

DEMOCRACY-TALK IN THE EUROPEAN UNION: THE NEED FOR A REFLEXIVE APPROACH

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I. INTRODUCTION

The question of democracy in the European Union (EU or EC) has featured centrally in academic literature, as well as in policy related debates, since the 1990s. Issues such as the remaking of the European Union and its transition from technocracy to democracy, the effect of European integration on national democratic institutions and practices, and the "democracy v. efficiency" dilemma have all received much attention and will continue to do so in light of the forthcoming Intergovernmental Conference in 2004. However, the flourishing literature on Euro-democracy tends to rely very heavily on the national statist discourse of democracy in assessing and imagining the European polity. There is nothing necessarily wrong with this, provided that, on prior reflection, it has been concluded that the paradigms used are the appropriate ones. Owing to their distinctive historical pedigree, national statist paradigms may entail skewed angles of vision and biased frames of reference, which not only distort reality, but can also render democratic deficiencies at the European level invisible.

The aim of this paper is not to set out the main contours of the debate concerning the democratic deficit(s) of the European Union. Others have done this successfully. What I wish to argue is that the question of democracy in the European Union cannot be addressed adequately without first addressing the suitability of existing models of national democracy for the formation of the European polity, and perhaps without radically transforming these models. Because such models are premised on the ideals of consensus and stability, they are ill equipped to capture the dynamics of the construction of a European polity (Sections 1 and 2). By reflecting on the formation and development of the heterogeneous and contested polity of the European Union, I refute the assumption that consensus, be it over a set of shared meanings, civic values or the rules of the game, is a condition or a goal of democracy at either the national or supranational level, and that, in the absence of a basic set of shared assumptions, the web holding a community together will become unstrung (Section 3).

Although neither a constituent, homogeneous, European people nor an "overlapping consensus" on abstract principles, shared values or the rules of the game are necessary for a well-ordered, well-functioning, democratic European

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polity, it is both desirable and necessary that European institutional actors reflect seriously on the models of national-statist democracy they employ in the European setting and on the tensions, muddles and contradictions generated by co-existence of competing models of democracy even within a single instrument or a policy proposal. Paths for the democratization of the EU might be screened out by the selective use of certain models of democracy or by the contradictions and incoherencies that their unreflective blending may generate. I use a concrete example, the Commission's White Paper on European Governance (2001) to make my point (Section 4). More promising, I suggest, is the shift of attention from inherited models of democracy to avenues for democratization and to the encouragement of democratic practices. All this leads me to argue that we should, perhaps, rethink the paradigmatic literature on democracy and go "back to basics," if we wish to devise an adequate theory and practice of democracy for a plural and complex framework of governance, such as the European Union.

II. THE DEMOCRATIC PARADOX

Democracy is a contested concept. The "real world of democracy"¹ has also had a long history of turbulence and suspicion about genuinely democratic governance. As a substantive ideal, democracy, which is generally defined as rule by the people, has been intimately bound up with a number of principles and practices, such as liberty, equality,² social justice, active participation, good government, and cognitive and moral development. Yet as a particular form of government closely connected with the growth of competitive party politics and/or a procedure for making authoritative collective decisions, the aggregative conception of democracy becomes detached from its classical pedigree and from normative expectations. It refers to popular participation through the ballot box for the appointment of political elites. According to Schumpeter, democracy is "an institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote."³ Schumpeter's conception of democracy, however, has been seen as flawed and normatively objectionable. Competitive elections are an essential, but not sufficient, element of democratic governance⁴ and citizens are not simply "consumers" of the political spectacle.⁵ Proceduralist accounts of democracy, such as Schumpeter's, also entail a rather

1 The term is borrowed from Crawford Brough Macpherson, *The Real World of Democracy* (1966).

2 This entails both *isonomia* (i.e., equality before the law) and *isopoliteia* (i.e., having an equal share in ruling and being ruled, or having a fair say in society's deliberations and a fair share in the distribution of resources).

3 Joseph Schumpeter, *Capitalism, Socialism and Democracy* 269 (2d ed. 1947). Schumpeter's account was modelled on the neo-classical theory of price competition. But compare Kenneth Arrow, *Social Choice and Individual Values* 2-6 (2d ed. 1962) (questioning aggregative procedural mechanisms).

4 Compare Giovanni Sartori, *Anti-elitism Revisited*, 13(1) *Government & Opposition* 58-80 (1978).

5 See Anthony Downs, *An Economic Theory of Democracy* (1957). But compare Adam Przeworski, *Minimalist Conception of Democracy: A Defence*, in *Democracy's Value* 23-55 (Ian Shapiro & Casiano Hacker-Cordón eds. 1999) [hereafter Shapiro, *Value*] (defence of the minimalist conception of democracy).

narrow definition of the political sphere, put too much weight on the stability of the existing order, and ultimately squeeze out of democracy the notion of participation.⁶

Pluralists, deliberative democrats and radical democrats regard political participation as both desirable and necessary: it is a means of preventing concentration of power in the hands of public officials, an aid to self-development and a recipe for enriching political life. Whereas pluralists put emphasis on citizen involvement through a network of organized interest groups designed to ensure that policy outputs take their interests into account,⁷ deliberative democrats put the weight of democracy on its ability to generate communication and to enhance the formation of, reflection on, and transformation of preferences and interests through processes of deliberation.⁸ Deliberation features centrally in civic republicanism as well, since it holds the key to invigorating civil society and promoting "contestatory democracy."⁹ Finally, radical democrats praise strong democracy in the form of active and direct political engagement and value democracy's promise to empower subordinated groups and to disrupt asymmetrical power relations.¹⁰

Underlying the above-mentioned models of democracy are very different assumptions about the nature of the polity, the role of the citizen in it, the construction of subjectivity, the meaning of political membership and the purposes or ends of the community. Despite the divergence in their theoretical underpinnings and the conflicting answers they provide to important issues of political life, however, all these models contain what may be termed the paradox of democracy: the political system must be sufficiently complex, differentiated and disharmonious to require the pursuit and political management of the conflicting interests, opinions, disputes, etc.,¹¹ yet sufficiently homogeneous and harmonious for democracy to take root and survive. Democracy, allegedly, needs a set of shared meanings in order to

flourish.¹²

6 Carole Pateman, *Participation and Democratic Theory*, 17-21 (1970); Tom Bottomore, *Elites and Society* (1966); Peter Bachrach, *The Theory of Democratic Elitism* (1967).

7 To this end, institutional mechanisms for interest representation and the provision of checks and balances are essential. According to Dahl, a key characteristic of a democratic system is the continued responsiveness of the governance to the preferences of its citizens. Robert Dahl, *Polyarchy: Participation and Opposition* 1-9 (1971).

8 Diego Gambetta, "Claro!": An Essay in Discursive Machismo, *in Deliberative Democracy* 19, 21-22 (Jon Elster ed. 1998) [hereafter Elster, *Deliberative*]; Jurgen Habermas, *Between Facts and Norms: Contribution to a Discourse Theory Between Law and Democracy* 274-286 (William Rehg trans. 1998) [hereafter Habermas, *Between Facts*]; Amy Gutmann & Dennis Thompson, *Democracy and Disagreement* 5-7, 12-16 (1996); John Dryzek, *Political Inclusion and the Dynamics of Democratisation*, 90(3) *Am. Pol. Sci. Rev.* 475-487 (1996).

9 Philip Pettit, *Republicanism: A Theory of Freedom and Government* 277 (1997) [hereafter Pettit, *Republicanism*]; Philip Pettit, *Republican Freedom and Contestatory Democratisation*, *in* Shapiro, *Value*, supra note 5, at 163-190.

10 Benjamin Barber, *Strong Democracy: Participatory Politics for a New Age* 117-139 (1984); Iris Marion Young, *Intersecting Voices* 38-60 (1997); Iris Marion Young, *Inclusion and Democracy* (2000); Anne Phillips, *Engendering Democracy* (1991).

11 See James Madison, *The Federalist No. 10*; Bernard Crick, *In Defence of Politics* 18 (4th ed. 1992).

12 Seymour Martin Lipset, *The Social Requisites of Democracy Revisited*, 59 *Am. Soc. Rev.* 1-22 (1994) [hereafter Lipset, *Requisites*].

Homogeneity can take various forms and consensus can be of varying degrees, ranging from a common understanding of the public good to shared political values or to a mere agreement on some procedural organizing principles of society which form the common platform on which the conflicts of beliefs and interests are fought out.¹³ In the latter sense, what is required is an overlapping consensus on "constitutional essentials," that is, on the fundamentals of the institutional structure.¹⁴ Where such agreement is lacking, the prospects of the governability of the system apparently diminish. In the consociational model of democracy, too, the internal cohesion and homogeneity of segments and general acceptance of the principle of government by elite cartels are vital to the functional stability of societies that are divided by deep and reinforcing cleavages across ideological, ethnic or religious divides.

The thesis that democracy requires consensus (the maximalist position) or at least agreement on fair procedures and acceptance of the rules of the game by the citizenry and by political elites¹⁶ (the minimalist position), facilitates interest pluralism and the flourishing of competing conceptions of the good life. But it also implicitly relies on two assumptions which may be more problematic than they first appear: namely, that there exists a relatively stable background of settled cultural-cum-political norms and a "given" demos.

13 As Joshua Cohen stated, "the fact of reasonable pluralism may suggest that a procedural conception of democracy, limited to such values as openness and impartiality associated with fair process, is the only remaining option." Joshua Cohen, *Democracy and Liberty*, in Elster, *Deliberative*, supra note 8, at 192. Compare Stephen Holmes, *Passions and Constraint: On the Theory of Liberal Democracy* (1995). Compare also Pettit, *Republicanism*, supra note 9, at 277 (A contestatory mode of democratisation refers to practices and mechanisms that enhance participation by providing fora within which public decisions are open to review. On Pettit's account, democracy contains electoral and contestatory aspects).

14 John Rawls, *Political Liberalism* 227-30 (1993); Habermas, *Between Facts*, supra note 8, at 60-61. B. Parekh argues:

[P]olitical dialogue has a distinct structure and is not as inclusive and open-ended as is sometimes suggested. Commitment to it implies a willingness both to accept certain norms, modes of deliberation, procedures and so on and to live with and act on such consensus as the subject in question allows.

Bhikhu Parekh, *Rethinking Multiculturalism* 15 (2000).

15 Arend Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (2nd ed. 1975); Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration* 71-105 (1977).

16 Compare Cass Sunstein, *Legal Reasoning and Political Conflict* 41-46 (1996) (Sunstein discusses incompletely theorised agreements and argues that since judges' views diverge on high level propositions, they can reach agreements on particular outcomes at low-levels of generality. In an attempt to produce stability and agreement in the midst of disagreement, Sunstein sets out the standards of legal argumentation that should be employed by judges). For a critique of Sunstein's position, see Neil Duxbury, *Ambition and Adjudication*, 47 *U. Toronto L.J.* 161 (1997). Notable exceptions from the "consensus" thesis are Tully's and Connolly's agonistic conceptions of democracy. Both theorists view disagreement over the prevailing rules of recognition and distribution as an enduring feature of democracy. James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (1995); William Connolly, *The Ethos of Pluralization* (1995). Tully states:

[S]truggles over recognition, like struggles over distribution, are not amenable to definitive solutions beyond further democratic disagreements, dispute, negotiation, amendment, implementation, review and further disagreement. Recognition in theory and practice should not be seen as a telos or end state, but as a partial, provisional, mutual and human-all-too-human part of continuous processes of democratic activity in which citizens struggle to change their rules of mutual recognition as they change themselves.

James Tully, *Struggles over Recognition and Distribution*, 7(4) *Constellations* 469, 477 (2000). Compare Chantal Mouffe, *The Democratic Paradox*, in *Political Theory in Transition* (Noel O'Sullivan ed. 1999).

Both these assumptions are understandable if one considers two things: the enduring appeal of the Athenian city-state, and the importance of the nation-state as a setting for grafting representation onto democracy in modern times. The Athenian city-state was based on small and homogeneous polities underpinned by common interests and shared understandings of the good life. The classic Greek conception of democracy was the rule of the many sharing the same values and a common understanding of the common weal. Secondly, and more importantly, the grafting of representation onto democracy in modern times took place within the setting of western nation-states. Because modern democratic theory and practice has been built upon Westphalian foundations,¹⁷ heterogeneity in interests, opinions and preferences not only rests upon an assumed prior cultural-cum-political homogeneity, but is also elevated into a condition of possibility for a flourishing democracy.¹⁸

Liberalism has traditionally taken for granted the existence of bounded national societies that are relatively unified and homogeneous. As Requejo has argued, liberal theories are explicitly theories of the state and implicitly of a form of national communitarianism.¹⁹ National homogeneity can take the form of either pre-political commonalities, such as ethnonational traditions and beliefs (culture) or a civic community held together by shared beliefs and mutual commitments (civic nationalism). All institutionalized democracies have cultivated and relied on the above forms of homogeneity. Similarly, in democratic theory, there is the tendency to assume either the congruence of political and cultural communities or significant homogeneity in constitutional background and political norms. Such assumptions, however, conceal the existence of profound disagreements within political and cultural communities and understate the existence of conflict and opposition. Against this background, it is not surprising that the search for democratic innovation has shifted beyond the confines of institutionalized territorial democracies (e.g., Held, Walker, Linklater), and that certain theorists highlight the

17 David Held, *The Transformation of Political Community*, in *Democracy's Edges* 99 (Ian Shapiro & Casiano Hacker-Cordón eds. 1999) [hereafter Shapiro, *Edges*].

18 Compare Robert Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (1993)

(providing a theoretical description for the strong correlation between certain traditions in Northern Italy and a flourishing democracy); Lipset, *Requisites*, supra note 12, at 1-22. Miliband has remarked that pluralist theory operates within a framework of shared assumptions about the political system and the socio-economic structure of society. Ralph Miliband, *The State in Capitalist Society* (1968). According to Dahl, democratic political institutions are more likely to develop in a country that is fairly homogeneous with respect to culture. Robert Dahl, *On Democracy* 129 (1998). But Tully emphasises the irreducible agonistic dimension of democratic constitutional politics: "[D]emocratic agreement and disagreement takes place not only within the rules of the game, but also over the rules of the game from time to time." James Tully, *Radical Democratic Constitutionalism: A Critical Approach to Constitutionalism in Transition* (2001) (paper delivered at the Workshop on Constitutionalism in Transition, University of Leeds, on file with author).

19 Ferran Requejo, *European Citizenship in Plurinational States*, in *European Citizenship, Multiculturalism and the State* 29-49 (Ulrich Preuss & Ferran Requejo eds. 1998). One can simply recall here John Stewart Mill's contention that free institutions are next to impossible in a country made up of different nationalities. As he put it in his "Considerations on Representative Government," among a people without fellow-feeling, especially if they read and speak different languages, the united opinion which is necessary to the workings of representative democracy does not exist. John Stewart Mill, *Utilitarianism, On Liberty and Considerations on Representative Government* (H. B. Acton ed. 1972) (1910).

importance of an agonistic form of democracy that prioritizes disagreement over consensus (e.g., Connolly and Tully). This clearly demonstrates that our inherited ideal of democracy is essentially defined by hidden assumptions about the institutional arrangements and historically situated social practices that are seen to realise this ideal. These assumptions are then transplanted into other contexts and structure our thinking about democracy therein, concealing other interpretive options. Acknowledging this may hold the key to strengthening democracy within the statist setting and to enhancing democracy within the European setting.

III. UNITING THE FAMILIAR WITH THE NEW: DEMOCRACY-TALK IN THE EUROPEAN UNION

European developments have added another layer of complexity into the familiar paradox of democracy examined above. This owes much to the fact that the fundamental premises of national democracy are either absent or far from being settled in the European Union. A voluminous literature on Euro-democracy has sought to make sense of the puzzling issues that characterize the European polity in the making, such as the complex nature of the polity, its shifting territorial boundaries, the lack of congruence between territory and function, the absence of a fully fledged and homogeneous demos, its unsettled constitutional rules and procedures, and the unsettled policy competence.²⁰

And yet those who cling to national democracy and its requirements of a common identity or a shared sense of community regard democracy's outer edges as being coterminous with those of the national state.²¹ On this reading, democracy is almost impossible at the European level since Europe lacks a demos and a European communication system.²² The German Federal Constitutional Court in its Maastricht decision reached this conclusion by invoking an organicist conception of the demos.²³ If this view is taken seriously, then the EU suffers from a structural democratic deficit that cannot be remedied by institutional reforms. However, the organicist conception of the demos has been criticised by both Habermas and Weiler who envisage the formation of a supranational civic and value-driven demos designed to complement the national demoi.²⁴ This may fail to convince those who

20 Brigid Laffan, *The European Union Polity: A Union of Regulative, Normative and Cognitive*

Pillars, 8(5) *J. Eur. Pub. Pol'y*, 709-727 (2001); Albert Weale, *Democratic Legitimacy and the Constitution of Europe*, in *Democracy and Constitutional Culture in the Union of Europe* 103-120 (Richard Bellamy et al eds., 1995); Joseph Weiler, *European Democracy and its Critique*, in *The Crisis of Representation in Europe* 4-39 (Jack Hayward ed. 1995); Daniel Wincott, *Does the European Union Pervert Democracy? Questions of Democracy in New Constitutionalist Thought on the Future of Europe*, 4(4) *Eur. L. J.* 411-428 (1998) [hereafter Wincott, *Pervert Democracy*]; Joseph Weiler, *The Constitution of Europe* (1999); Larry Siedentop, *Democracy in Europe* (2000); Dimitris Chrysochoou, *Democracy in the European Union* (1998).

21 Ian Shapiro & Casiano Hacker-Cordón, in Shapiro, *Edges*, supra note 17, at 3.

22 Compare Dieter Grimm, *Does Europe Need a Constitution?*, 1(3) *Eur. L. J.* 282-302 (1995);

Dieter Grimm, *Braucht Europa eine Verfassung? (Does Europe Need a Constitution?)*, 50(12) *Juristenzeitung* 581-91 (1995).

23 See BverfGE 89, 155 (196, 210).

24 Jürgen Habermas, *Remarks on Dieter Grimm's "Does Europe Need a Constitution?"*, 1(3) *Eur. L.J.* 303-7 (1995); Joseph Weiler, *Does Europe Need a Constitution? Reflections on Demos, Telos and the German Maastricht Decision*, 1(3) *Eur. L. J.* 219-58 (1995); Joseph Weiler, *To Be a European Citizen - Eros and Civilisation*, 4(4) *J. Eur. Pub. Policy* 495-519 (1997).

believe that democratic politics is politics in the vernacular,²⁵ and are thus likely to defend the democratic deficit in the EU on the grounds that democratizing the EU would strengthen its supranational character thereby weakening democracy within the nation-state.²⁶

Doubts have also been expressed about the relevance of democracy to the European Union. Indeed, if the EU is viewed as a bureaucratic bargaining system, then the question of democracy is not apposite: size and complexity results in costs in democratic values, which can be outweighed by other gains, such as an output oriented legitimacy.²⁷ Majone's conception of the EU as a regulatory system leads him to argue that regulatory politics do not require the degree of democratic accountability that majoritarian politics do. This, of course, does not imply that no efforts should be made to enhance the accountability of non-majoritarian institutions and agencies.²⁸

At the other side of the spectrum are those who view the relationship between democracy and the nation-statist framework as a contingent one and discern the emergence of either postnational democracy or cosmopolitan democracy at the European level.²⁹ On this reading, the discourse and literature on the democratic deficit of the EU is not diagnostic of the European pathology. Instead, it could be seen as a reaction against the EU's success at highlighting the limitations of national democracy.

Two questions appear to be crucial in debates about the European Union's democratic deficit(s): first, which model of national democracy one subscribes to, for this functions as the baseline against which to judge the EU, and secondly, which model of democracy is seen to be appropriate to the European Union. There is a strong correlation between the two aspects, because the choice of the national standard is bound to have a decisive effect upon the model of democracy that is seen to be appropriate to the EU. But using existing models of national democracy unreflectively as the lens through which to evaluate European developments may be unhelpful for several reasons. First, it takes for granted that the models themselves have passed the tests of democratic governance. Second, it not only depicts the European and domestic arenas as distinct, but it also tends to exaggerate the democratic credentials of the former. Third, it results in a selective examination of

25 Will Kymlicka, *Citizenship in an Era of Globalisation*, in Shapiro, Edges, *supra* note 17, at 121.

26 Sverker Gustavsson, *Defending the Democratic Deficit*, in *Political Theory and the European Union* 63-79 (Albert Weale & Michael Nentwich eds. 1998); Sverker Gustavsson, *Reconciling Suprastatism and Accountability: A View from Sweden*, in *Democratising the European Union* 39-64 (Michael Newman & Catherine Hoskyns eds. 2000) [hereafter Newman, *Democratising*].

27 Robert Dahl, *On Democracy* 114-116 (2000); Fritz Scharpf, *Governing in Europe: Effective and Democratic?* (1999).

28 Giandomenico Majone, *Regulating Europe* (1996); Giandomenico Majone, *Europe's "Democratic Deficit": The Question of Standards*, 5 *Eur. L. J.* 5-28 (1998).

29 *Cosmopolitan Democracy* (Daniele Archibugi & David Held eds. 1995); Elizabeth Meehan, *Political Pluralism and European Citizenship*, in *Citizenship, Democracy and Justice in the New Europe* (Percy Lehning & Albert Weale eds. 1998) [hereafter Lehning, *Citizenship*]; Deirdre Curtin, *Postnational Democracy* (1997); Heidrun Abromeit, *Democracy in Europe: Legitimising Politics in a Non-State* (1998); Jo Shaw, *Process and Constitutional Discourse in European Union*, 27 *J. L. & Soc.* 4-37 (2000); Richard Kuper, *Democratisation: a Constitutionalising Process*, in Newman, *Democratising*, *supra* note 26, at 156-175.

those aspects of European governance and European institutions that are most likely to confirm or disprove a selective definition of democracy. Finally, it transplants statist and national assumptions at the European level, thereby portraying European integration as a quest for a federal statehood.³⁰ In this respect, it may be wise to rethink and re-evaluate the models of democracy derived from the theory and practice of states if we are to democratize the EU in the twenty-first century.³¹

The important question, then, is: how can we go about doing so and articulate an agenda for democratization in the EU? Shifting our attention away from questions concerning the democratic deficit(s) of the European Union and speculations about the prospects of Euro-democracy to strengthening democratic institutions and procedures at all levels of governance may be a solution. The question of democracy in the European Union then would become part of a much broader debate on multi-level democratization. A distinct advantage of this exercise would be that the question of democracy in the EU would cease to be derivative from and parasitic upon the European institutional context. Its main disadvantage, however, is that it evades the issue of devising an appropriate theoretical framework for democracy in the EU.

The basic argument advanced in this paper is that furnishing an adequate framework for European democracy requires a reflexive approach. We need to go back to the basics: to re-examine the "paradox of democracy" mentioned above and to devise accounts of democracy which replace the ideals of consensus and stability with those of dissent and reflexive governance. Although some may object that nobody would disagree with my call to be more reflective about the paradigmatic literature, the subsequent discussion will show that the precise steps that my re-interpretive approach entails call into question some standard assumptions about both democracy and the nature of European governance. Interestingly, it is in the intersection between these two areas that the answer to the democratization of the EU may be located. At the same time, however, having the opportunity to look at democracy through the experiment of European integration - as opposed to looking at European integration through models of national democracy - holds the key to the refinement of democratic theory per se. Such an opportunity should not be easily dismissed, for democratic theory and practice have evolved and developed in response to altered contexts.

IV. THE CENTRALITY OF ANTINOMIC CO-OPERATION IN EUROPEAN GOVERNANCE

The European Union is a complex and unique edifice. Good theorizing about democracy in the European Union needs to address its distinctive features. For example, the Community's founding Treaties (ECSC, Euratom and EEC) do not represent the crystallization of a unified and homogeneous constituent political will. Although the Community has its origins in international law, the founding of a "Community," that is, the inauguration of a framework of co-operation among states

30 Christopher Lord, *Democracy in the European Union* (1998). According to Wincott, "statist models contribute to the mis-diagnosis of the European Union's democratic disorder and therefore provide a flawed basis for prescribing a cure." Wincott, *Perverv Democracy*, supra note 20, at 474.

31 Michael Newman, *Introduction to Newman, Democratizing*, supra note 26, at 11.

and peoples, did not represent a way of "doing what comes naturally." Its architects took "a leap in the dark"³² and proposed a framework for integration that transcended the traditional framework of interdependence.

Anchored in the memory of war, the urgent need for post-war economic reconstruction, and against a background of popular movements championing federalist ideas, the European Community, in its early days, represented the organization of industrial sector communities setting up integration in limited, but vital, economic fields (i.e., coal and steel). The avowed objectives of the founders of the European Coal and Steel Community³³ included the prospect of a "European federation." The political dimensions of the integrationist framework featured in the Schuman Plan (1950): closer co-operation between France and Germany, would furnish a "broader and deeper community among peoples long divided by bloody conflicts."³⁴ Ensuring peace and prosperity in Europe³⁵ through a supranationalist experiment with no historical precedent has been a "master ideal" of the Community,³⁶ alongside ensuring undistorted competition in a barrier-free market, raising the standard of living, promoting social cohesion, etc.

Although European integration is oriented to the realization of these ideals,³⁷ the Community lacks a set of generalized shared beliefs concerning how to go about realizing these ideals, a clear conception of its development and the scope of its competences, a settled constitutional structure, etc. The Treaties make no reference to a shared political end, the ultimate telos of European integration. Questions about the nature and the end of European integration and the role and future of the state are thus the primary source of disagreement. Europe is a contested polity.³⁸

In this contested polity of crosscutting levels of decision-making, EC law does not reflect the consensus of competing constituencies. Instead, it delineates an evolving and ambiguous system of relationships. Both the incremental development of the human rights policy and the evolving constitutional framework in relation to the vertical division of powers attest to this. This rules out the application of a Rawlsian approach to the EU whereby we would have to assume that the European

32 Jean Monnet, *Memoirs* 305 (1978) [hereafter Monnet, *Memoirs*].

33 See Treaty Establishing the European Coal and Steel Community [hereafter ESCS], art. 5.

35 *Ibid.*

34 See ESCS, *supra* note 33, at preamble.

36 The term is borrowed from Philip Selznick, *Sociology and Natural Law*, 6 *Nat. L. F.* 84-108 (1961). For a critical discussion of the ideals of the Community, see Joseph Weiler, *Fin de Siecle Europe (Europe at the Turn of the Century)*, in *Europe After Maastricht: An Ever Closer Union* 203-216 (Renaud Dehousse ed. 1994).

37 One can view the "master ideals" of the Community as signposts or road maps. On this, see Zenon Bankowski & Emiliios Christodoulidis, *The European Union as an Essentially Contested Project*, 4(4) *Eur. L. J.* 341, 342 (1998) [hereafter Bankowski, *Contested Project*]. On the member states' divergent preferences over the institutional structure of the Coal and Steel Community, see B. Rittberger, *Which Institutions for Europe? Explaining the Birth of a Unique Institutional Structure* (2001) (paper presented at the European Community Studies Association 7th Biennial International Conference, May 31- June 2, Madison, WI USA, on file with author); Joseph Weiler, *The Constitution of Europe* 238-245, 259-262 (1999) (Weiler argues that the European Union suffers from a "crisis of ideals").

38 Bankowski, *Contested Project*, *supra* note 37, at 342; Thomas Banchoff & Mitchell Smith, *Introduction to Legitimacy and the European Union: The Contested Polity* (Thomas Banchoff & Mitchell Smith eds. 1999).

legislative process does not involve fundamental disagreements about matters of principle, for these have been settled at an earlier stage.³⁹ Nor can it be argued that an agreement about the norms of deliberation is what binds the Community together. Moments of crisis in the European integration process, such as the failure of the European Defence Community or the Empty Chair Crisis in 1965, highlight the fact that the norms of deliberation themselves can be the subject of much contention, thereby leading to a renegotiation of the rules of the game.

If I am correct on this, then the European Community cannot be analyzed as a community like any other. Its operation disproves Hayek's argument that democracy can only work in the long run if the great majority has in common at least a general conception of the type of society desired.⁴⁰ The master ideals of the Community form a "fuzzy" presuppositional framework within which the actors declare their willingness to engage in a process of devising the rules and terms of their interaction without presupposing commonalities, common interests, shared beliefs about the common good and shared dispositions. The European Community is not a complete, homogeneous and unified body governed by a set of closed, coherent and definite rules. Although Monnet was correct to state that the union of Europe cannot be based on goodwill alone and that nothing lasts without institutions,⁴¹ it is interesting that both the scope and nature of these rules continue to be the subject of debate. For example, national constitutional courts have not unconditionally accepted the principle of the supremacy of the Community law.⁴² The debates concerning the meaning and justiciability of the principle of subsidiarity in post-Maastricht Europe and on the meaning and implications of flexibility in post-Amsterdam Europe also confirm this.⁴³ The grammar of the Community legal order thus remains incomplete, contested and unsettled.

The European Court of Justice (ECJ) has made a vital contribution to furnishing the basic tenets of this grammar. In *Van Gend Loos*, it pronounced that the Community constitutes a new legal order of international law, and subsequently it held that the Treaty of Rome constitutes the constitutional charter of a Community based on the rule of law.⁴⁴ The ECJ has also adjudicated numerous inter-institutional

39 For a critique see Jeremy Waldron, *The Dignity of Legislation* 71 (1999).

40 Friedrich Hayek, *The Constitution of Liberty* (1960).

41 Monnet, *Memoirs*, supra note 32.

42 See *Internationale Handelsgesellschaft mbH v. Einfuhr - und Vorratstelle für Getreide und Futtermittel*. Case 11/70, 1970 E.C.R. 1125; *Raul Georges Nicolo* [1990] 1 C.M.L.R. 173; *Brunner v. The European Union Treaty*, [1994] 1 C.M.L.R. 57; *Frontini v. Ministero delle Finanze*, [1974] 2 C.M.L.R. 372.

43 On subsidiarity, see Akos Toth, *A Legal Analysis of Subsidiarity*, in *Legal Issues of the Maastricht Treaty* 37, 39 (David O'Keefe & Patrick Twomey eds. 1994) [hereafter O'Keefe, *Maastricht*]; Jo Steiner, *Subsidiarity under the Maastricht Treaty*, in O'Keefe, *Maastricht*, supra, at 49, 55; N. Emiliou, *Subsidiarity: An Effective Barrier Against the "Enterprises of Ambition"?*, in O'Keefe, *Maastricht*, supra, at 65, 68. On flexibility, see Claus-Dieter Ehlermann, *Differentiation, Flexibility, Closer Co-operation: The New Provisions of the Amsterdam Treaty* (1998); Jo Shaw, *The Treaty of Amsterdam: Challenges of Flexibility and Legitimacy* 4(1) Eur. L. J. 63-86 (1998); Neil Walker, *Flexibility within a Metaconstitutional Frame: Reflections on Flexibility and Europe's Future*, in *Constitutional Change in the EU: From Uniformity to Flexibility?* 9 (GrAinne de Burca & Joanne Scotteds. 2000).

44 *Van Gend & Loos v. Nederlandse Administratie der Belastingen*. Case 26/62, 1963 E.C.R. 1, 23; *Parti Ecologiste 'Les Verts' v. European Parliament*. Case 294/83, 1986 E.C.R. 1339, 1345; *Opinion 1/91 (Draft Treaty on a European Economic Area)* (1991) E.C.R. I-6079, [1992] 1 C.M.L.R. 245.

conflicts and helped delineate the powers and prerogatives of the institutions on the basis of the principle of institutional balance. In the *Isoglucose* cases, the Court established the European Parliament's (the Parliament) participation in the legislative process through consultation,⁴⁵ and in the *Chernobyl* case⁴⁶ it gave the Parliament standing to challenge the acts of the other institutions under Article 230 EC in order to protect its prerogatives, thereby reversing its earlier position.⁴⁷ All this disproves the argument that democratic politics can be deeply satisfactory only to the extent that fairly clear normative standards are accepted by the participants at the outset, just as overarching rules are required to enjoy playing games.⁴⁸

Additionally, unlike modern liberal communities, the Community is neither a community of shared ends nor a community of destiny.⁴⁹ European integration is a process and an adventure. It is akin to a conversation that evolves endlessly as the parties engage in a collective quest for community. And although the conversation does not mean the same thing for everyone at the same time, since domestic constraints inform state preferences and shape the various interpretations of the European output, it is, nevertheless, shared. As Preuss has put it, "the dynamic character and the openness of the European Union require a constitutional framework which does not fix boundaries to the evolution and self-transformation of the Union - boundaries of objectives and of competences - but provides appropriate institutional schemes with the help of which the deliberations about the next step of the political transformation can be performed and the changes, if considered necessary and desirable, can be accomplished."⁵⁰ The ongoing and open-ended European conversation,⁵¹ however, has to be conducted within the context of a culturally heterogeneous political community that is open to disagreements, critique, new ideas, and cultural collisions.

It is true that strong disagreements and dissent often put pressure on the delicate institutional balances of the Community, and conflicts on the policies of the EU often take the form of conflicts on the EU itself in national arenas. Intergovernmental reflexes have also exercised a strong hold on the trend towards supranationalism in the 1990s. In addition, the forthcoming enlargement is bound to accentuate pressures for differentiated and asymmetrical solutions. At the same time, however, the constituent units demonstrate a deep commitment to continued cooperation and to the joint creation of common, albeit contested, institutional realities. The absence of either some kind of consensus over the final shape of the Union, or

45 *Roquette Freres v. Council*. Case 138/79, 1980 E.C.R. 3333. *Maizena v. Council*. Case 139/79, 1980 E.C.R. 3393.

46 *European Parliament v. Council (Chernobyl)*. Case 70/88, 1990 E.C.R. I-204 I.

47 *European Parliament v. Council*. Case 302/87, 1988 E.C.R. 5616.

48 See Jon Elster, *The Foundations of Social Choice Theory* (Aanund Hylland ed. 1986).

49 Paul Howe, *A Community of Europeans: The Requisite Underpinnings*, 33(1) *J. Common Mkt. Stud.* 27-46 (1995); Paul Howe, *Insiders and Outsiders in a Community of Europeans: A Reply to Kostakopoulou*, 35(2) *J. Common Mkt. Stud.* 309-14 (1997).

50 Ulrich Preuss, *The Constitution of a European Democracy and the Role of the Nation-State*, 12(4) *Ratio Juris* 417, 427 (1999).

51 Jo Shaw, *Postnational Constitutionalism in the European Union*, 6(4) *J. Eur. Pub. Policy* 579, 79-97 (1999).

an agreement over a common set of determinate values⁵² is counterbalanced by a strong commitment on behalf of the constituent units to co-operation, in the sense that "we are all in this together and we will collectively shape this process by designing appropriate institutions and common rules."⁵³ The European political community is a community of concern and engagement.⁵⁴ It is perhaps the member states' awareness of the indispensability of their involvement in the European collective adventure - and not their conviction that "Europe" will produce answers or solutions on which all will agree⁵⁵ that leads them to comply with even those European norms that conflict with conventional understandings and settled traditions in domestic arenas.

The delicate balance between co-operation and antinomy (antinomic co-operation) can be seen in the following table which outlines the prospects for democratic governance.

TABLE OMITTED

The opportunities for democratic governance are higher when co-operation is relaxed and antinomy is strong. Too much emphasis on co-operation will lead to the obliteration of antinomy and will thus undermine the maintenance of a democratic community. On the other hand, enhanced voice must be accompanied by the awareness that the parties have embarked upon a common quest for understanding and designing institutions that accommodate conflicting interests and meet both common and distinct needs-rather than a quest for a "common weal" or a "common good." It is precisely this awareness that binds the units together and makes outside options unappealing. In sum, the art of European association requires antinomic co-operation.

A prominent and rather permanent feature of the incipient political culture of the EU is the politics of "becoming." Unlike its constituent units, the member states, the European Community is a community of multifarious minorities whose perspectives, interests and opinions are equally legitimate. The process of collective collaboration of diverse political communities cannot but induce fundamental changes and facilitate an awareness of both the contestability and relativity of their own positions, assumptions and beliefs. For the same reason, European institutions are characterized by conditionality and reflexivity; they recognize their cognitive and coercive limits, seek to accommodate multiple and often contending visions

⁵² Percy Lehning, *European Citizenship: A Mirage?*, in Lehning, *Citizenship*, supra note 29, at 175-99. Compare Larry Siedentop, *Democracy in Europe* (2000) (arguing that there is need for a "moral consensus" or a common "culture of consent" in the European Union).

⁵³ Theodora Kostakopoulou, *Towards a Theory of Constructive Citizenship in Europe*, 4(4) *J. Pol. Phil.* 337-358 (1996).

⁵⁴ Theodora Kostakopoulou, *Citizenship, Identity and Immigration in the European Union: Between Past and Future* 102-127 (2001).

⁵⁵ See Neil Walker, *Sovereignty and Differentiated Integration in the European Union*, 4(4) *Eur. L. J.* 355, 374 (1998) (Walker has argued that the present pattern of differentiated integration has evolved as a result of a series of strategic compromises and gambits, policy-driven sectoral initiatives, and accommodations of new geopolitical forces).

even within a single provision or a legislative instrument and, more importantly, their output is open to review and renegotiation. Contestation is thus as much as a discursive process as an institutional fact. Disagreements and conflicts do not have a fleeting quality; they do not evaporate when Treaty amendments are agreed or secondary legislation is published in the Official Journal. Rather, they continue as much after deliberation as during and before it. And European Community law serves as a surface for the inscription of disagreement and strife as well as a medium for the co-ordinated management and maintenance of dissent and antinomy. But this does not make the European Community democratically unstable or disorderly. On the contrary, it makes it precisely what it is: a community of antinomic co-operation and a site for reflexive governance.

V. REFLEXIVE GOVERNANCE AND COMPETING MODELS OF DEMOCRACY IN THE EUROPEAN UNION

A. The White Paper on European Governance: A Deliberative Bricolage?

Reflexive governance refers to the persisting interaction of different rationalities rather than to their reconciliation. Reflexive governance does not aim at consensus building. Rather, its aim is to design and redesign institutions that meet the various needs, to renegotiate rules and strategic collective action frames, to embark upon the constant monitoring and examination of policies, to set new goals, etc. Giddens has defined institutional reflexivity as the process whereby policies are constantly monitored and the dynamic of the interaction between the institution and its environment are seriously taken into account, thereby leading to the incorporation of external demands, suggestions and viewpoints.⁵⁶ Even though the European Union is an ideal site for reflexive governance, owing to its close linkages with and exposure to many external environments, the absence of a constituent European people united by shared interests and shared culture, and the lack of an "overlapping consensus" on principles, rules or a set of meanings (see sections 2 and 3), institutional reflexivity often leads to reflexive closure. Reflexive closure occurs when there is a lack of serious reflection on the (national-statist) models of democracy used by European institutional actors and the muddles, tensions and contradictions generated by the presence of competing options of democracy even within a single document. Owing to the tensions generated by the co-existence and unreflective use of national models of democracy in the European setting or the mere selectivity of the inclusion, avenues for democratization of the EU may be rendered invisible. A more promising approach would be for European institutional actors to shift the focus of attention from (national-statist) models of democracy to practices of and paths for democratization.

A good example of the problems generated by the unreflective use of models of democracy and the tensions created by the existence of competing models of democracy is the Commission's White Paper on European Governance (hereinafter White Paper), which was published on 25 July 2001. True, the White

⁵⁶ Anthony Giddens, *Consequences of Modernity* (1990).

Paper filters out strong disagreements among the various European institutions about the institutional make up and the appropriate competences of the Community, but it has not managed to iron out competing democratic aspirations and conflicting perspectives about the role of the citizen in European governance.⁵⁷

The White Paper could be seen as both a marker of a "deliberative turn" in European affairs by seeking to engage, enhance and extend the participation of civil society and the continuation of the old, functionalist logic of "bringing Europe closer to its citizens." As the Commission's work program for the White Paper had stated: "if people are ever to aspire to sharing membership in and the objectives of a wider Europe, then they need to feel on top of how the Union of 15 is run and take part in discussing and debating the directions of its policies".⁵⁸ By making the process of EU policy-making more open and inclusive, and by encouraging the involvement of "civil society" and local and regional authorities, people are more likely to feel that they are part of Europe. Accordingly, the final White Paper identifies five principles that underpin "good governance": openness, participation, accountability, effectiveness and coherence.⁵⁹ The Commission defines governance as "the rules, processes and behaviour that affect the way in which powers are exercised at the European level, particularly as regards openness, participation, accountability, effectiveness and coherence."⁶⁰

Although the Commission notes that each principle "is important for establishing more democratic governance" and that "they underpin democracy and the rule of law in the Member States"⁶¹ the centre of gravity of the White Paper has shifted from democracy and European identity to ensuring more inclusive input of groups in policies that affect them (the principles of openness and participation), more accountability of European institutions and tackling the performance aspect of the social legitimacy deficit of the EU (the principles of effectiveness and coherence). This discursive shift is significant in that it signals that the Commission's commitment to making the EU less elitist and technocratic by involving the civil society does not entail a program of radical reform of European governance and the adoption of a genuinely participatory model of democracy. Nor does it sketch an institutional framework for "multi-level partnerships" both vertically and horizontally. Rather, participatory democracy is used instrumentally in order to enhance the acceptability and effectiveness of European policy output.

57 European Commission, White Paper on European Governance, COM (2001) 428 final (June 2001) [hereafter White Paper]. For an assessment of White Paper, see Adam Cygan, The White Paper on European Governance - Have Glasnost and Perestroika Finally Arrived in the European Union?, 65(2) Mod. L. Rev. 229-240 (2002); Daniel Wincott, The Commission and the Reform of Governance in the EU, 39(5) J. Common Mkt. Stud. 897-911 (2001); Christian Joerges, "Economic Order" - "Technical Realization" - "The Hour of the Executive": Some Legal Historical Observations on the Commission White Paper on European Governance, Jean Monnet Working Paper No. 6/01 (2001), available at <http://www.jeanmonnetprogram.org/papers/01/012201.rtf> (last visited Apr. 23, 2003). See also Kenneth Armstrong, The Rediscovery of Civil Society in the Production of Governance, Paper presented to 2001 ECSA International Conference, Madison, Wisconsin.

58 Laura Cram, Governance to "Go": Domestic Actors, Institutions and the Boundaries of the Possible, 39(4) J. Common Mkt. Stud. 595-618 (2001), citing European Commission, Enhancing Democracy in the EU, White Paper on European Governance, Commission Staff Working Document, SEC (2000) 1547/7 final, 11 October, at 5.

59 White Paper, supra note 57, at 10.

60 Ibid. at 8.

61 Ibid. at 10.

Clearly, the White Paper is underpinned by an instrumental strategy coupled with a communicative strategy seeking to increase the social legitimacy of the EU. Accordingly, the specific proposals it makes have to be seen in the context of sustained efforts to promote the overall performance, effectiveness and ultimately the popularity of EU policies and actions. It is certainly the case that the Commission is puzzled by the feeling of alienation about the Union's work, the perceived inability of the Union to tackle important social issues, the fact that beneficial acts of the Union are rarely attributed to it, the "scapegoating" of Europe in national arenas and the general lack of knowledge about EU affairs.⁶² It believes that involvement and participation hold the key to reducing the social legitimacy of the Union. But the participatory model of governance, which the Commission has in mind, does not call into question the intergovernmentalist character of the EU and is limited to eliciting the involvement of organized groups or "interested parties"-and not to stimulating civic involvement. This explains the absence of reference to issues such as European political parties, EU-wide referenda, or the right of EU citizens to be consulted. Nor does the White Paper envisage a central role for national legislative bodies in EU governance. Its proposals are very modest. After all, it states that "the Union's credibility will eventually be judged by its ability to add value to national policies and address people's concerns more effectively at the European and global level".⁶³

Although it may be objected here that the aim of the White Paper is to suggest changes in the way the Union works under the existing Treaties-and not to propose radical institutional reforms, the crux of the point is that this "event-oriented" reflection (i.e., in light of the 2004 Intergovernmental Conference) appeases national sensitivities by failing to provide genuine innovations and alternatives to established practices and routines. For instance, in the Commission's opinion, refocusing EU institutions and policies requires promoting coherence in EU policies; setting long-term objectives and guarding them against short term thinking; calling on the Council to develop its capacity to co-ordinate all aspects of EU policy both in the Council and at the national level, thereby enabling the European Council to establish and follow more long-term strategic orientations; calling on the European and national Parliaments to be more active in stimulating public debates on the future of Europe and its policies; and proposing an institutional mechanism whereby both the Parliament and the Council can monitor actions of the Commission rather than just the Council, as it is the case under article 202 EC.⁶⁴ Clearly, the intergovernmentalist and elitist conception of democracy characterizes the Commission's thinking on "refocusing EU institutions." Such proposals are likely to have limited impact and will not democratize the EU's constitutional architecture. In addition, the section of the White Paper devoted to the EU's contribution to global governance is disappointingly thin and vague in the institutional recommendations it makes.⁶⁵ The benefits of state action are

62 Id. at 7.

63 Id. at 9.

64 Id. at 28-31.

65 Id. at 26-27.

emphasized in the section of the White Paper concerning "better policies, regulation and delivery".⁶⁶ In particular, the Commission intends to limit its proposals for primary legislation to essential elements and argues that legislation need not be the only means of increasing regulatory efficiency.⁶⁷ To this end, the Commission encourages more creative use of different policy instruments, such as combining binding and non-binding legislative tools, the use of the framework of co-regulation and the open method of co-ordination.⁶⁸ However, without the Parliament's involvement, the open method of co-ordination tends to be an intergovernmental mode of co-operation centred on the exchange of best practices, the setting out of common targets and guidelines for the member states and national action plans.

And yet, although the elitist model of democracy is not seriously called into question by the Commission's above mentioned proposals, the influence of the promise of deliberative democracy and reflexive European governance is evident in the sections of the White Paper devoted to improving involvement in shaping and implementing EU policy as well as the quality and implementation of EU policies. Engaging in a reflective review of the adopted policy instruments and "encouraging a stronger culture of evaluation and feedback" is seen as essential to improving the quality and effectiveness of regulatory acts.⁶⁹ In the same vein, opening up policy-making to make it more inclusive and accountable, and boosting confidence in the expert advice that informs policy by publishing guidelines on the collection and use of expert advice,⁷⁰ promise to improve the quality of European legislation.

The Commission's traditional neo-pluralist strategy with respect to interest mediation is complemented by measures designed to boost citizen participation by giving citizens greater access to information on European issues. The Commission recognises the need for an active communicative strategy: "providing more information, and more effective communication are preconditions for generating a sense of belonging to Europe. The aim should be to create a transnational 'space' where citizens from different countries can discuss what they perceive as being the important challenges for the Union."⁷¹ To this end, it announces its commitment to EUR-LEX, the website which will enable citizens and residents to follow instruments through the various stages of decision-making. Although Weiler believes that EUR-LEX could serve as "the starting point for the emergence of a functioning deliberative political community",⁷² a far more significant indication of the Commission's intention to take deliberative democracy seriously and to promote reflexive governance is seen in its proposals for multi-level partnership with local and regional democracy and the involvement of civil society.⁷³ As regards the former issue, the White Paper praises the virtues of an anticipatory style of policy formation, which takes into account regional and local demands and seeks a

66 Id. at 18-26.

67 Id. at 23.

68 Id. at 20.

69 Id. at 22.

70 Id. at 19.

71 Id. at 12.

72 Joseph Weiler, *The European Union Belongs to its Citizens: Three Immodest Proposals*,

22 *European Law Review* 150 (1997).

73 White Paper, *supra* note 57, at 11-17.

dialogue with subnational authorities. And although the member states have principal responsibility to involve regional and local actors in preparing their positions on EU policies, the EU could complement and further enhance subnational involvement by engaging in dialogue with subnational government, establishing tri-partite contracts, involving the member states, the Commission and the local and regional authorities to achieve targets and objectives defined in primary legislation, and welcoming a more proactive Committee of the Regions.⁷⁴ There are good reasons to believe that such a multi-level partnership, which provides the framework for the systemic interaction of different rationalities, will make EU governance more reflexive and responsive. However, further guarantees that member states will not participate symbolically, that is, without exerting any actual influence, must also be provided.

In conclusion, although the Commission calls for building a stronger partnership with civil society, there are no guarantees that better and wider consultation will lead to an endogenous change of the preferences of European actors resulting from communication. Rather, "better consultation complements, and does not replace, decision-making by the Institutions".⁷⁵ This also entails the risk of co-optation of the participant interest groups. Moreover, EU institutions remain the key initiators of processes of "partnership," which are confined to sectoral groups. Notwithstanding these limitations, the proposed inclusive approach to the formation and implementation of EU policies, the creation of a culture of consultation and dialogue, and the development of partnership arrangements will increase the normative power of the EU and should generate interest and trust in European institutions. However, genuine commitment to reflexive governance and multilevel-partnership requires institutional reforms, which go beyond the narrow proposals suggested by the White Paper. More importantly, it requires the acknowledgement of the tensions generated by the co-existence of deliberative democracy and elitist and technocratic models of democracy in the White Paper. Otherwise, the potential pitfall of the Commission's deliberative approach to European governance is that the recommendations it makes may be perceived as substitutes for Euro-democracy rather than its aid.

VI. CONCLUSION

If we are to take the task of democratizing the European Union seriously, be it in the sense of strengthening recent institutional reforms, or perfecting and deepening democracy in certain areas, or making the transition to democracy in other areas, then we need to reflect on the models of democracy we use in order to theorize and measure democracy at the European level. Quite often lens-shaped problems either create an "apparent democratic deficit effect," or magnify or even conceal crucial deficiencies of democracy in institutional design and practice. The main rationale of this paper has been to show that the European democracy question cannot be addressed adequately without first addressing the suitability of existing

⁷⁴ Id. at 13-4.

⁷⁵ Id. at 16.

models of national democracy for the European polity in formation, and perhaps without radically transforming these models. Premised on the ideals of consensus and stability, such models are ill-equipped to capture the process of the formation of a community at the European level in which there are strong disagreements about the type of community desired and its scope, divergent interpretations of civic values, an incomplete legal grammar, and contested rules. The European political community has been created and is being sustained through practices of antinomic co-operation. Such practices of antinomic co-operation presuppose neither the presence of a constituent European people, nor the existence of a relatively stable background of settled cultural-cum-political norms. Although it has long been assumed that the latter are necessary conditions of democracy, the process of European integration has shown that democratic processes and institutional design do not need consensus, be it over a set of meanings, or a set of principles or the rules of the game, in order to advance.

They do need, however, a more serious effort on the part of European institutional actors to engage critically with the national-statist frames of reference they use, to reflect seriously on the models of democracy they employ at the European setting and their tensions, competing demands and contradictions, and to direct their focus towards the search for avenues for democratization in the EU, rather than insisting on a particular notion of democracy or blending several notions of it.

Essential as they are, solving the "paradox of democracy" and shifting the focus from the inherited models of democracy to democratization are not the only relevant criteria for devising a complex model of democracy beyond the nation-state. Ensuring fairness in representation, rethinking the model of representative democracy itself, introducing mechanisms to improve the responsiveness of the system, and searching for institutional devices that improve the citizens' inclusion in the policy process - including their ability to initiate legislation and Europe-wide referenda, are equally important. Nothing I have said in this paper should be taken to imply that the search for a postnational model of democracy that is suited to the evolving European experimental community is an easy task.⁷⁶ However, it seems to me that two ingredients are necessary for any significant advance. First, we need to identify problems, to understand the bias of our frames, to search for solutions beyond the confines of existing models of national democracy, and to be more imaginative in the design of mechanisms to control political power and to enhance citizen participation. Secondly, it would be wise to abandon the logic of the "eclipsing binaries" of the EU and the state, and to embrace the democratization of institutions and sociopolitical life both vertically, that is, at all levels of governance, and horizontally.

76 See Edgar Grande, *Post-national Democracy in Europe, in Democracy Beyond the Nation-State? The European Dilemma and the Emerging Global Order* 115-138 (Michael Greven & Louis Pauly eds. 2000).