰³ Bellamy, *A Republican Europe of States* (2019), p.92: “[C]itizens of different peoples ought not to be discriminated against in their interactions”.

¹⁰⁴ For this point, see: R. Schütze, *From International to Federal Market* (Oxford: Oxford University Press, 2017), Introduction.

¹⁰⁵ Bellamy, *A Republican Europe of States* (2019), p.4.

Cheneval's "supranationalism": demoicracy as popular sovereignty

Bellamy's radicalised intergovernmental model is even further removed from the present realities of European integration than the standard model.¹⁰⁶ A third model of EU demoicracy has therefore emerged, whose main advantage over its two theoretical rivals is to recognise the real-existing majoritarian elements within the EU institutional system.

This third model of demoicracy defines the concept primarily by reference to "popular sovereignty", which is said to have remained with each state. The creation of the Union is, rightly, viewed as a decision of a plurality of peoples—a plural *pouvoir constituant*; and it is this pluralist foundation that is seen as the "first and fundamental principle of demoi-cracy":

"As *demoi-cracy* cannot presuppose a common political demos as *pouvoir constituant*, it has to constitute the framework of decision-making by agreement of the participating *demoi* and accept that the *demoi* may exit the political order or veto its further development."¹⁰⁷

Viewed in this light, the EU is considered to be a paradigm case of demoicracy: because not only is a unanimous decision of all Member States seen to be required to create or amend the EU Treaties,¹⁰⁸ a unilateral exit right equally guarantees the non-domination of any state people.¹⁰⁹

This identification of demoicracy with (plural) popular sovereignty has a significant side effect: it liberates the concept from its association with (intergovernmental) governance arrangements; and this third model of demoicracy consequently has little difficulty—unlike the standard model—to accept supranational majoritarianism within the Union. The third model thus permits, with regard to the functioning of EU government, that individual states/peoples can be outvoted by others; and it even generally asserts that "[t]he proper domain of *demoi-cracy* is a polity of democratic states with hierarchical, majoritarian features of policy-making".¹¹⁰ All that matters for the existence of a demoicracy is that "[n]o People is subjected to majority rule of common governmental institutions it shares with other Peoples *if it has not accepted this rule in the first place*."¹¹¹ Where the unanimously agreed EU Treaties allow for majority voting, there is no violation of demoicratic principles.

Importantly, however: even this third model adheres to the no-*demos* thesis.¹¹² The reason for this lies in its belief that the existence of a European demos would undermine demoicracy's core commitment to

¹⁰⁶ For this excellent point, see again Wolkenstein, "Demoicracy, Transnational Partisanship and the EU" (2018) 56 J.C.M.S. 285, where Bellamy's political vision is eloquently contrasted with the post-Maastricht "realities" and in which the author rightly claims that the only normative import of Bellamy's vision is to advise "Member States to decouple themselves from the EU via art.50 TEU and then renegotiate their relationship with what remains of the Union in such a way that national parliaments can take centre stage" (Wolkenstein, "Demoicracy, Transnational Partisanship and the EU" (2018) 56 J.C.M.S. 291). It seems that the United Kingdom has followed Bellamy's (and Nicolaïdis') advice; because both models of demoicracy directly lead—even if their authors disagree—to justifying the Brexit decision in light of the "hegemonic" and "antidemocratic" nature of the European Union.

¹⁰⁷ F. Cheneval et al, "Demoi-cracy in the European Union: Principles, Institutions, Policies" (2015) 22 *Journal of European Public Policy* 1, 4.

¹⁰⁸ Cheneval et al, "Demoi-cracy in the European Union" (2015) 22 *Journal of European Public Policy* 1, 6: "The treaty-based organizational structure of the EU is in line with the fundamental constitutional principle of demoi-cracy. It preserves the sovereignty of the states/peoples' *pouvoir constituant* requiring unanimity and national ratification for all changes of the basic rules."

¹⁰⁹ Cheneval et al, "Demoi-cracy in the European Union" (2015) 22 *Journal of European Public Policy* 1, 4.

¹¹⁰ Cheneval et al, "Demoi-cracy in the European Union" (2015) 22 *Journal of European Public Policy* 1, 14.

¹¹¹ Cheneval et al, "Demoi-cracy in the European Union" (2015) 22 *Journal of European Public Policy* 1, 4 (emphasis added).

¹¹² F. Cheneval and F. Schimmelfennig, "The Case for Demoicracy in the European Union" (2013) 51 J.C.M.S. 334 at 337: "If we define the *demos* as a political community that shares a purpose, and possesses the institutional infrastructure, of self-government, a single European *demos* does not exist."

the existence of a plural constituting power.¹¹³ And yet: the model does seem to admit that the “people” can enjoy a “double status as a collective and as a plurality of citizens”¹¹⁴; and it even positively “embraces the dual character of the EU as a community of both states (peoples) and individuals in a common supranational polity”.¹¹⁵ The reality of *co*-decision within a *bi*-cameral EU legislature can therefore be reconciled within this model¹¹⁶; and the model also has no problem in expressly recognizing “vertical” and “hierarchical” Union elements as long as the Member States voluntarily join and voluntarily stay within the European Union.¹¹⁷ Philosophically, however, the EU citizenry stays atomised as a multitude of individual EU citizens that never emotively feel and act as a collective European people.

Theorizing EU democracy II: “republican federalism” as a new model

Quite different conceptions of democracy do, as the previous section revealed, co-exist in academic discussions of the European Union.¹¹⁸ The three models identified however also show important family resemblances. Indeed, each of them is based on the “no-demos” thesis; and all three were united in their rejection of a “federal” analytical reading.¹¹⁹ Stuck in a *sui generis* reading of the Union, the historical experiences of other unions of states are discarded, especially as regards the first two models; and the conceptual capital potentially resulting from such a comparative enterprise remains woefully underinvested. To remedy this shortcoming, a fourth model of democracy is here proposed. This fourth model focuses on the federal idea of a *dual* popular sovereign and a *dual* democratic government, as the key characteristics of federal unions—something that none of the three existing models can do in light of their conceptual denial of a European people. This fourth model will be called “republican federalism”.

Importantly, and unlike the federal integration theory of the 1950s,¹²⁰ the purpose of republican federalism is not to advocate the creation of a European super-state. On the contrary, it strongly rejects the “statist” reductionism inherent in the “nationalist” understanding of federalism stemming from the nineteenth-century

¹¹³ Yet as the US American case shows, this is simply not the case: there can be a pluralist constituent power in the past; and yet an (emerging) Union people in the future. See only A. de Tocqueville in P. Bradley (ed.), *Democracy in America* (NY: Vintage, 1954), p.151; as well as Schütze, “Federalism as Constitutional Pluralism: ‘Letter from America’” in *Constitutional Pluralism in the European Union and Beyond* (2012).

¹¹⁴ F. Cheneval, *The Government of The Peoples: On the Idea and Principles of Multilateral Democracy* (Oxford: Palgrave Macmillan, 2011), p.20.

¹¹⁵ Cheneval et al, “Democracy in the European Union” (2015) 22 *Journal of European Public Policy* 2.

¹¹⁶ Cheneval and Schimmelfennig, “The Case for Democracy in the European Union” (2013) 51 J.C.M.S. at 342: “statespeoples as well as citizens are equally entitled to participation in the secondary legislative rule-making of the multilateral democratic order.”

¹¹⁷ Cheneval and Schimmelfennig, “The Case for Democracy in the European Union” (2013) 51 J.C.M.S. 345–346.

¹¹⁸ T. Hüller, “Out of Time? The Democratic Limits of EU Democracy” (2016) 23 *Journal of European Public Policy* 1407 at 1408.

¹¹⁹ Nicolaïdis has, in the past, engaged with the federal idea (e.g. Nicolaïdis, “The Idea of European Democracy” in *Philosophical Foundations of European Union Law* (2012), p.259) but rejects it for the European Union on the ground that it has been captured by the federal state. This rejection is however too simple and only serves to cement her “third way” claim. For even if, in a federal state, the question of popular sovereignty is believed to have been “resolved” (as, say, in the United States after the New Deal), a federal state is still never just *one* democracy or one parliament (“union as democracy”), but always at least *two* democracies and *two* parliaments. To gloss over this by assuming that federalism equals a federal state that is “ontologically” identical to a unitary state commits a serious historical and conceptual mistake. To give just one example of a “federal” conception of democracy and of the “people(s)” in a federal state, let me point to contemporary Germany. For in addition to the “German people”, there also exists a “Saxonian people” (of which I happen to be a citizen). The existence of two “peoples”, two parliaments, two citizenships etc. is thus also envisaged in a federal state; and it is these *governmental* features (and not the metaphysical question of “sovereignty”) that, in my view, are the quintessential features of a democracy.

¹²⁰ For a discussion here, see C. Pentland, *International Theory and European Integration* (London: Faber and Faber, 1973), Ch.5.

Staatsrechtslehre. Republican federalism is, on the contrary, built on the US American idea of *dual* sovereignty, *dual* democracy, and *dual* citizenship.¹²¹ The European Union, as a union of states (in the plural), is seen as a political and constitutional *dualism*; and in rejecting the “federal state” destination, the integration theory underlying this fourth model is best described as “neo-federalism”.¹²²

This section aims to explicate the conceptual contours of republican federalism, as a fourth model of democracy, and to compare and contrast it to the three established models discussed above. Table 1 presents a preliminary comparison of what I consider to be “the” distinctive feature each model identifies with democracy. And in line with the first part of this article, let me divide the analysis alongside the two dimensions of popular *sovereignty* and popular *government*.

Table 1 Models of democracy: distinctive features

	Popular Sovereignty	Popular Government
Republican Intergovernmentalism		<i>Horizontal</i> cooperation between sovereign national peoples (via their parliaments).
“Third Way” Transnationalism		<i>Horizontal</i> power-sharing between sovereign national peoples (via mutual recognition).
“Popular Sovereignty” Democracy	<i>Horizontal</i> cooperation between sovereign national peoples in the constituent power.	
Republican Federalism		<i>Vertical</i> power-sharing between the European and national peoples (dual government).

Dual sovereignty: who are (to be) the “masters” of the EU Treaties?

Who are (to be) the popular sovereign(s) in the European Union? Republican federalism recognises, like the “Popular Sovereignty” model,¹²³ a historically *pluralist* constituent power. The European Union was formally founded on the *unanimous* consent of its constituent states; and every formal “re-founding” of the Union has so far always required the participation of *all* previous Member States.¹²⁴ This historical convention is, however, not constitutionally mandated: on the contrary, a majority of Member States could decide to “re-found” the Union without the participation of *some* existing members. This follows today from art.50 TEU. For the latter not only offers a *unilateral* right to each Member State to leave the Union; behind it also stands the more radical constitutional principle that the “old” Union can be dissolved in order to re-constitute a “new” European Union. For if *all* Member States can withdraw from the Union,

¹²¹ For a discussion of this point, see R. Schütze, *European Union Law* (2021), Ch.2, s.1; as well as Schütze, “Federalism as Constitutional Pluralism: ‘Letter from America’” in *Constitutional Pluralism in the European Union and Beyond* (2012).

¹²² Within the last decade, I have tried to promote the term “neo-federalism”, within the context of the EU and beyond. With regard to the European Union, it specifically refers to a new integration theory, which (like “neo-functionalism” and the “new intergovernmentalism”) is meant to represent an improved version of an older integration theory—in this case the “federalist” theory of the 1950s.

¹²³ Bellamy’s model cannot, in my view, generate a “constitutional” claim for the Union; and he is therefore treated as not having a conception of an EU *pouvoir constituant*. The same is, to some extent, also true for Nicolaïdis whose position on this is however left ambivalent.

¹²⁴ Within EU constitutional history, a re-foundation with potentially less than all previous Member States appears to have been envisaged only once. For the 1953 European Political Community, art.117 of its draft Treaty stated (third indent, emphasis added): “The present Treaty shall come into force on the day when the instrument of ratification shall be deposited by the penultimate [!] State to fulfil this formality.”

a (qualified) *majority* of them must—*argumentum a maiore ad minus*—be able to re-claim and re-form the constitutional foundations of the Union.¹²⁵

But more importantly: the constituent power behind the Union does not, unlike what all other models of democracy assume, exclusively express itself through the—very few—formal foundational moments, like the signing of the 1957 Rome Treaty or that of the 1992 Maastricht Treaty. It can equally be seen, albeit in less fundamental ways, when the Union formally *amends* or informally *changes* its Treaties; or, when the membership of the Union is *enlarged* or *reduced*. All these situations reflect moments when a *pouvoir constituant dérivé* comes to the fore. Table 2 offers a summary of the main players involved in effecting such formal and informal constitutional changes to the EU legal order; but in the interest of brevity, only the first two shall be discussed here.

Table 2 Non-foundational constitutional change in the EU: main actors

Formal Amendments	Informal Amendments	EU Enlargements	EU Withdrawals
Member States EU Institutions	European Court European Legislator	EU Institutions Member States Third State	Member State

First, there are formal EU Treaty amendments. Following art.48 TEU, two types of Treaty amendments can be distinguished: ordinary and simplified revisions.¹²⁶ And despite some degree of Union involvement, a unanimity requirement here still applies, which means that every formal Treaty amendment can ultimately be vetoed by every single Member State.

Ought this unanimity rule for collective exercises of the Union’s *amendment power* be a hallmark of democracy? All three older models of democracy, discussed above, come to this conclusion in one way or another. Republican federalism, on the other hand, proposes a profoundly different result—a result that stems from the analytic distinction between founding a “new” and amending an “existing” constitution.¹²⁷ For whereas republican federalism resolutely affirms, just like its three theoretical rivals, the ultimate sovereign choice of each State people to *enter* or *exit* the Union, it asserts that once a *Member State* is within the Union, constitutional amendments should be subject to a (super)majority decision *as long as each Member State retains the unilateral ability to exit the European polity*.¹²⁸

Significantly, the replacement of the unanimity rule by a majority rule for EU Treaty amendments does not, in any way, undermine the *plural* nature of the constituting power at play; on the contrary, the decision of a *plurality* of state peoples in favour of constitutional change is increased by removing the possibility of a *single* Member State to block a future amendment.¹²⁹ Indeed, and in light of the conceptual link between democracy/democracy and majoritarianism, only the elimination of the unanimity rule would, in fact, offer terminological credentials to the idea of democracy as a “government” of the “many” peoples here.

¹²⁵ In *Wightman v Secretary of State for Exiting the European Union* (C-621/18) EU:C:2018:999; [2019] 1 C.M.L.R. 29 the European Court held that “given that a State cannot be forced to accede to the European Union against its will, neither can it be forced to withdraw from the European Union against its will” (at [65]). However, the second part of this proposition does, in my view, not follow from the first; and in any case, if a majority of States decided to withdraw in order to re-found the Union, the legal successor of the Union would be that (qualified) majority of Member States.

¹²⁶ For an excellent general overview, see S. Peers, “Amending the EU Treaties” in R. Schütze and T. Tridimas (eds), *Oxford Principles of European Union Law—Volume 1: The EU Legal Order* (Oxford: Oxford University Press, 2018), Ch.13.

¹²⁷ On the distinction, see: C. Schmitt, *Verfassungslehre* (Duncker and Humblot, 2003), pp.102–112.

¹²⁸ This had been proposed, in the context of the Constitutional Convention, by the Commission’s “Penelope Project” in its art.101.

¹²⁹ Let me, tongue-in-cheek, quote a passage from the German Constitutional Court’s Maastricht Judgment here ((1994) C.M.L.R. 57 at 86): “Unanimity as a universal requirement would inevitably set the wills of the particular States above that of the Community of States itself and would put the very structure of such a community in doubt.”

From an ideal-typical perspective, such a majority rule for constitutional amendments would also befit and reflect the federal character of unions of states. Building on the work of Carl Schmitt, this point was recently and insightfully made by Jean Cohen:

“It would thus seem logical that the ideal-typical amendment rule of a federation should reflect its position between a [international] confederation and a [sovereign] federal state. Whereas for a confederation (bündnis or staatenbund), the amending powers, the states, are outside the treaty and classically, amending the treaty requires unanimity, in the case of a federal state, the “states” are within the constitution and can be treated as organs of the federal union with respect to the federal constitution. (...) *For a federation of states the amendment rule, as for a confederation, would have to retain the states as the sources of fundamental legal change (the treaty component) but the constitutional dimension of the pact would have to entail that a qualified majority of these formally equal states (one state-one vote) would be able to bind the minority.* (...) A federation would have, from the state’s perspective, a single source of ultimate legitimacy: its constitutional authorities remain the member states.”¹³⁰

The introduction of a (qualified) majority rule for Treaty amendments is inherent in the conceptual logic of republican federalism; yet—unlike Cohen’s thinking—the view that the Member States remain the exclusive authorities may here be qualified. For if we take the idea of *dual* sovereignty seriously, all constitutional amendments should be subject to a mixed *pouvoir constituant*. Only the latter integrates and combines the two popular sovereigns—the Union people and the state peoples—acting directly or indirectly in a compound amendment procedure.¹³¹ From the perspective of republican federalism, the involvement of the Union—through Union institutions, like the European Parliament, or forms of a European referendum—should thus be welcomed as an expression of federalism and democracy. Republican federalism consequently stands for a mixed constituent power.

Are there also EU Treaty changes in which mainly Union institutions are involved? Strangely ignored by the three older models of democracy, we do indeed find formal procedures allowing for autonomous “small” treaty amendments in the past and present of the Union.¹³²

But much more impotently still: once it is accepted that the nature or character of the *material* constitution can radically change without formal amendment, as powerfully described by Bruce Ackerman for the United States,¹³³ who are the “masters” of such informal constitutional change in the European Union?

Early on, the Court of Justice here trimmed the powers of the *Member States* to informally operate outside the formal amendment channels.¹³⁴ Informal Treaty amendments have therefore been mainly in the hands of Union institutions. First among all Union institutions here ranks the European Court of Justice. For when the European Court decided to change the EU Treaties from ordinary international treaties to constitutional treaties in *Costa v ENEL*; or, when it transformed the EU internal market from an international to a federal market in *Cassis de Dijon*, these fundamental changes were really *judicial* treaty- “amendments” that the Member States only retrospectively—and sometimes reluctantly—accepted over the course of

¹³⁰ J. Cohen, *Globalization and Sovereignty: Rethinking Legality, Legitimacy and Constitutionalism* (Cambridge: Cambridge University Press, 2012), p.127 (emphasis added).

¹³¹ For the US American example, see art.V of the US Constitution.

¹³² For a contemporary example of such an autonomous revision procedure, see only art.126(14) TFEU according to which the Council may “in accordance with a special legislative procedure” change the constitutional provisions set out in the Protocol on the excessive deficit procedure annexed to the EU Treaties.

¹³³ For his remarkable account of this, see B. Ackerman’s famous trilogy “We The People” by Harvard University Press.

¹³⁴ On this point, see R. Schütze, “European Law and Member State Agreements: An Ambivalent Relationship?” in *Foreign Affairs and the EU Constitution* (Cambridge: Cambridge University Press, 2014), Ch.4.

time.¹³⁵ And there have, secondly, also been moments when the national governments themselves wished, via the Union legislator, to make “small” amendments to the EU Treaties. The best illustration of such “organised” change towards an ever-closer union is the story of art.352 TFEU.¹³⁶ This broadest of all legislative powers of the Union offered, from the very beginning, a limited form of “competence-competence” that would allow the Council to act where the EU Treaties had “not provided the necessary powers”. This legislative competence-competence is nonetheless, and as the Court has confirmed, constitutionally “bounded”. For it can only be used to (informally) “amend” the EU Treaties in ways that would not touch the constitutional identity of the European Union.¹³⁷

Functioning government: dual majoritarianism, dual citizenship

This brings me to the quintessential difference between Nicolaïdis’ standard model and my neo-federal model of democracy: majoritarian government. The standard model is—albeit in a more ambivalent manner than Bellamy’s intergovernmentalism—permeated by an international law philosophy grounded in the sovereign equality of states. Majoritarianism here must not take place in the—international—sphere between states/peoples but is restricted to the internal—national—sphere; and the sole way to protect the distinct democratic choices of each national community is to insist on unanimity in the transnational relations between democracies.

But how can we then even speak of a “government” of peoples in this context? If each and every state people always remains the “author”—to use the brilliant Hobbesian phrase—of its own political and legal obligations, where do we find the “rule” of the “many” peoples here? From a conceptual point of view, all *non*-majoritarian versions of democracy actually cannot, without distorting the core meaning of the neologism, make any meaningful semantic claim to refer to a government of *peoples* because each and every *people* continues to democratically and sovereignly govern itself. For the standard model, the Union’s sole credit to being more than a “union of democracies” is the principle of mutual recognition; yet, Nicolaïdis categorically and relentlessly refuses to think of the European “[U]nion as democracy”.

Republic federalism, by contrast, positively conceives the European Union as *both* a “union of democracies” (*qua* Member States) and a “union as democracy” (*qua* Union); and it indeed primarily identifies this vertical duality of the Union as a “democracy of democracies” or a “republic of republics” with *demoi*cracy. Building on the federal theory and past practice of the United States, republican federalism thus accepts the co-existence of state *demoi* governing together but not as one, but it also accepts the idea of a constitutionally constructed (and morally emerging) federal *demos* and the consequent co-existence of two independent political wills formed and articulated in two independent arenas of parliamentary decision-making. Each person is always a citizen of two political communities: her state people and the federal people.

But more than that: for republican federalism, democracy is not just dual democracy. Democratic credentials can also be found in two horizontal expressions: one at the Union level, and one at the state level. As regards the former, the European Union has, as we saw in the first section, a bicameral legislature in which the state representatives in the Council take a *majority* decision on behalf of their state *peoples*. Seen through a republican lens, the *inequality* of votes within the Council becomes in fact a distinctive

¹³⁵ My two studies on the “changing structure of European law” deal indeed with these “informal” or “philosophical” amendments to the EU legal order—brought about, primarily, by the European Court of Justice.

¹³⁶ R. Schütze, “Organized Change towards an ‘Ever Closer Union’: Article 308 EC and the Limits to the Community’s Legislative Competence” (2003) 22 *Yearbook of European Law* 79; and, more maturely, *From Dual to Cooperative Federalism: The Changing Structure of European Law* (Oxford: Oxford University Press, 2009), pp.133–143 as well as pp.151–156.

¹³⁷ *Re, Accession to the Community to the ECHR* (Opinion 2/94) EU:C:1996:140; [1996] 2 C.M.L.R. 265.

hallmark of demoicracy because the different sizes of national peoples are here *directly* and better represented when compared to their indirect and equal representation *qua* states.

The most important horizontal expression of demoicracy is, however, the principle of mutual recognition. Demoicracy here means the co-existence of a plurality of—democratically validated—national solutions within the European Union. Yet importantly: the principle of mutual recognition is a *federal* principle.¹³⁸ It only exists within the Union legal order because of the Union’s *supranational* capacity to generate—vertical—legislation for its Member States.¹³⁹ Republican federalism thus categorically rejects the unbounded transnationalism à la Nicolaïdis.¹⁴⁰ It believes that the principle of mutual recognition must always be bounded by a “common will”; and for that common will to exist, there must be majoritarian institutions representing and co-constituting that political will.

For the principle of mutual recognition this means that it must be confined, as a constitutional principle, to those “sister” states that have subjected themselves to the will of the Union via a supranational social contract. For an unbounded cosmopolitanism to “others” here fatally undermines the common *kratos* that stabilises the demoicratic aspects of mutual recognition. The principle of mutual recognition, while horizontal in operation, must indeed always operate within a *federal* context in which the horizontal transfer of sovereignty between Member States is coordinated by vertical institutions of government—whether they be the European Court of Justice, or ideally, the EU legislator. The “privileges and immunities” of mutual recognition should therefore always be—and in the constitutional practice of the European Union always are—confined to the Member States of the Union. Mutual recognition is confined to those “sisters” or “brothers” that have “subjected” themselves to the constitutional disciplines of a new political and legal order. Mutual recognition without such discipline or order is, *pace* Nicolaïdis, not demoicracy but anarchy.

Descriptively, the analytical picture drawn in the first part of this article for the European Union corresponds already in large parts to the philosophy of republican federalism. And yet, there are constitutional propositions that have so far not yet translated into the empirical reality of the contemporary Union. Apart from the suggested majority rule for constitutional amendments under art.48 TEU, suggested above, what are its main normative recommendations here? First and foremost: full-blown legislative majoritarianism. The Union should, in the future, completely eliminate unanimity voting in the Council; and it should generally reduce instances where special legislative procedures exclude the European

¹³⁸ Schütze, *From International to Federal Market* (2017).

¹³⁹ One cannot emphasize this point enough: *Cassis de Dijon* happened, despite the absence of Union harmonisation in that case, because of and within the constitutional context of Union harmonisation powers. For an analysis of the dialectic relationship between the principle of mutual recognition and positive integration, see: R. Schütze, “Re-Constituting the Internal Market: Towards a Common Law of International Trade?” (2020) 39 *Yearbook of European Law* 250.

¹⁴⁰ One of the most striking aspects of Nicolaïdis’ conception of mutual recognition is that it ought not to be confined to the Member States of the European Union. Indeed, according to her cosmopolitan vision “demoicracy calls for the consistent treatment of both other Europeans and non-European “others” in that “Europeans must not look for some “other” against which to bond, but extend their logic of mutual recognition and inclusion to outside partners” (Nicolaïdis, “We, the Peoples of Europe...” (2004) 83 *Foreign Affairs* 106 and 109). She consequently applies the principle of mutual recognition also to the international and global sphere and indeed sees it as a cosmopolitan principle of Kantian vintage: “mutual recognition may be the foremost legal incarnation of what Kant referred to as cosmopolitan law—that is, the law that exists between domestic and international law, the law that defines the obligations of a state regarding citizens of other states” (Nicolaïdis and Shaffer, “Transnational Mutual Recognition Regimes: Governance without Global Government” (2005) 68 *Law and Contemporary Problems* 266). This, however, is a serious misreading of Kant and his legal theory (see: R. Schütze, “The ‘Unsettled’ Eighteenth Century: Kant and his Predecessors” in *Globalisation and Governance: International problems, European Solutions* (Cambridge: Cambridge University Press, 2018), p.11); and one might also add that it completely contradicts European Union law (see: Schütze, “Re-Constituting the Internal Market: Towards a Common Law of International Trade?” (2020) 39 *Yearbook of European Law* 250).

Parliament. Secondly, the degressive proportionality within the Parliament is, from the point of view of republican federalism—and *contra* Habermas, no rational reconstruction of dual sovereignty within the Union and should therefore be replaced by a purely proportionate system that fully respects the equality of all EU citizens *as citizens*. Thirdly, the European Union might, in the future, need to better protect republicanism at the national level so as to also better protect Union democracy; and it may for that reason need to replace the defunct art.7 TEU (ultimately requiring unanimity!) with a US-inspired “guarantee clause”.¹⁴¹ Fourthly, the principle of mutual recognition within the Union should, ideal-typically, only come to operate after the Union legislator has set common standards that apply to all Member States. For while the judicial principle of mutual recognition was good to build the EU internal market, the future regulation of that market must lie in the more democratic hands of the Union parliament.

Conclusion

How best to conceptually define the idea of “democracy” in the European Union? And, in particular, is the European Union a “union of democracies” or a “union *as* democracy” or something else; or all of these things at once? This article has tried to answer these questions and to analyse and assess the democratic and democratic structures within the European Union.

We started out by analysing the Union’s normative foundations as well as its governmental system. Based on a plural *pouvoir constituant*, the Union is different from classic nation states; yet a dynamic understanding of popular sovereignty can here equally envisage the potential and gradual emergence of a new popular “sovereign”: a Union general will. The EU constitutional order is already today characterised by the co-existence of two “sovereigns” within Europe; and in terms of government, the Union is, as we also saw in that first section, based on the idea of dual democracy and dual citizenship.

Can we identify these foundational and governmental arrangements with “democracy”? The second part of this article introduced the standard definition of “democracy”, espoused by Nicolaïdis, as well as two alternative models that have, in the last two decades, been developed in the academic literature on the European Union. All three models deny that there is—and ever can be—a European “people”; and all three thus reject the possibility of a European Union *as democracy* out of hand. There were, nevertheless, also significant normative differences between the three models. These different conceptions of democracy were further enhanced through the introduction of a fourth model in the last section.

Table 3 offers an analytic summary of the theoretical and normative commitments characteristic of each model. We can see here that, apart from all models affirming a unilateral right to withdraw from the Union, there is very little general commonality. Table 3 however also reveals a—relatively—clear dividing line between two groups of democracy models in which we find distinct family resemblances. Models 1 and 2 (Bellamy, Nicolaïdis) indeed share a great many similarities with each other; while the same is true for models 3 and 4 (Cheneval, Schütze).

Table 3 Models of democracy: analytic summary

	Republican Governmentalism Model	Intergov- ernmentalism Model	“Third Way” Model	“Popular Sovereignty” Model	“Republican ism” Model	Federal- ism Model
Popular Sovereignty						
<i>Constituent Power</i>	No Constituent Power	No Constituent Power	No Constituent Power	National Peoples (Unanimity)	National Peoples (Unanimity)	National Peoples (Unanimity)

¹⁴¹ Article IV, s.4 US Constitution states: “The United States shall guarantee to every State in this Union a Republican Form of Government”. For a recent analysis of the clause, see: C. Shapiro, “Democracy, Federalism, and the Guarantee Clause” (2020) 62 *Arizona Law Review* 183.

	Republican Intergovernmentalism Model	“Third Way” Model	“Popular Sovereignty” Model	“Republican Federalism” Model
<i>Amendment Power</i>	National Peoples (Unanimity)	National Peoples (Unanimity)	National Peoples (Unanimity)	National Peoples (Majority) and European People (Majority)
<i>Withdrawal Right</i>	Unilateral	Unilateral	Unilateral	Unilateral
Popular Government				
<i>Democratic Principal</i>	National Peoples. There is no European people.	National Peoples. There is no European people.	States peoples and “European Citizenry”; yet there is no European people.	National Peoples and a (gradually emerging) European people.
<i>Democratic Agent(s)</i>	National Parliaments	National Parliaments	National Parliaments and European Parliament	European Parliament and National Parliaments
<i>Power Sharing</i>	None	Horizontal	Vertical	Vertical and Horizontal
<i>Legal Instrument</i>	International Treaty	Mutual Recognition	Legislation	Legislation and Mutual Recognition
<i>Decision-Making</i>	Consensus	Consensus	Majoritarianism	Majoritarianism
<i>Integration Theory</i>	Intergovernmentalism	Transnationalism	Supranationalism	Neo-Federalism

Which group has the better model here? From an empirical point of view, republican intergovernmentalism and the “Third Way” (standard) model should quickly be disqualified. They badly fail in explicating and explaining the “physical” realities of Union government. And normatively, too, they raise grave concerns. For the intergovernmental emphasis on republican non-domination, expressed through unanimous consent, may work in a rational utopian arcadia where all states and peoples always agree with all what the common good is. But it translates into a “tyranny” of the minority in a non-ideal world in which political compromises are not always Pareto efficient and in which the “few” are simply allowed to refuse to give to the “many”. To insist on unanimity here translates into a tyranny of one and this is a tyranny of the status quo.¹⁴² Bellamy’s republican intergovernmentalism, in particular, supports a democratic nationalism that, in my view, dismisses the realities of the contemporary world. His anachronistic celebration of the sovereign republic comes at a time when international corporations have outflanked (especially smaller) nations almost everywhere,¹⁴³ and in which the “consensus” requirement in international organisations has meant regulatory gridlock for the most vital problems that humanity faces today.¹⁴⁴

This intergovernmental vision of *no* government and *non*-governance above the sovereign nation is only partly remedied by Nicolaïdis’ account of mutual recognition. For her, mutual recognition is a horizontal form of governance in which a plurality of national democratic solutions ideally co-exists without any vertical harmonisation or “hegemony” by the European Union. But would mutual recognition ever have been introduced into the Union without the possibility of prior or subsequent European legislation¹⁴⁵; and if she really thought so, who then guarantees the *permanent* presence of diverse national solutions

¹⁴² For that insightful point, see: B. Barry, *Political Argument* (CA: University of California Press, 1990), esp. Ch.14: “Constitutional Choice and Public Interest”.

¹⁴³ Without wishing to single out Ireland, the genesis of the “double Irish” tax scheme—written by US American companies for US American companies—is a powerful illustration of how “local” legislatures might be captured by “global” companies.

¹⁴⁴ D. Held et al, *Gridlock: Why Global Cooperation is Failing when We Need It Most* (Polity Press, 2013).

¹⁴⁵ For my personal answer here, see: Schütze, “Re-Constituting the Internal Market: Towards a Common Law of International Trade?” (2020) 39 *Yearbook of European Law* 250.

within the Union? Mutual recognition, as a form of *negative* integration, means that national solutions will come to compete with each other in a single market characterised by a competition between national legislatures.¹⁴⁶ In the absence of—majoritarian—European harmonisation setting out the mandatory *public* rules of play, mutual recognition here bears the risk of a regulatory race to the bottom in which only the most market-conforming and “leanest” national legislations survive. The result of such a neoliberal logic is a common market without a common legislature; and in which the only form of Union governance is—*pace* Nicolaïdis—not a government of *peoples* but the governance of the *market*.

On the basis of these empirical and normative objections, models 3 and 4 should be preferred over models 1 and 2. The “popular sovereignty” model and the “republican federalism” model can indeed much better *explain* what the European Union today actually does; and in accepting majority decisions at the Union level, they allow for a *government of peoples* and therefore also have a stronger semantic claim over the concept of democracy.

The fourth model thereby enjoys—it will hardly come as a surprise—in my view a much firmer conceptual grounding than the third model, because the formalist understanding of the Union’s *pouvoir constituant*, adopted by model 3, is reductionist in turning a blind eye to the dramatic informal and material constitutional changes in the EU legal order. For there exists, *pace* Cheneval, not just one pluralist constituent power but a plurality of pluralist constituent powers in the European Union. (And some of these pluralist constituent powers already depart from the unanimity requirement for Treaty changes that models 1–3 suggest.) Model 4 also has much better comparative constitutional credentials; and in doing so, it actively helps the Union to benefit from good and bad federal lessons learnt elsewhere. In that learning spirit, a number of normative recommendations were proposed by model 4 for the future of the European Union.

How, then, to best define “democracy” from the vantage point of republican federalism? The idea of democracy here stands for a “Union of States” in which both the Union and its Member States are founded on republican principles and in which the peoples of the Union govern together as many but also as one. This model of democracy allows us to simultaneously conceive the Union as a “union *of* democracies” and a “union *as* democracy”, because democracy primarily means dual democracy in a “republic of republics”. Majoritarian government here operates at two levels: at the state level as well as at the union level.

Are there normative arguments in favour of “doubling” democracy and majoritarianism within a union of states? If each society—and each time—has “its” constitutional philosophy and law to “reflect the principles of the social order that it seeks to regulate”,¹⁴⁷ then the need to re-think and re-form democracy in the twenty-first century is alarmingly urgent. In the words of the late David Held:

“Throughout the nineteenth and twentieth centuries theorists of democracy have tended to assume a ‘symmetrical’ and ‘congruent’ relationship between political decision-makers and the recipients of political decisions. In fact, symmetry and congruence have often been taken for granted at two crucial points: first, between citizen-voters and the decision-makers whom they are, in principle, able to hold to account; and secondly, between the ‘output’ (decisions, politics and so on) of decision-makers and their constituents—ultimately, ‘the people’ in a delimited territory ... But the problem, for defenders and critics of modern democratic systems, is that regional and global interconnectedness contests the traditional national resolutions of the key questions of democratic theory and practice.”¹⁴⁸

This contestation has been equally, and superbly, captured by Eyal Benvenisti in a passage also worth quoting:

¹⁴⁶ N. Reich, “Competition between Legal Orders: A New Paradigm of EC Law?” (1992) 29 C.M.L. Rev. 861.

¹⁴⁷ W.G. Friedmann, *The Changing Structure of International Law* (London: Stevens & Sons, 1964), p.3.

¹⁴⁸ D. Held, *Democracy and the Global Order* (Cambridge: Polity Press, 1995), p.16.

“The ‘globalization’ of commerce provides ever-growing opportunities for producers, employers, and service providers to shop the globe for more amenable jurisdictions. While they enjoy a ‘race to the top’, an international ‘race to the bottom’, spawned by decreasing relocation costs, threatens to compromise the achievements of the welfare state and lower standards of consumer protection. National governments, weakened by competition that entails leaner budgets, find it increasingly difficult to cooperate in the appropriation of crucial shared natural resources, seriously endangering these assets while damaging the environment. Not only does the growing global competition create both efficiency losses and social-welfare problems, it also challenges principles of democracy and self-determination.”¹⁴⁹

Globalisation (and Europeanisation) have indeed significantly weakened the public powers any national “government” can today exercise over mobile private actors, and especially corporate “non-citizens”.¹⁵⁰ Public borders and public rules have become porous in the “global” twenty-first century. How can any democratic steering power be regained? Should free movement be stopped because a national utopia can only be built in a closed commercial state?¹⁵¹ Or, should we accept the benefits of globalisation, as a social force uniting humanity; yet try to re-build democratic structures above the nation state so that the “few” do not escape the interests and needs of the “many”? If one believes that globalisation is here to stay and that the collective action problems humanity faces require collective actions as solutions, then, (representative) democracy can only be rescued if successfully translated into a supranational format. This new format must abandon the idea that majoritarian government can only legitimately take place inside isolated national communities, called “the people”, that must, so as to protect their *national* democratic choices, externally cooperate exclusively via unanimous consent. This solution simply no longer works in a world where the unanimous agreement of 200 states is needed to reach an international answer to an international problem.

What to do, then, in a world in which the nation-state has lost its social autonomy to freely choose for its “people”, and in which the idea of a cosmopolitan democracy that includes all of humanity remains a far-flung and utopian project? The answer this article has closely analysed is the European Union. Standing between “cosmopolitanism” and “nationalism”, its supranational “regionalism” has, as a non-ideal solution in a non-ideal world, much to recommend. From its beginning, the Union was meant to contain the—external—pressures of globalisation,¹⁵² while offering, at the same time, an—internal—compromise combining democratic diversity with democratic unity. Its form of democracy, as a *majoritarian* government of peoples, is not perfect. But the Union has, decidedly, more democratic credentials than those debilitated national governments that, straightjacketed by the global market, have been outmanoeuvred by international corporations and the “hegemonic” forces of hyper-capitalism. The fear of European federalism is therefore often the fear of losing something (sovereignty, control) that is, ironically, already lost.¹⁵³ To regain democratic agency and choice, one needs to re-construct government and democracy above the nation state. This should, in no way, lead to a super-state or super-republic with one people and

¹⁴⁹ E. Benvenisti, “Exit and Voice in the Age of Globalization” (1999) 98 *Michigan Law Review* 167 at 168.

¹⁵⁰ For a powerful analysis of the increasing schism between “states” and “markets” (and multinational corporations), see: S. Strange, *States and Markets* (London: Bloomsbury, 2015).

¹⁵¹ This seems to have been the position of many left-wing Brexit advocates. For a prominent “Lexit” political philosopher’s view, see: R. Tuck, *The Left Case for Brexit* (Cambridge: Polity Press, 2020).

¹⁵² For this point of view, see: W. Mattli, *The Logic of Regional Integration* (Cambridge: Cambridge University Press, 1999), pp.70–71 but also and especially S. Meunier, *Trading Voices: The European Union in International Commercial Negotiations* (Princeton: Princeton University Press, 2007).

¹⁵³ A. Giddens, *Turbulent and Mighty Continent: What Future for Europe* (Cambridge: Polity Press, 2014), p.10: “Most concerns about federalism are about loss of national sovereignty. However, to have any meaning, sovereignty must refer to real control over the affairs of the nation. You cannot surrender something that you have largely lost anyway.”

one parliament. On the contrary, the future of democracy lies in democracy. It lies in a “republic of republics” in which the people(s) govern together as many and as one.