

# Polity Dynamics in the European Union: Setting a Normative Framework

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## Introduction

One of the paradoxes about the study of the European Union (EU) is that, however atypical or indeterminate the latter may be, no other system of governance has been attributed so many different neologisms: proto-federation, confederance, concordance system, quasi-state, mixed polity, *Staatenverbund*, consortio, condominio, regulatory state, market polity, managed *Gesellschaft*, multilevel republic, confederal consociation, mixed commonwealth, etc. Whether or not these attributes are 'trapped in a state-oriented mode of thinking' (Jachtenfuchs *et al.*, 1998:417) or emanate from novel conceptions of institutionalised shared-rule, they only capture part of a more complicated reality. As a result, integration scholarship is still in search of a reliable theory as the basis for the future of the regional system.

But why is it that a 'conceptual consensus' or even convergent conceptual understandings are yet to emerge over the EU's ontological conundrum? A plausible answer is that the process of conceptualising the emerging European polity rests on competing normative orders, accounting for different 'structures of meaning' (Jachtenfuchs *et al.*, 1998:411). This is also why the study of the EU represents such a fascinating exercise in theory-development, new theory-creation and, more recently, metatheory (Chrysochoou, 2000). Arguably, these theoretical trends contribute to a dialectical process of concept-building as part of a wider evolution of systematic explanation through which a 'hierarchy of realities' might emerge (Taylor, 1971:149). As Church rightly points out, 'we need to be aware of the conceptions we use since they determine our perception of things' (Church, 1996:8).

Part of the intellectual challenge here is rooted in the different perceptions and treatments of such general and value-charged concepts as sovereignty and integration, management and interdependence, order and fragmentation, unity and diversity, autonomy and control. But which interpretation ought we to utilise so as to increase our understanding of such macro-level and dynamic phenomenon? This latter property of the EU is crucial when employing different lines of theoretical inquiry to 'rise above [mere] observation of specific events' (Lieber, 1973:4). As Kuhn suggests, absent a

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theoretical model, 'all facts are likely to remain equally relevant' (Kuhn, 1962:15; quoted in Lieber, 1973:9).

Both normative and narrative accounts purporting to explain the logic of a distinctive form of 'deep regionalism' (Laffan, 1998:239) and its implications for the subunits tend either to underestimate the role of the central institutions or to exaggerate the influence of state-centric actors in setting the integrative agenda and acting authoritatively upon it. But the many different phases in the evolution of the EU suggest that the formation of a European polity, as distinct both from the making of a new regional state and the consolidation of a loosely institutionalised regional regime, resembles an asymmetrical synthesis of different (sub)disciplines. Thus, different theoretical perspectives on how the EU actually works and towards what it is developing become clear sites of intellectual contestation.

Writing on the growing antithesis between intergovernmentalists and institutionalists, Puchala argues that EU theorising 'has recently evolved into a full-scale, hard-fought debate ... with contenders jumping upon one another's attributed weaknesses while disregarding one another's insights' (Puchala, 1999:318). The 'elephant' though, to recall his earlier metaphor, is not easy to manipulate in theoretical terms: it often turns into a 'chameleon', adjusting itself to the requirements of the day. This is perhaps the only confident assertion to be drawn after half a century of theorising about this 'essentially contested project' (Bańkowski *et al.*, 1999). It thus follows that the most challenging question confronting EU scholarship today remains similar to that raised by Puchala some thirty years ago: 'where do we go from here?'

### **Still a Social Scientific Puzzle?**

Any reliable theory of European integration should aim at capturing the dialectic between strengthening the viability of separate public spheres through the institutionalisation of joint sovereignty. The point to make here is that we are currently witnessing the reversal of the Mitrany logic to integration: instead of 'form follows function' (Mitrany, 1943:236), it is the structural properties of the larger system that dictate the depth and range of the regional arrangements. This exemplifies the limits of integration, in that the extension of its 'scope' and 'level' do not necessarily coincide: the former (policy arenas) can be extended, if not at the expense of the latter (ways of management), without altering the locus of sovereignty, or having any significant impact on the way in which the central institutions exercise political authority (Chrysochoou, 2001). The extension of qualified majority voting (QMV) in the 'policy-generating' Single European Act on non conflict-prone areas and the introduction of a complex co-decision procedure by the 'polity-creating' Treaty on European Union (TEU) are good cases in point. And so are the sensibly arranged reform packages agreed at Amsterdam and Nice, both of which fall short of representing an exercise in polity transformation.

Another thorny issue arises from the fact that the current state of integration tends to be conceived as an unspecified gray area between forms of polity that more often than not rely on a statist analogy. Writing on the 'betweenness' of the EU, Laffan argues that it currently 'hovers between politics and diplomacy, between states and markets, and between

government and governance' (Laffan, 1998:236). This, in Sbragia's words, 'will stimulate scholars of politics within unitary states and federations to rethink what they have so far taken as givens' (Sbragia, 1992:267); an optimism, however, Puchala is less inclined to share, in that 'European integration will for the foreseeable future continue to be an ongoing social scientific puzzle' (Puchala, 1999:330). The following examples support the latter prophecy.

Although from a state-centric perspective the EU rests on the separate constitutional orders of states, the European Court of Justice (ECJ) has ruled that the founding treaties already represent a 'Constitutional Charter'. Further, consensus-seeking practices in the Council of Ministers are employed more often than not, even when the treaties formally require resort to QMV. Similarly, the European Parliament (EP) performs functions that even the member legislatures would be jealous of, yet its lack of controlling and legislative powers over the EU's executive branches suffice to support the philology of a 'democratic deficit'. Also, Union citizenship has been hailed as a step toward the formation of a transnational demos - itself product of a normative commitment to substantive civic engagement - whilst others have claimed it has more to do with the free movement of people within an extended economic space, rather than with the construction of a common civic identity based on a substantive corpus of democratic rights. Moreover, whereas an increasing array of policy competences (and norms of governance) are brought into the larger system, often impacting significantly upon domestic institutions, their *locus decidendi* is closer to the domain of state agents. Finally, enshrined in the TEU as a mechanism for the allocation of concurrent competences, subsidiarity has opened the way for two separate lines of development: on the one hand, the protection of national democratic autonomy against excessive institutional centralisation and, on the other, the extension of transnational legislative authority.

Not surprisingly, then, many of its students regard the EU as an unresolved puzzle with an open *finalité politique*: a polity ensemble of federal, confederal and consociational features that 'has displaced the potential to alter the relative congruence between territory, identity and function which characterised the nation state' (Laffan, 1998:238). Although the EU is taken to denote something more than merely the sum of its parts, sovereignty as 'ultimate responsibility' has not moved towards a new political 'centre'. Put differently, sovereignty is yet to become part of the EU's systemic properties. Equally puzzling remains its legal physiognomy: for some, resting on a set of international treaty rules, whilst for others on a constitutional order *in statu nascendi*, if not *ex proprio vigore*, driven by aspirations similar to traditional state-building. Likewise, although the EU exceeds a Deutschian 'pluralistic security community', it has failed thus far to meet the sociopsychological conditions for any substantive transfer of loyalties and expectations to a neofunctionalist 'political community'.

Drawing insights from pluralist paradigms of international governance to neorealist interpretations of collective problem-solving; from modified schemes of co-operative state behaviour to revised neofunctionalist theses; and from federalist prescriptions of power-sharing to neo-institutionalist

accounts of polity-building, the analytical spectrum for studying the evolving EU seems to have reached a *plateau*. At the same time, reflecting on the recent 'normative turn' in EU studies, a debate that arguably follows the constructivist discourses in international theory (Wendt, 1999), the EU is seen as 'an entity of interlocking normative spheres with no particular one being *et al.*, 1999). From this neo-constitutionalist, post-statist angle, or what in recent methodological parlance amounts to a normativist 'meta-discourse', the EU is portrayed as an emerging 'heterarchical political space' that combines unity and multiplicity, transcends pre-existing boundaries and projects a multi-dimensional configuration of political authority (Walker, 1998:357).

The crucial question to ask, then, is whether the existing 'laboratory' of concepts and ideas drawn from the domain of integration theory offers any concrete sense of direction as to the political future of the EU (Chrysochoou *et al.*, 1999), given its emphasis on questions of 'who governs and how'. Namely, how policy is pursued at different levels of governance; whether the EU is capable of resolving its internal crises; who controls the setting of the integrative agenda; how to account for the interplay between intended and unintended consequences; how to improve decisional efficiency and policy performance; whether institutions matter and, if so, how and when, etc. In doing so, an equally crucial question to the democratic viability of the EU remains largely unanswered: 'who is governed'. This metatheoretical shift in emphasis directs integration scholarship both to the explanation and understanding of a striking paradox: although traditional notions of democracy are losing their normative appeal when applied to the EU, the latter exhibits a notable potential for democratic self-development: since the early 1990s, there is a growing tendency on the part of the EU to transcend issues of market integration and regulation, and touch upon 'sensitive areas of state authority'; or, in Laffan's words, 'to democratize politics above the level of the state' (Laffan, 1998:247, 249). Hence, there is evidence to suggest that the present-day EU casts doubt on 'the continuing adequacy of the conventional solution' (Dahl, 1997:37). What follows examines the dialectic between the promise of democratising the collectivity and the process of managing integration after the Treaties of Amsterdam (AMT) and Nice (NIT).

### **Amsterdam and its Critics**

The AMT, signed on 2 October 1997, came into force on 1 May 1999 after a rather uncontroversial ratification process. But it was not long before the initial joy of perceiving the Amsterdam process as a success story started to fade among scholars and practitioners alike. Given the moderate reforms embedded in it, it is fair to suggest that the AMT reflected the outcome of a state-controlled process of limited treaty change, rather than a substantive constitutional redesign. As *The Economist* put it, Amsterdam 'produced more of a mouse than a mountain' (June 21, 1997:37). Hailed by many as a step 'lacking ambition', the AMT consolidated state competences by preserving the EU's three-pillar structure and with it its two separate legal mechanisms: the Community Method and intergovernmental co-operation.

As Devuyst writes, '[r]ather than focusing on pre-emptive institutional spillover in preparation for enlargement, the Amsterdam negotiation was characterized by a "maintaining national control trend"' (Devuyst, 1998:615). Underlying this (largely incomplete) outcome has been a preference for a managerial type of reform to improve the effectiveness in policy-output: 'flexibility', pointing in the direction of differentiated integration, was partially elevated to a *modus operandi* of the system, whereas the deepening of integration was referred *ad calendas Graecas*. Still though, despite the institutionalisation of flexibility, the AMT precludes the creation of a Europe *à la carte* by introducing stringent conditions for its application, to the extent that the provisions might 'encourage reluctant member states to resort to the Union's normal provisions' (Wessels, 1998:95). Of such conditions, the most significant is that any objection by a member state on 'important and stated reasons of national policy' results in the whole matter being referred to the European Council for a decision by unanimity, revealing an accommodationist arrangement through which states retain control over highly sensitive issues. To borrow again from Devuyst: 'On controversial issues, the negotiators proved able to arrive at a unanimous compromise formula only as long as the reluctant governments were confident that they would be able to maintain control over the decision-making process ... [while] the French interpretation of the Luxembourg compromise was formally recognised in the Treaty ...' (Devuyst, 1998:623, 624).

In the same vein, those who linked the end-product of the revision process with the making of a 'constitutive polity' based on mutually reinforcing legitimisation structures have no real grounds for celebration. For political pragmatism finally had its way, in that the new provisions failed to deliver the much-needed clarification of the properties of the system. Instead, the AMT relates to the well-known saying *plus ça change, plus c'est la même chose* and is likely to go down in history as the 'uncourageous Treaty'. Contrary to previous treaty reforms, Amsterdam is characterised by a lack of vision about the democratisation of the EU, offering instead a series of 'partial offsets' to its democratic pathology by focusing on its institutional rather than socio-psychological aspects. The latter refer to the normative qualities embodying the construction of a European 'civic space' where citizens share among themselves a sense of public sphere (as a civic virtue element that is a valuable resource for the polity) and a regard for 'good governance' (as a training ground for civic learning). Both elements are crucial for, as J.S. Mill rightly reminds us, '[p]olitical machinery does not act of itself' (quoted in Spragens, 1999:214). Rather, it has to be worked by citizens themselves. This civic conception of the democratic polity contributes significantly to the making of a political order, national or transnational, that is steered by an active community of citizens.

It is somewhat ironic that what was not explicitly discussed in the 1996/7 IGC - itself part of a 'pre-reform process' (Devuyst, 1998) - proved more significant for the future of the EU. The granting to European citizens of effective 'civic competence' to engage themselves in the governance of the larger polity is a good case in point. The idea here is not so much on the crystallisation of liberal democratic norms in the political 'constitution' of the

EU, but rather on the search for a transnational civic space within which citizens mobilise their energies in the pursuit of a new democratic order. Underlying this normative assertion is the belief that democratic reform is not the cause, but rather the consequence of popular aspirations to democratic rule: a desire by the civic body itself to participate in a legitimised political unit.

With the benefit of *a posteriori* knowledge, three options for constitutional change were feasible during the Amsterdam process. The initial dilemma was between a pragmatic versus a normative approach, although in the end a 'mixed' approach effectively prevailed - itself an ensemble *sui generis* of the previous two. According to the first option, the EU remains a 'contractual union' that fails to develop an independent basis from which a genuine European sovereignty and a system-wide constitutional hierarchy might emerge. The second option emphasises the desirability of a federalising regional order (embodying a civic conception of non-hierarchical forms of governance) through which a European demos can direct its democratic claims to, and via, the central institutions. The third option implies that the EU is *in limbo* between a regional regime of co-ordinated interdependencies and the breaking of a new, transnational polity. In many respects, the prevalence of the 'mixed' approach meant that the EU effectively retained its distinctive characteristics as a Confederal Consociation: a compound polity whose distinct culturally defined and politically organised units are bound together in a consensual form of union, without losing their national identity or resigning their individual sovereignty to a higher central authority (Chrysochoou, 1998:184).

Changes in the workings of the general system by the late 1990s have not affected its essential character as a 'polycracy': 'a many turned into one without ceasing to be many'. Although a hindrance to formal federation-building, such an approach managed to preserve a balance between state and regional organisation by producing a sophisticated system of mutual governance based on the principle of joint sovereignty and the practice of political co-determination. These concepts are a key to understanding the changing conditions of sovereignty in the EU, which may now be interpreted as the *right* to be involved in the joint exercise of competences, to play full part in the transnational community, and 'to represent there the interests of the state' (Taylor, 1999:560). In a nutshell: 'sovereignty was now a condition, even a form, of participation, in the larger entity' (Taylor, 1999:560). Also, the quasi-governmental structure of the EU, when disconnected from a Weberian understanding of hierarchically structured forms of polity, 'has no classic aspiration of its own ... [it] is too complex and too amorphous to be presented as emerging from a new abstract constituent power' (de Areilza, 1995:9). Instead, responsibility for the making of such a non-state polity, but with an increasingly 'state-like agenda', rests with the partners to it. And so does the consolidation of the EU's legitimising self: the right to binding decisions over its citizens.

The following points on the EU's confederal/consociational nature are in order: the EU represents a 'treaty-constituted political body' that is not 'the unilateral act of *one* people ... considered as a homogeneous entity' (Forsyth,

1995:64); it does not derive its political authority directly from the citizens but from the legitimate governments of the component states, each representing a historically constituted demos; it has not resulted in a complete fusion where the different 'pillars' composing the transnational society lose their respective identities, but rather into a fairly co-ordinated system of democracies; the states continue voluntarily to band together by way of 'mutual agreement' and are thus free to dissociate themselves from the union (Bellamy and Warleigh, 1998:452); both the constitutional identity and international legal personality of the EU are dependent on the constituent polities in critical ways (Wessel, 1997); finally, the EU does not fundamentally challenge the capacity of the component parts to determine their own fate, although it represents a profound locking together of states regarding the joint exercise of fundamental powers. All the above confirm a state-centric conception of European political order, which suggests that sovereignty itself is still confined to the participating states, rather than to a constituted federal authority.

As in the case of Maastricht, so in Amsterdam, Lejeune's point that the states retain their sovereignty despite the creation of an 'integrated interstate area' remains valid (Lejeune, 1995:140). And so does the assertion that '[t]he system rests on the member states but works on the basis of embedding the national in the European [and *vice versa*]' (Laffan, 1998:242). Thus, the EU acts as a crucial link between national and regional dynamics: a point where two different incentives of governance are brought together. In this logic, treaty reform in the early and late 1990s has made it clear that preserving the 'constitutive autonomy' of states both as *Herren der Verträge* and as the central actors in EU constitutional engineering is part of the system's *modus operandi*. Accordingly, the joining together of diverse entities through an informal culture of consensus-building at the highest political level and the way in which competences are exercised within the EU have not eroded sovereign statehood. The latter has simply acquired a new co-operative dynamic of its own within a highly institutionalised framework: it no longer refers to 'a private world into which the outside world was not permitted to enter' (Taylor, 1999:538), nor is it subsumed by 'a new "hierarchy", in which the dominant form of regulation is authoritative rule' (Keohane and Hoffmann, 1990:281).

This is not to imply that the EU is only concerned with the functional requirements of an extended policy space based on a system of 'network governance' (Kohler-Koch, 1999). Rather, it has greatly impinged upon the way in which sovereignty-relations are to be understood within a pluralistic arena that is neither hierarchical nor anarchical, but subject to 'positive-sum governing': competences exercised by the common institutions are necessary to preserve the symbiotic nature of integration itself. As Taylor defines this dialectical quality in sovereignty: 'Having the right to participate in the management of common arrangements with other states was a much more important consideration in sovereignty than the traditional right to exclusive management ...' (Taylor, 1999:564). But this pragmatic review of the relationship between the sovereign states and the 'unsovereign' EU should not get in the way of attempting a normative reading where an

affective/identitive potential can be recorded. For it is thanks to such normative undertakings that the EU's ontological conundrum becomes part of an open intellectual challenge, rather than a studied case of empirical realities.

### **Some Normative Readings**

It has been argued that 'to this date the [integration] process has not generated a new political consciousness that would demand and sustain further institutional and democratic transformations' (de Areilza, 1995:9). Integration has not thus fostered the normative qualities necessary for the nurturing of a European civicness towards the configuration of a shared civic identity at the grassroots. Notwithstanding the contrary rhetoric, recent treaty reforms, including those leading to NIT, have failed to rectify this democratic deficiency. Rather, the EU project became even more technical, reflecting the prevalence of a new regulatory aetiology of 'post-parliamentary governance' (Andersen and Burns, 1996) based on 'expertology', 'managerialism', and 'technocratic elitism'. Underlying this empirical pragmatism rests the idea of 'committee governance' (Kirschner and Christiansen, 2000), evident in the highly technocratic operations of existing 'comitology' structures. Hence, the relationship between the EU and 'the civic' remains problematic. As with Maastricht's (top-down) polity-creation, the Amsterdam and Nice reforms, loyal to the segments' tradition of 'civic statehood', failed to provide a sense of civic attachment to the larger polity and create a normative order sustained by an independent source of input-oriented legitimacy 'to forge a common identity able to sustain a shared sense of the public good ...' (Bellamy, 1999:190).

Before examining the extent to which recent reforms have impacted upon the democratic quality of European governance, let us sketch a normative perspective on Union citizenship. The first point to make here is that the once nationally-determined fix between norms of citizenship and the territorial state is being increasingly eroded by large-scale processes of institution-building and polity-formation. Citizenship, it is argued, symbolises an 'internally-oriented relationship' that members of the demos share with the institutions of the polity to which they belong (Close, 1995:2-3). From this view, and despite its explicit treaty-based character and corollary constitutional shortcomings, Union citizenship carries an undisputed political weight, by setting in train the conditions for a European civicness to emerge, which in turn entails far-reaching implications for the embodiment of a stronger *Gemeinschaft* element at the popular level. But perhaps the most celebrated property of citizenship as a social construct is the range and depth of participatory opportunities it offers to fulfil the democratic potential (deliberative or other) of the demos in the exercise of political authority.

This view accords with the idea of citizenship as 'substantive public

It is within this embracing civic space that a feature central to the democratic process becomes crucial, that of 'civic competence': the institutional capacity of citizens as social equals to enter the realm of political influence with a view to sustaining a liberal polity in turn based on a vital public sphere. The pairing of 'civic' and 'competence' does not embody a

category mistake, but rather acts in the interests of empowering the collective civic body to engage itself in the management of public affairs. It issues and invitation to institutionalise, through the granting of new civic entitlements, a normative commitment to core democratic principles in the governance of the larger polity. In so doing, it offers a conceptual framework and gives an institutional face to a central task of legitimate public life, that of encouraging civic participation and responsible government. On the basis of this civic conception of European governance, joint decision-making becomes more transparent, political issues more visible, and transnational power-holders more accountable for their public actions or inaction.

Accordingly, the democratic potential of Union citizenship is threefold: it sets up a transnational system of political rights giving access and voice to the constituent demoi; it further induces integrative popular sentiments by motivating greater civic participation; and it strengthens the bonds of belonging to an 'active polity' by facilitating the process of positive EU awareness-formation at the grassroots. The question to ask is whether Union citizenship simply entails a re-arrangement of existing entitlements for the member demoi, or whether it attributes effective civic competence based on a new 'civic contract' between peoples, states and central authorities. Whether, in other words, it generates the social capital and assorted civicness needed for the making of a transnational demos *ab intra*. This organic and, in large measure, meta-institutional perspective on Union citizenship implies that the distribution of European civic competence passes through, rather than goes beyond, the capacity of citizens to determine the political functions of the larger entity. For what is vital both to the moral ontology of democratic governance and the prevailing value spheres of civicness itself, is the existence of a civic contract between decision-makers and decision-receivers. Should a demos-oriented arrangement of this type fails to materialise, then the social legitimacy of the polity is being challenged and a corresponding state of illegitimacy effectively prevails.

Union citizenship thus offers the opportunity to incorporate but not amalgamate the separate civic contracts of the component polities into a transnational civic space, where the consent of citizens for the larger-scale of decisions is organised 'from below'. This, Neunreither notes, requires the evolution of the 'member-state citizen' from a 'functionalist' or 'fragmented citizen' to an 'indirect' or 'derived' one, and then to an 'interactive citizen' (Neunreither, 1995:10). But the transition from one stage to another should come about as a conscious act of civic self-development and/or an exercise in 'political self-identification' (Neunreither, 1995:13). As Herzog put it: 'European citizenship must proceed from the desire and the capacity of the persons concerned to found an active community seeking to serve common goals' (Herzog, 1995:67). Of such measures to build on the occurrence of a transnational civic identity are the detachment of Union citizenship from the 'nationality requirement' and its placing upon an independent sphere of civic entitlements; the institutionalisation of citizens' right to information on all EU issues; the creation of protective legal mechanisms against any infringement of fundamental liberties, collective or individual; the enrichment of the citizens' social and economic rights relating to the four freedoms of

movement, social welfare, working conditions and labour-management relations; the institutionalisation of the right to education and of access to training programmes; and the recognition of social and political rights to legally resident third-country nationals, something which practically requires the transcendence of liberal statist norms of civic inclusion and, hence, the rejection of a 'dissociational-type democracy' (Taylor, 1998; Geddes, 1995).

Central to the above is the principle of additionality, in that European citizenship rights are established *in addition to* national citizenship, attached to a novel *status civitatis*. It is only then that these treaty-based entitlements may foster the bonds between an emerging civic body and the larger polity. As Bellamy notes, the only significant change to citizenship provisions brought about by the AMT amounted to a point of clarification: 'Citizenship of the Union shall complement and not replace national citizenship'. This provision 'neatly captures the continued dual character of the EU, as both inter-national and supranational' (Bellamy, 1999:204). Like Maastricht, however, Amsterdam failed to incorporate any substantive civic rights in a formal 'constitutional' document addressed to the citizen directly, reflecting the insistence of sovereignty-conscious states to codify existing trends in both jurisprudence and legislation. The same can be said of the merely declaratory nature of the Charter of Fundamental Rights signed in Nice on 7 December 2000. A few words on the latter deserve our attention.

Although the prospects for European civic competence rest as much upon formal legal requirements and judicial procedures, as they do upon social and political sources of legitimacy, including public responses themselves, the inclusion of the Charter into the new Treaty would have signaled the beginning of a more demos-oriented relationship between the EU and its citizens. In particular, institutionalising fundamental rights within the EU would strengthen the credibility of commitments undertaken by the member polities to protect the fundamental rights of all persons residing within their territory; it would empower the ECJ to ensure that fundamental rights are indeed respected; it would advance the fight against various forms of discrimination and protected the status of all civic associations within the EU; it would place the individual at the heart of the EU's activities by further strengthening transnational citizenship rights, including the right to good administration; and it would contribute to the preservation and development of common values, while respecting and protecting the diversity of constituent cultures, traditions and identities. Whether or not the incorporation of the Charter into the Treaty is seen as an exercise in regional constitution-making, or a significant stage in large-scale state-building, or merely as a codification of legal rights and duties, its 'communitarisation' within a multi-level civic order aims at harnessing the democratic ethos of those who form the 'constituent power' of the European polity. From this view, one has to stress that the drafting process itself has opened the way to a more visible, deliberative and inclusive method of polity-building - ie, a European public process.

The triptych *symbiosis* - *synergy* - *osmosis* corresponds to the three stages in the making of a European civic demos: the first, describes the current state of the relationship between the collectivity and the segments;

the second, points to the development of horizontal links among the member publics and a strengthening of existing ones among their respective elites; and the third, represents a culmination of the two in a democratically organised polity that strengthens the capacity of citizens to act in an extended political space. The significance of tying the self-image of the elites to the dialectic between citizenship and demos-formation is that no common civic identity may come into being unless all major actors engaged in European governance see themselves as part of a polity-building exercise that has to evolve from reciprocal interactions at the lower level 'upwards'. Likewise, a transnational political space must be built up in the everyday networks of civic engagement, instead of being constructed from the top down. The following typology helps to clarify some of these points.

### Typology of Civic Governance

*Civic Competence*

		Latent	Institutionalised
Nascent <i>Civic Identity</i>		<b>Civil Society</b> (functionalist demos)	<b>Civic Space</b> (interactive demos)
	Formed	<b>Public Sphere</b> (deliberative demos)	<b>Civic Community</b> (organic demos)

The EU currently occupies the upper left box since there are clear signs for the development of a large-scale civil society composed of transnational policy communities, partnership arrangements, structures of functional representation, patterns of interest intermediation, networking activities, and a plethora of organised pressure groups pursuing their interests at a level beyond or alongside the traditional state. But what the EU has not yet reached is a stage where a nascent civic identity on the part of its constituent *demos* meets the institutionalisation of European civic competence. As the above typology illustrates, this mix of variables is necessary for the emergence of a European civic space composed of an interactive transnational *demos*. But the EU has not equally met the conditions for the institutionalisation of a political public sphere based on the discursive qualities of free public argument and deliberation over possible ways of improving the democratic quality of European governance and the right of citizens to have their voice heard over the shape of things to come. This is after all what the process of civic governance is all about: the process whereby the *demos* of a polity, national or transnational, steers itself. As the next section shows, however, both the Amsterdam and Nice reforms leave much to be desired regarding the transition of the EU's democratic orientation 'from paternalism to citizenship', or from 'top-down elitism' to 'a participatory

ethics of governance' (Bellamy and Warleigh, 1998:456). For, absent a normative framework for the development of European civiness, the prospect for institutionalising a full-working transnational civic order will be rather bleak.

The normative content of the envisaged transnational democracy refers to discourse-centred processes of civic engagement embedded in the political process itself. Whether or not formally instituted, such processes serve the goal of a polycentric public sphere, for they direct the democratic claims of the citizen body towards those centres of authoritative political decision-making that are entitled to commit the polity as a whole. Otherwise, a novel yet easily discernible form of political domination will determine the relationship between 'executive-centred elites' operating at the transnational level and the affected public. The general point to make is that, absent a principled public discourse to steer the democratic orientation of the European polity, it would be naïve to expect the structural transformation of its shadowy political space into a purposeful *res publica*. This is the major challenge confronting those who share a genuine commitment to the constitutive norms of democracy. Such normative commitment at instituting a European civic space may act also as an antidote to the growing impoverishment of national public life, where a decline of public discourse is met by a shrinking democratic legitimacy of the political space. The section below examines the extent to which recent reforms failed to bring about a more democratic process of union.

### **Treaty Reform in Perspective**

Regardless of one's pro/contra integrationist convictions, the phasing-in of questions of polity in the EU's public agenda has not yet transcended the anxiety of states to safeguard their own prerogatives, even when these questions became crucial to the political viability of the larger system. Instead of focusing on issues that constitute the essence of any well thought out process of democratic reform, the unimaginative quality of proposals submitted to the IGC 2000 (assigned the task of preparing the EU for further enlargement) highlighted the absence of a clear democratic vision to take the EU dynamically into the next millennium. As Weiler suggests, '[w]hereas in its founding period Europe was positioned as a *response* to a crisis of confidence, fifty years later it has shifted to become one of the causes of that crisis' (Weiler, 1998:230). Both Amsterdam and Nice failed on these accounts, not least because they lacked a kind of 'innovative reflection' on the possibilities of constructing a European civic space out of the segments' varied traditions. Instead, both treaty reforms focused on 'distributive compromises' (Bellamy and Hollis, 1998:63) with a view to embodying the particularistic attitudes of self-interested actors, inviting a sacrifice in democratic input for greater efficiency in output. Shaw concurs: '[The AMT] is more about "managing" reactions to the EC/EU than it is about seeking to engage in citizen participation' (Shaw, 1998:85). The same conclusion can be easily drawn by looking at the result of the Nice reforms that was agreed on 11 December 2000 and is expected to enter into force on 1 January 2003.

In particular, after a four-day marathon talks, an agreement was reached that the larger states will retain their second Commissioner until 2005, while each member state may nominate one Commissioner until the time when the EU expands to 27 members. It was also agreed that the four largest states will each have 29 instead of 10 votes in the Council (which means that three large states and a small one could form a blocking minority, whose threshold was raised to circa 73%), while the small- and medium-sized members will each have between 3 and 13 votes (which means that while the larger states' votes have increased threefold, those of the smaller states have only doubled). Also, the threshold of seats in the EP has been raised to 740 in an enlarged EU of 27 members, thus exceeding the 700-seat Amsterdam threshold. QMV has been extended to largely non-controversial areas (with the exception perhaps of the appointment of the Commission President), including international trade agreements (services, investment and intellectual rights), external border controls and certain visa rules, freedom of movement for non-EU nationals, treatment of illegal immigrants, judicial co-operation in civil cases, emergency supplies in times of crisis and natural disasters, social exclusion and social welfare modernisation, state aid for industry, regional subsidies financial and technical co-operation with non-EU members, pay and conditions of EU officials, etc. Finally, the member states agreed to a fresh round of constitutional review in 2004, a time when Poland, Hungary and the Czech Republic are expected to join the EU. The new IGC will cover, *inter alia*, issues relating to the division of competences between the central institutions, the states and possibly subnational authorities; the legal status of the Charter of Fundamental Rights; the simplification of the existing treaty framework, the role of national parliaments in the integration process; and possibly the procedure for the future election of the Commission President.

In a high-stakes endgame, which undoubtedly brought on a flash of *déjà vu*, the NIT clearly lacked a 'departure of substance' for the creation of 'norms of polity' centred on the specific constructions of legitimate governance. As The Guardian succinctly put it: 'At every stage of the prolonged negotiation, raw national interest has overshadowed the broader vision' (The Guardian, December 11, 2000). Or, as The Times is, at best, a ramshackle palace that has been cobbled together' (The Times, December 12, 2000:23). As a result, Nice failed to discover 'a sense of process' (and purpose) over the transformation of a plurality of *demos* into a pluralistic *demos* and, hence, the emergence of a new *pouvoir constituant* as 'the ultimate legitimising referent of the [Euro-]polity' (Weiler, 1997:250). This is linked to yet another crucial transformation the EU ought to undertake, 'from an ethics of integration to an ethics of participation': 'a deliberative process whereby citizens reach mutually acceptable agreements that balance their various communitarian commitments in ways that reflect a cosmopolitan regard for fairness' (Bellamy and Warleigh, 1998:448). In the words of Mény: 'There is a need for a new civic culture ... which allows for multiple allegiances, which combines the "right to roots" with the "right to

Following Dehousse's analysis of the EU's 'unstable equilibrium', 'although the parliamentary system remains by far the dominant paradigm in the discourse on the reform of European institutions, the last decade has witnessed a gradual emergence of issues and instruments which do not correspond to the parliamentary tradition' (Dehousse, 1998:13). As Kohler-Koch put it, 'the EU is not just institutionally retired, but lives in a social environment that does not fulfil the prerequisites for representative democracy' (Kohler-Koch, 1999:9). Arguably, the Amsterdam reforms have placed the EP closer to the *locus decidendi* of the system by extending the scope of co-decision and by simplifying the procedures therein (by changing the 'default condition' in the conciliation process). Although these reforms sought to address the EU's 'parliamentary deficit' and facilitate the emergence of a bicameral system, increased parliamentary co-decision was not always linked with greater QMV in the Council (Duff, 1997:145 and 152-3), nor has the EP's right of assent been extended to legislation in third-pillar issues, to decisions over the Community's 'own resources' (Duff, 1997: xxxvi-ii, 143) and to constitutional reform, especially in view of the IGC 2004.

Let us now move on to the issue of transparency for it has overlapping consequences on the relationship between the EU and its citizens. This principle, inspired by notions of 'open government', is vital for the EU to eliminate the gap between the functioning of its institutions and the way in which the constituent *demos* can identify with its governance structures. The term is linked to the granting to Union citizens of a right of information and the need for a more simplified and comprehensible Treaty. Although Amsterdam succeeded in meeting the first requirement through a (conditional) right of public access to official EU documents, and in Dehousse's words by covering 'the practical modalities of access' (Dehousse, 1998:10), it did not achieve much on the latter: the simplification of some legislative procedures like codecision was coupled by the institutionalisation (or even instrumentalisation) of other practices like flexibility, exceptions, reservations, safeguards, protocols, declarations and the rest which, taken together, arguably represent an exercise in 'cognitive difficulty' (Dahl:1977:13-14). On balance though, a formalisation of transparency procedures has taken place, namely, their *de jure* incorporation into the treaty. Whereas previously such procedures were determined by interinstitutional arrangements and rules of procedure, the ECJ can now monitor the implementation of a 'norm' of legislative openness as an operational principle of European governance. For all their shortcomings, the new transparency rules are now part of the EU's 'primary law' (Nentwich and Falkner, 1997:11). Yet, as Cram *et al.* categorically put it, 'the post-Amsterdam EU is even more arcane and complex than its already impenetrable predecessor' (Cram, Dinan and Nugent, 1999:363).

Before turning to the concluding section, it is worth noting that Amsterdam and Nice's largest deficiency was their emphasis on policy rather than polity, efficiency rather than democracy, distributive compromise rather than integrative accommodation, functionalist structures rather than shared normative commitments and, above all, the rationalist exercise of competences rather than symbiotic legitimation. In particular, the areas upon

which these reforms focused concerned the rationalisation and simplification of decision-making procedures (co-decision), voting adjustments (re-weighting of votes) and voting mechanisms (extension of QMV) and, in general, measures concerning the effectiveness of EU decision-making as a precondition for the future functioning but not legitimisation of the general system. Ironically, this elaborate exercise in rationalised institutionalism originally aimed at rectifying a long-standing criticism of the Community as a 'joint decision-system' producing sub-optimal policy outputs (Scharpf, 1988) and, at the level of negotiated package-deals, an inequitable *status quo*. For these reasons, both revision processes emerge as managerial types of reform where affective/identitive politics still remains without reach. Their core principles rest not on the need for cementing the constitutive (even dialectical) norms of a polycentric civic space as a precondition for deliberative equity and substantive public engagement, but rather on a politics of consensus elite government determined by sub-optimal exchanges within an overly complex negotiation system. Not surprisingly, therefore, the general assessment is that a European civic order patterned on the mutual constitution of normative structures is yet to emerge. The final section helps to summarise the limits of EU polity-building and the related failure of successive treaty reforms to institutionalise democratic norm-orientation in the larger entity.

## **Conclusion**

Theorising the European polity has so far impelled many promising theoretical departures but managed to achieve only a few concrete theoretical arrivals. At a time when the EU remains much of an unspecified entity with an open-ended political *telos*, its dynamism is caught between federalist aspirations of becoming a more congruent polity and a modified type of intergovernmentalism confirming the centrality of states in the regional system. In the midst of a near-chaotic state of theorising European integration, the normative agents of legitimate governance, 'postnational constitutionalism' (Shaw, 1999), and the Europeanisation of civil society raised the expectations of successive treaty amendments in bestowing the EU with a clearer civic identity. Yet, by consolidating national autonomy and by acknowledging the innate need of states to retain ultimate control over both constitutional choice and change, the limits of treaty reform represent a clear illustration of the limits of EU polity-building itself.

Even the new dialectic between sovereignty and integration, which carries the implication of an explicit right to political co-determination, has failed to produce credible commitments on the part of states to a common strategy for democratising the larger polity with a view to strengthening transnational civic competence. Another important implication was the perception that because the recent review conferences carried a mandate for limited treaty reforms, the development of European citizenship and corollary democratic concerns would be dealt with at a later stage. Judging, however, from the end-product of Amsterdam and Nice, it is doubtful that the next review conference will be equipped with the necessary mandate for establishing conditions of legitimate governance based on a 'deepening' of European

citizenship rights, granting the EP constitutional competence over treaty reform and, crucially, dissociating social and political norms of legitimacy from policy performance.

The Amsterdam and Nice reforms, far from representing a *cause célèbre* for a substantive re-ordering of civic spaces and public spheres, amount to a cautiously negotiated deal of 'partial offsets' to key democratic problems confronting the European polity. Hence, a new dynamic tension between the promise of democratising the collectivity and the actual management of integration became manifest not only after Nice but, more important perhaps, because of Nice. For what the latter failed in the end to produce was not only a common democratic vision *per se*, but rather a belief that such a vision remains without reach at least for the foreseeable future. This criticism is justified further by perceiving the NIT as the product of a predominantly utilitarian, cost-benefit calculus among divergent interests, along the lines of a rationalist settlement. Moravcsik and Nikolaidis' assessment of the AMT is also indicative of the outcome of the Nice process, in that 'no amount of institutional facilitation or political entrepreneurship, supranational or otherwise, can overcome underlying divergence or ambivalence of national interests' (Moravcsik and Nikolaidis, 1999:83).

To the above one could add that it is hardly possible to introduce substantive democratic reforms without civic participation, now that the once unquestionable 'permissive consensus' cannot generate the necessary public commitment to an EU politics where 'the provision of public welfare is best met by through the process of elite-led, regional integration' (Bellamy and Warleigh, 1998:453). If anything, the exclusion of citizens from European governance, compounded by their lack of effective civic competence, is at the expense of popular fragmentation itself. But it is also against the interests of better equipping citizens to become agents of civic change: namely, a system-steering agency within a nascent pluralist order. The absence of this normative trend from the logic of recent reforms was exactly the opposite of what neofunctionalists had hoped to achieve: instead of politicisation becoming an additional weapon in the strategic arsenal of pro-integrationist forces, it is effectively employed by the more sceptical actors, making it difficult to achieve a democratic equilibrium between the EU and 'the civic'. Anything less would perpetuate a predominantly elitist operation that is detrimental to legitimate forms of governance, whereby the normative orientations of society are expressed through a principled public discourse. Like any other polity that aspires to democratic rule, the EU has to engage itself in a constitutive process based on a deliberative rather than aggregative model of governance. As Spragens tellingly warns us: 'Forgetfulness about important things can be dangerous' (Spragens, 1999:208). The making of a democratic European polity should counsel an end to that neglect.

