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Does Europe Need a Demos to Be Truly Democratic?

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Does Europe Need a Demos to Be Truly Democratic?

Daniel Innerarity

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Does Europe Need a Demos to Be Truly Democratic?

Daniel Innerarity*

Abstract

Principal theories about European democracy agree that there is no European demos (unfortunately or inevitably, depending on whether one is a federalist or intergovernmentalist). In my opinion, the “no demos theory,” in all its various manifestations, has, at least tacitly, an excessively demanding concept of demos, utopian for federalists and static for intergovernmentalists. In both cases, it is so categorical that it does not correspond to the history from which political communities have arisen, nor to how a sense of belonging is truly established, nor to the limits on the expectations we can reasonably hold for Europe. The demos could be more practical and contingent, more performative and vulnerable. It can, for that very reason, be constructed or lost; it is more emergent and fragile than those who view it so emphatically believe. Additionally, what if the peoples who “truly exist” were not such a solid group or did not need to be so? In that case, it may even be that European integration represents an opportunity to articulate unity and diversity in a manner that is more respectful of its internal plurality. In order to do that, we obviously need very different concepts and practices than the ones that gave rise to the nation state.

Keywords: demos, people, democracy, European Union

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

- Valéry 1996 [1931], pp. 15–16

If the people didn't exist, who would realize?

- Luhmann 2000, p. 366

1. The people as a condition for democracy

According to the dominant discourse about the absence of a European *demos* and the consequences of that absence, the democratic deficit does not stem from the EU's institutional structures as much as from a dearth of certain social, historic, and cultural conditions that cannot be created or modified in a brief period of time. Democratic decisions, we are assured, take place at the heart of political communities that are based on confidence and solidarity, while nothing similar exists within a transnational political community. A *demos* is "a group of people, the majority of whom feel sufficiently connected to each other to voluntarily commit to a democratic discourse and to a related decision-making process" (Cederman 2001, p. 224). When there is identification, we can expect coherence, shared objectives, and a propensity for solidarity; where there is none, there is

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generally division and an inability to build anything in common. “If there is no *demos*, there can be no democracy” (Weiler, 1999, p. 337; Weiler, Haltern and Mayer, 1995). Without *demos*, there is no confidence, recognition, solidarity, or reciprocal friendliness, which are all values that are essential for democratic coexistence.

This lack of a common national identity would be the concrete reason that distributive justice cannot be applied at the European level (Grimm, 1995 and 2012; Streeck, 1995; Scharpf, 1999; Offe, 1998 and 2000). When there is no *demos*, the citizens are not prepared to pay for their compatriots’ bad luck; the “consent of the losers” (Anderson, Blais, Bowler, Donovan and Listhaug, 2005) is impossible. Those who oppose the advancement of federalization tend to argue that Europe lacks a sense of solidarity provided by a common history, which would prevent carrying out redistributive policies and any other policy in which there are clear winners and losers, which require majority rule (Majone 2009, p. 65). Only a robust *demos* would make the obligations of justice acceptable. In order for these responsibilities to be understood and assumed, there must be a sense of co-belonging that no administrative authority seems to be capable of providing. At the same time, without a functional equivalent of the connection provided by solidarity, it is inevitable that some people will understand any decision as an imposition and others will see it as a undeserved transfer, as if there were no common ground. Meanwhile, in Europe, we share vulnerability, but not enough solidarity; we hold our risk exposure in common, but the protective procedures are specific (and very limited). Within this climate, is it possible to articulate an “us,” something truly common, which will connect us and make sense of our responsibilities? To what extent do we need that commonality and of what should it consist?

This skepticism is regulated in various ways. It essentially rests on the principle

that when we pursue something such as redistribution based on solidarity, the area of legitimacy must remain within the pre-existing community where there is a “communitarian” civic feeling (Scharpf, 1998, p. 89). The nation is the only possible realm of democracy (Miller, 2000). According to this model, European institutions would make up a functional regime that would focus on resolving problems that the member states cannot resolve when they act independently. This would be a type of prosthetic governance that would not form any common identity beyond that mutual utility. Some people suggest that it would be a regulatory regime, which would not, strictly speaking, require popular legitimacy. Politics in common and effective solidarity would only be realized with pan-European democratic support, which regulatory policies do not need (Majone, 1998 and 2011). At the same time, the federalist idea of creating *de facto* solidarities seems to have failed when it comes to establishing the type of spontaneous and emotional solidarity that the states seem to have always enjoyed (Meny, 2012).

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

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

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

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

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

In the face of the “*no demos theory*”, which I consider too anchored in the conceptual framework of the nation state, my hypothesis is two-fold: 1) these types of solidarities can be constructed on a level that presents different characteristics of state space and, furthermore, 2) they have a constructive or emerging character that does not stem so much from old identifications as from practices shared through time and future expectations. The skeptical point of view over-estimates the values that collective action would require (these values are not that substantive or unattainable and can be created by intense cooperation) while simultaneously under-estimating the force of reasons in the coordination of actions (Eriksen 2005, p. 15). History shows us the extent to which identities and solidarities are constructed; noting this contingency allows us to understand them as something that can erode and even disappear but that can also spring up and increase through collaborative processes. Why not in the European Union? Why can there not be *community building*—creating confidence and solidarity—where there once was *nation building*, at least the creation of the minimum community that would be required by the solidarity that current circumstances demand? The Eurobarometer is a measuring tool, not a normative institution.

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

In place of a *demos*, we should ask ourselves what conditions and procedures are

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

Instead of complaining that Europe has no *demos*, we should be asking ourselves what good would come from having one and what functions can be achieved by other methods. Even more importantly: whether this functional equivalent at the European level could be conceived without the inconveniences that the concept of the *demos* has for democracy, its genealogical logic, its tendency to exclusion, its resistance to porousness, its inconsiderateness towards anything that is different from it. The post-national concept of the people would instead point towards the community of those who are affected, the “stakeholders,” which is potentially more democratic than the community of the authors or members. Therefore, the democratic question should not be presented as *from what group of perfectly identified and delimited people does all power originate*, but *what type of communitarization should we shape* when matters that should be governed with some institutional innovation arise. In some ways, we have moved from thinking about “community that gives itself a government in order to resolve certain problems” to “problems for which we must create a structure of government and thus configure a community.”

The concept of “the people” is too simple to serve as a point of reference for the

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

2. The constitutional paradox

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

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However, are the societies of the member states truly united? Do we need to expect that degree of cohesion from European public spaces? And is the tension between constituted power and constituent power common to all political communities, sometimes made invisible by the ritualizing power of history, while at other times, insufficiencies are being pointed out by a crowd of skeptics?

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

But the race towards the origin is irrepressible when we want to account for a reality and examine its justification. The reconstruction of the origin of things takes place through a fictitious strategy, which does not imply challenging anything, but recognizing two realities: there was no one at the origin of things, but at the same time, we should organize events in a way that allows us to express a judgment regarding their validity. In the case of contractual fiction and constituent fiction, the issue is that, prior to the nation, there were no nationals

to be constituted nor owners of things who agreed upon rights and responsibilities over the things they owned. Democracy has always presupposed a people as an all-encompassing authority in which the miracle of the fusion between individual will and general will would take place. Looking at this fiction with a critical eye allows us to discover that the sustained intertwining of constituent and constituted power is "the tiniest piece of law making" (Van Roermund, 2003, p. 34).

In the first place, the situation in the origin is not one of perfect unity, but "*disparate*," to use Foucault's formulation. The ideal of self-government does not match the historical genesis of power (Elster, 1998), nor should we mythologize the participation of "the many" in the processes of European national construction. This contrast between idyllic projections and historic realities provides points of criticism and response. The principal contrast may be the fact that, in Europe, democracy was subsequent to the nations (unlike in the U.S., where nationality was the product of the democratic process, not its precondition). That is why we Europeans tend to understand this historical correlation as if it were a logical necessity (Fabbrini, 2007, 49). And it would also explain why our main concern is the configuration of a European *demos*, instead of thinking that the democratic processes will themselves determine what becomes a European *demos*.

This obsession with the origin—very typical of constitutional logic and the idea of sovereignty—looks to the absolutist logic of the foundation, as if only the existence of a pre-political substratum could sustain everything else. In accordance with genealogical rationality, any constituted power must have been preceded by constituent power. A political entity may refer to "its" origins, but that origin is something foreign to it as a polity. "It is in this sense, then, that political unity is not only contingent, but also radically contingent" (Lindhal,

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2003, p. 113). Therefore, the task of identifying the original source of the establishment of democracy can neither escape the specter of an infinite regression in search of an elusive first authority nor can it evade the danger of covering up this difficulty by granting a definitive nature to a particular facticity. The beginnings of democracies are trapped in paradoxes of this kind: if we want the rules of democracy to be subject to democratic determination, we will end up in an infinite regression (Richardson, 2002, p. 67).

The relationship between constituent and constituted power, or between democracy and legality, is a true dilemma. The sooner we recognize that "in many cases, constitutional doctrine presupposes the existence of that which it creates" (Weiler, 2001, p. 56), the less will we commit the error of granting some realities greater necessity than their contingent nature allows.

Using the U.S. Declaration of Independence as an example, Derrida has demonstrated the circular and contradictory nature of constitutional documents, in which "a people" signs that it constitutes itself as a unitary subject through its signature. However, the people do not exist before their founding action, an action that precedes the people as an authorizing authority. This strange event means that the people, by signing, come into the world as a free and independent subject, as a possible signatory. By signing, the people authorize themselves to sign (1984). This is the founding myth of democracy: the presence of the *demos* is postulated so that it can come into existence (Offe, 2003, p. 254). However, the "us" that is constituted in these declarations "escapes itself"; the us that speaks does not coincide with the us that is referenced (Waldenfels, 1997, p. 149). The constitutional paradox is that the self-constitution of a non-constituted crowd can only take place if the individuals identify themselves retroactively as members of a *polity* that constitutes itself by exercising the powers conferred upon them by constitution. "All representations of political unity lead back to a

representational act that is not mandated, yet without which no genesis of a polity is possible. Not only does this suggest that there is a core of irreducible groundlessness at the heart of every political community, but also that no polity is contemporaneous with its own genesis" (Lindhal, 2003, p. 133). That is why the "us" gathered in the foundational act masks an original heterogeneity. The people are a decreeing subject at the same time as they are still an empirical group of disperse individuals; they are the establishers of a law to which they themselves are subject.

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

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

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At the heart of every constitutional order, of every democratic coexistence, there is an unsubstantial us, a rupture and a contradiction, which continuously redefines the dimensions of inclusion and exclusion in a provisional manner. That is why the political cannot be monopolized by institutional realities, by the organization of society and by ritualized statehood. What is political is instead the place in which a society acts upon itself and renews the forms of its common public space. Society has not emerged from the collapse of a community; there is no original division or first unification or lost innocence of collective life or initial formation. This does not mean that the "us" does not exist at all, but that it is of an unstable size, an open and changing reality, grasped by human beings from the twists of fate and placed in the realm of what we do with our freedom. This gap between what is constituent and what is constituted guarantees that the people are not exhausted in any of their representations. "Questionability" is part of the collective identity (Lindhal, 2007, p. 21) because, in a democracy, totality is only conceivable as a "polemic totality" (Röttgers, 1983). Modern societies do not owe their strength to identity determinants but to resistance in the face of the hypostasis of a lost familiarity as well as in the face of the definitive determination of the social arena. If a society wants to remain free, it must reject any totalizing unity between the representative and the represented.

How can we, in practice, remove the paradox from this dilemma of democratic identity? Luhmann maintains that complex societies manage to do so by displacing their paradoxes in time (1997, p. 1061). Proceduralization does not resolve the constitutive paradox of the social, but postpones it, turning it into flexible rules of inclusion and exclusion, reiterating over and over again the question about the us in such a way that it includes and considers its externalities. The unrepeatable and fictitious foundation represents nothing but the initial non-identity that breaks apart into a continuous iteration. This

impossible identity recalls that the foundation of a polity is not closed once and for all, that what is common is neither original nor present, neither previous nor deducible, but instead continuously out of place, deferred, postponed. "The collective subject is always in a state of continuing self-constitution, and the judgments it makes will have a reflective effect upon its own identity as a community" (Beiner, 1983, p. 143). The heterogeneity of the community that founds itself forces it to always repeat its founding again.

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

3. Community as practice

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

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

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

through conflict. All of these things create a common reality. This malleability is especially apparent in the processes of the deterritorialization of democracy, in those functional areas of governance where there are *demoi* that do not coincide with the limits of the states, communities of destiny that do in fact overlap. For that reason, it would be regressive to anchor the political community to a static population (Besson, 2006, p. 188). These open and dynamic areas have no choice but to function with a certain amount of experimentalism. It makes no sense to judge them based on categories that come from the nation states or measure their cohesion with criteria of strict nationality, in the same way that it makes little sense to talk about "optimum currency areas" that only exist in books, but are created in real life.

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

European identity is not stable and definitive, fixed by pre-political categories; instead, it can be shaped by public discourse and political practices. Europe is nothing but an emergent polity, the result of a dynamic interaction between external challenges, internal responses, and citizens practices, in the midst of a process that combines decisions, omissions, projects, crises, and un-desired effects (Olsen, 2005; Liebert, 2012, p. 103). The European Union is an emergent

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structure in the same way the modern states emerged out of the previous old (dis)order.

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

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

The only way to resolve this dilemma is to abandon the preconception of thinking that political identities are constituted in virtue of a conscious decision to be one and take a pragmatic turn, replacing metaphysics with pragmatics. We are what we are because of the community of practices we establish, because of

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

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

For this pragmatic reason, the theories of democratic deliberation have allowed us to make more progress in the legitimation of its practices than a constitutional law generally burdened by a static vision of the idea of sovereignty (Eriksen / Fossum 2011). Precisely given the complexity provoked by the number of actors who intervene in decision-making processes, the modality of communication has a legitimizing function. For the EU's type of polity, the configuration of its communicative and cooperative space is fundamental. The power of the European Union is not exercised by a central actor, but by a conjunction of

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different governmental, parliamentary, and social actors. The effective instrument of the government is no longer order, but the configuration of forms of political interaction oriented towards understanding. Communicative processes have the potentiality of reducing the alterity of other people, constructing reciprocal confidence, and extending cooperative behavior. In these open processes, what is decisive is not what exists but what can arise. The category of “emergence” plays a central role in current theories of complexity (and European democracy must be conceived within this categorical framework of complexity).

In contrast with those who hold the rather static position that the problem is the absence of *demos* on the European or global scale, our experience is that intense relationships can create elements of a transnational *demos* as a result of the normal dynamics of institutions or transactions, in terms of solidarity, confidence, and the construction of shared memories.

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

In recent European history—even though there is both progress and regression—we can see the emergence of decision-making processes that are increasingly similar to the processes of a national *demos*. Since the mid 1980s, the EU has been transforming itself into a majority system little by little: “qualified-

majority voting" (QMV) in the Council now covers the main areas related to the internal market; the EP has the same decision-making power as the European Council in almost all areas of economic and social regulations; if the Commission presided by Santer was most similar to a grand coalition, the Prodi and Barroso Commissions have obeyed central left and central right positions respectively. The ECJ is not limited to arbitrating between competing governmental aspirations but adds new elements to the legal order, in such a way that its teleological application of the law has promoted greater integration. The EU is increasingly less consensual and more majoritarian by virtue of its system of decision-making, the increase in EP power, and the change in the way the EC and its president are elected.

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

The European Union has no other more direct and unquestionable procedure to laboriously build its complex democratic legitimacy than creating conditions so that the aforementioned emergence is produced. Why should we not think of this complexity as its true political contribution rather than a regretful problem? Let us not contrast its fragility with the supposed unassailability of its member

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states. Most democracies have not arisen from a homogeneous people, nor have they managed to fully configure them. We have no reason to stop hoping that collective political action, the destinies we share, our experience and communication (including communication through conflictive forms of the divergence of interests) are capable of originating a certain form of political community, perhaps not especially lofty, but with the characteristics needed to tackle the demands for justice with which we are presented.

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

The emerging nature of European integration is revealed by the fact that it is neither a process in the hands of the member states nor a process through which member states are subordinate to the Union. There is, in the Treaty of Lisbon, no

emphatic call for a unitary collective, which we could interpret as a rejection of the idea of dissolving the elements that comprise Europe into one unit. But we should not see it as dissolving the question of European democratic legitimacy into verification by each of its component states either. Unlike the international institutions, the EU does not derive all its legitimacy from the member states but from an emerging quality from which a unique community of destiny and interests with their own logic has been arising (without configuring a *demos* in a strict sense). It is a process that is taking place at the same time as this new political entity has transformed the states that originated it. When we say that the states have moved from being nation states to member states (Bickerton, 2012), we are making reference to this transformation. In the face of the “hydraulic” model of the EU, according to which the democraticity of decisions on the European level would be administered by national deposits, we would instead have to reference a “gaseous” or transformative reality in order to explain the fact that new constellations and emerging attributes that are being produced in the European aggregate should be provided with distinct and specific legitimacy.

4. The communitarian innovation of the European Union

When we Europeans think about configuring common institutions, why do we not know how to do so except by imitating the format and properties of the nation state, thus wasting the opportunity to think of something new and avoid some of the worst manifestations of the national? Realizing the European political community without the communitarian *pathos* that has characterized nation building could be an opportunity to revise our political culture and afford ourselves, on other levels as well, a relationship with our community that is less

emphatic and more open to understanding ourselves in a plural fashion. We are faced with the challenge of understanding ourselves without an “organic” concept of community or “a robust pan-European identity” (Liebert, 2012, p. 96). Europe should respond to the old question about how to build a community in a very different way from the logic of domination and homogenization that have generally characterized the processes of nation building. It should be carried out in an evolving, reflexive, inclusive, and dispassionate fashion with much discussion and negotiation or not be done at all.

The problem is that we still do not know how to act together, and we place too much trust on the classic instruments of nation building, like the flag and anthems, direct parliamentary elections, and typical right-left polarization. We are in search of the Kelsenian and Schmittian “holy grail” (Weiler 2001, p. 60) to build a community in the classic style (indisputable authority, general will, a foundational moment, a homogeneous people...), and we do not know what to do when we suffer the shock of finding out there is no Bastille or Philadelphia for Europe. The propensity to demand that the EU display attributes of statehood—a people, hierarchical government, majority vote, a voice, and a leadership—makes as little sense as a republican whose expectations manifest nostalgia for the monarchy.

But furthermore, taking the nation state as a model implies some degree of idealization of contingent historical processes that are not particularly exemplary in many ways. It makes no sense to project our communitarian frustrations onto an idealization—implicit or explicit—of the nation states, many of which imagined an ethnically defined homogeneity, a culture of precise contours, a common destiny, and unconditional state power. The preconception that democracy and the constitution can only exist within a delimited *demos*, within a homogeneous (“relatively homogeneous” is what the German Constitutional

Court decision on Maastricht says) and united nation state is still very much with us. However, the democratic nations do not necessarily have that degree of homogeneity nor should we assume that it is impossible to configure a democratic constitutionalism without that emphatic unity.

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

The European Union is a refutation of the idea that the nation state is the only site of community and identity politics. A uniform national identity is not a requirement for democracy or for solidarity. Not even liberal intergovernmentalism with its assumptions of rational choice (Moravcsik, 1988) nor neofunctionalism with its idea of a spill-over process (Haas, 1961) have been able to explain how non-coercive integration has come about and, especially, how it can continue developing under new conditions with actors with such varied interests. What should be explained empirically and normatively is how we can configure a true European community capable of confronting the new obligations of justice, the harsh reality of which we have seen during the euro crisis. The European democratic experiment consists precisely of attempting to realize a fair division of responsibilities and opportunities, of costs and benefits,

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without the guarantee of old-style national organic solidarity.

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

The idea of shared destiny would allow us to build *that which is common without community*. We would be speaking of something for which it would be sufficient that we were conscious of having been thrown together by history, as Hannah Arendt would say, and sharing the same destiny, without pre-established harmony, with interests that are divergent but should be resolved together. We could thus confront the idea that it is not viable to continue with the democratization of the Union in the absence of a strong identity as a community (Theiler, 2012, p. 785). Rather than speaking of “a community of unity,” we should discuss “a community of destiny,” as Raymond (1995) suggested, which emerges from politics, rather than preceding it, when there are experiences of reciprocal influences, shared risks, perceived inequalities, and redistributions that should be realized. For there to be democratic legitimacy, it may not be necessary to have “a people,” but it does require some type of recognition of a

“community” with a shared destiny—even if it is only a question of fate—and certain reciprocal obligations. We must delve deeper into “the common,” which cannot be reduced to interaction or agreement between self-sufficient elements, but refers to the reciprocal obligations and responsibilities that we in fact share.

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

We asked ourselves at the beginning if Europe needed a *demos* to be truly democratic, but perhaps we should conclude by questioning whether the

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

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

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