10

The democratization of the European Union

Theoretical and historical aspects

Mario Telò

1 Introduction: European democracy within the state and among the states

European history is the cradle of both the idea and practice of democracy as well as several different concrete typologies and theoretical models of democracy. Any rhetoric would be misplaced when talking about a continent that was also the birthplace of dictatorship, wars and imperialism. However, what seems relevant to this report is that democracy was born in Greece on the city scale ('polis'), before and independent from the nation-state; only since the English and French revolutions have the first alternative experiences of parliamentarian regime and domestic democracy been implemented within the framework of the modern nation-state. During the 19th and 20th centuries, democracy as government by the majority developed also at the civil society, free citizen associations and local communities levels, which provided democracy with a broader, multifaceted and multi-actor understanding, including procedures, values, communication and the public sphere. Other continents have a significant record of democratic life, too; however, what is particularly pertinent to this study is that Europe is recognized as the most advanced laboratory of international and supranational democracy, i.e. democracy among the states and beyond the state.

Regarding past experiences of democracy at the local and national levels, European history contains several models according to international literature: the Greek model of participatory democracy; British democracy based on the separation of powers and representative body; the French model of democracy as an expression of the people's sovereignty. To this we should add the Scandinavian model of 'organized democracy' with the participation of social partners (according to Gunnar Myrdal), a result of the 20th-century experience. All these experiences have influenced the development of the idea and practice of a supranational democracy for the European continent in various ways and to various extents. However, in his classic ideal-typical definition of democracy, Robert Dahl, in addition to the 'populist' and 'polyarchical' models, also included the US model,[1] even if its Madisonian model differs from the one that influenced the first decades of European constitutionalism (Hamiltonian federalism).

These models, with the sole partial exception of that of the USA, were conceived at the local and national levels. They were and are underpinned by internal forces and traditions in addition to interplay with external constraints and an evolving international environment, where democratic rules and procedures were totally missing. Even in the US context, the Republican dilemma of the first decades was precisely to ensure domestic democracy and rule of law while providing the citizens with security within a Westphalian international system.[2]

Besides some similarities with the US case, European supranational democratization emerged as an innovative and *sui generis* third layer of governance between domestic democracies and an international system still based on hierarchies and bipolar/multipolar power relations. The need to develop and deepen this third level of democratization is rooted in two key long-term processes affecting its interplay with national and local democratic systems.

On the one hand, the achieved democratic autonomy within the nation-state was and is seriously challenged by the internationalization of domestic activities, the intensification of various economic, financial, humanitarian, social, ecological, political and cultural decisions within an increasingly interdependent world. As David Held argues, we are witnessing the alteration of the quality of the modern sovereign state by

international and transnational relations (Held 2006, 303). However, the regional level[3] should not be confused with the global level. A third level of democratization seems to be complementary to the national/local and cosmopolitan level, but it is a distinct layer of governance characterized by distinctive problems of legitimacy and efficiency.

On the other hand, in most cases, either the internal fragility of some national democracies burdened by the vicissitudes of the 20th century or the shared need to face pressures from external threats and common challenges, made it necessary to support domestic democracy through a favourable external regional institutional framework.

It is a fact that during the second half of the 20th century, after the two world wars and especially after the end of the Cold War, a multilayered network of international organizations was created and strengthened in Europe with two main objectives:

- coping with the risks and opportunities of an increasingly global interdependence by improving regulation at regional levels; and
- facing the dangers of 'façade democracy' and 'standards degradation' at the national level by monitoring democracy implementation and consolidation within the member states.

This institutional supranational network covering varying memberships is characterized by shared democratic values and procedures, while covering a diverse geometry of countries (from 17 for the economic and monetary union (EMU), to 28 for the European Union (EU), up to the 56 members of the Organization for Security and Co-Operation in Europe (OSCE)). Their respective significance varies considerably according to the competencies provided by member states and the magnitude of the budget. However, through their co-ordinated action they create a common institutional and legal space defending and protecting human rights, the rule of law and democratic procedures throughout the whole continent:

- The Council of Europe[4], in charge of supporting democracy, the rule of law and human rights at the pan-European level and of monitoring the respect of the European Convention on Human Rights through the European Court of Strasbourg.
- The OSCE,[5] successor organization of the Conference for Security and Cooperation in Europe (CSCE, based on the 'Helsinki Charter' of 1975), through its pan-European 'Charter of Paris for a New Europe (1990)' and its consolidation as a formalized organization, enhanced the triple task of ensuring co-operation and dialogue in the economic, security and civil life fields, including the monitoring of democratic elections within members states.
- Over its 60-year history, the EU[6] has increasingly been linking its internal democratic life to its role of international democratizer. The reference of the European Communities (EC) EU treaty to democratic values and notably Arts 6 and 7 of the Treaty on European Union (TEU) punishing enduring violations of human rights, rule of law and democracy by a member state and the 'Copenhagen criteria' for European Union membership established by the European Council in 1993 are the basis of its international credibility as a democratic entity. However, this chapter will show how its relatively high degree of effectiveness and democratic legitimacy depends on the dynamic balance between the EU as a regional set of multilateral intergovernmental regimes and the EU as a supranational entity.

This democratic framework has been historically successful as far as the democratization process is concerned and for decades has deserved international attention. It provides an external environment making consolidation of internal democratization—notably during Huntington's 'second and third waves'—easier and more sustainable. However, the degree of binding power varies according to the different organizations and, as a consequence, the efficiency as well. After the successful enlargement from six to 28, further widening its member states, all observers place the EU at the top of the ranking.

The following examples illustrate extremely significant achievements:

- The post-fascist democratic regimes revived after the Second World War in Italy and threatened mostly by domestic terrorism: Italy, Germany and Austria or in the 1970s, Greece, Portugal and Spain would have been more unstable and fragile without the stabilizing framework provided by the EC/EU in collaboration with other European organizations.
- The post-communist democratic transition, which successfully took place after 1989 in Poland, Hungary, the Czech Republic, Slovakia, Slovenia, Estonia, Latvia, Lithuania, Romania and Bulgaria, has been openly supported and both legally and financially supported by European Union policies (pre- and post-full membership), and the monitoring of the above-mentioned pan-European organizations.
- The democratization process currently underway in a larger circle of neighbouring countries, members of the pan-European organizations and (mostly) candidates or would-be candidates to EU membership (and thus framed by the so-called Copenhagen criteria): the Western Balkans (Croatia, Bosnia-Herzegovina, Serbia, Montenegro, Macedonia and Albania) and Turkey; Russia and the former members of the Union of Soviet Socialist Republics (USSR), including the Caucasus region, Ukraine and Moldova.

Pre-accession programmes, special partnership agreements and, most recently, the European Neighbourhood Policy make the EU a comparatively efficient democratizer. All in all, in terms of domestic democracy consolidation, Europe is considered by most scholars an international example of a successful democracy-building actor (Nicolaidis and Magnette 2009).

However, even on other continents, the ongoing democratization process already includes both a wide range of national paths to domestic democracy and regional organizations supporting, more or less successfully, democratic consolidation within member states (for example see the Organization of American States (OAS), and MERCOSUR (the Common Market of the South) in Latin America; or the African Union (AU) and the Southern African Development Community (SADC); or the Association of Southeast Asian Nations (ASEAN) in Southeast Asia). What is still a distinctive feature of the European continent is that the EU provides the most sophisticated experience of supranational democracy, the symbol of which is the European Parliament, elected by universal suffrage since 1979.

Concerning the history of political ideas, the model of supranational democracy, predominant during the first decades of the European construction, was the one imported from US federal democracy. The US model of checks and balances links the process of democratization with a constitutional framework including both human rights protection and the delegation of substantial competences from the member states to the central level of decision. The more central regulatory power is strengthened, the more individual rights must be protected and democratic participation enhanced.

According to the EC founding fathers' generation, the traditional US path towards federal constitutional unification and democratization is perfectly suited to the European construction process as well. The twofold aim of this chapter is, on the one hand, to introduce this early model and its very significant historical impact and, on the other hand, to present both its achievements and shortcomings, in order better to explain the current debate about EU democracy, 60 years after the 'Schuman Declaration'.

2 The idea of a constitutional democratic polity for Europe

The idea of a democratic European Union has had several roots in the history of political thought since the 18th century. However, as an idea entailing a concrete political objective for the 20th century it has one main father: the European federalist movement. Contrary to 'Paneurope', the transnational elitist club led by Richard Coudenhove-Kalergi, which inspired Aristide Briand's Memorandum of 1930, and the functionalist approaches to European integration (Mitrany 1943) underpinning the first steps of the European Communities, the federalist movement combined, particularly after the 'Ventotene Manifesto' of 1941, the objective of a united Europe with both the value of democracy (as an antifascist idea) and the project of a democratic polity beyond the state. In theoretical terms, this project constituted the main reference model for European constitutionalism, based on a democratic version of the federal theory applied to European construction.

We are making a conscious methodological choice when we start by emphasizing the crucial role of a transnational political movement like the federalist movement. According to 'discursive institutionalism' (Schmidt 2005), ideas—defined as beliefs shared by individuals—and subjective perceptions are not only a fundamental part of the historical and sociological context of social constructions, but may also play a dynamic role as the main variables explaining and influencing policy making and change (Goldstein and Keohane 1993, 3–30; Garrett and Weingast 1993, 173–206). This occurs on the one hand through the historical impact of the substantive content of ideas, but also through the interactive processes by which those ideas are conveyed through the discourse of policy actors in policy communities or political actors with the general public. Even Daniel Elazar's federal theory stresses the crucial role of the subjective will of co-operating through federal unifications (Elazar 1987). The more the regional integration process is a matter of the emulation of a similar process elsewhere, the more the influence of ideas—both as analytical world views and as normative beliefs—becomes important.

By emphasizing this constructivist approach to the European supranational democracy we do not intend to underestimate the influence of other factors, notably the US hegemony in the West within the international context provided by the Cold War and the East–West confrontation. The influence of ideas should be combined with material interests and power relations. The present European unity is historically a creature of the Cold War. However, during the Cold War decades, the USA also supported the consolidation and enlargement of the North Atlantic Treaty Organization (NATO) in Europe, despite the victory of dictatorship both in Turkey and Greece, while all EU member states are democratic. The democratic nature of the domestic regimes of the founding member states is an important clarifying factor as well. However, both the democratic conditionality regarding new membership and the democratization of the decision-making process were not at all original features of the European Communities, but the outcome of controversial debates and the continuing struggle of a wide range of forces, including the avant-garde of the federalist movement. In conclusion, ideas matter as far as post-Second World War European history is concerned.

Where does the idea of a democratic European construction come from? Regarding the nature of member states' domestic regimes, Rousseau, Montesquieu and, notably, Kant, contrary to utopian pacifist writers, focused attention on internal regime change as a precondition for external peace. Despotism and tyranny provide no space for opposition, free public opinion and parliament, and over-stress secret diplomacy, all factors making aggressive foreign policy more likely, while constitutionalism entails the visibility of the critical public sphere, the division of powers, the representation of people's interests for peace, and transparency. Though, no matter how significant these theoretical tenets, Rousseau's emphasis on the primacy of the domestic social contract results in protectionist purposes, while Kant's liberal constitutionalism must not be confused with democracy. It has been correctly argued that the author of the first rational project of perpetual peace stressed the need to support what he refers to as the international 'federation' through anti-despotic domestic roots, which makes him a coherent liberal constitutionalist; however, he was not yet a democratic thinker (Bobbio 1999).

Second, focusing on domestic regimes says nothing about the nature of interstate organization and its democratic legitimacy. Liberal constitutionalism and democracy entail several historical and theoretical dialectic conflicts. However, while in the past the constitutional state used to exist without democratic legitimacy, we can argue that every modern democratic polity implies a constitution.[7] A constitutionalization process is the way a representative democratic polity emerges and consolidates, both at the national and supranational level. This is essential for the purpose of our paper.

Inspired by the US 'Federalist' papers and namely the Hamiltonian view,[8] the European federalist model looks not only at the democratic

regimes of member states but also at constructing the democratic polity of the United States of Europe through a democratic process of people's participation (Spinelli 1989). Spinelli's early democratic constitutionalism is characterized not only by the reference to the US tradition of shared power (vertically shared), with the consequence of an understated concept of sovereignty, but also by the democratic way of building up this innovative polity.

The distinctive feature of this constitutional model is the link between the European federation and people's participation through a kind of European 'constitutional assembly', acting on behalf of the sovereign European people and opposed to intergovernmental conferences as a treaty-making body. Spinelli's main aim and objective, his 'telos' and road map, shared by many founding fathers, was to build a federal and democratic state, the United States of Europe, while stressing that the way—and not only the end—should be democratic.

The US model of the Philadelphia Convention, which discussed and approved by 1787 the first federal Constitution in history, largely inspired this approach: national governments did nothing but mandate the Convention to elaborate a constitutional draft; the Convention decided by majority voting procedure; after the ratification of only nine out of 13 republics, the Constitution came into force. Regarding the international significance of the US model for European construction, the internal debate within the Convention, the tough difficulties and obstacles (including the civil war) met by the USA when transforming the new independent state from a con-federal into a federal polity have been underestimated by most of European literature (Magnette 2006). According to critical thinkers, crucial differences between Europe and America by combining unity and diversity deserved more attention. The question of whether a single 'European people' exists like that of the American nation was addressed in the 19th century. Against its Jacobin national tradition, the European supranational model needs an even more pluralist basis than the US one. Even before Habermas-Grimm-Weiler's famous debate of the late 1990s–early 2000s (Gowan and Anderson 1997),[9] more precisely in 1848, Hugo's optimistic vision of the 'United States of Europe' was opposed by Mazzini's idea of a unity among European *peoples creater body* (Mazzini 2001).

American federalist political culture became popular again in Europe during the inter-war years thanks to several elite groupings, including epistemic communities of intellectuals, business leaders and politicians (as for the concept of 'epistemic community', Haas 1992). In the UK, the Federalist papers were spread by a group of militant intellectuals, among them Lord Lothian, Lionel Robbins, Barbara Wootton and others (Pistone 1975); in Italy, this occurred thanks to the pluralist support of liberal intellectuals (Luigi Einaudi), entrepreneurs (Giovanni Agnelli) and antifascist secularized (Eugenio Colorni, Ernesto Rossi, Altiero Spinelli) and Catholic militants (Luigi Sturzo and Alcide de Gasperi).

It is worthwhile mentioning the Italian role in the spread of the federalist idea of a European democratic polity. In Italy it became a politically influential movement during the final years of the Second World War: the famous 'Ventotene Manifesto' (1941) was able to gra-dually take stock of the tragic consequences of nationalism, benefiting from the opportunity to link democratic federalism to the anti-fascist Resistance. The key element was the gradual construction of a large European domestic consensus about the federalist project. Already after the war, in the context of a defeated Italy, the federalist movement was able strongly and quickly to influence, above all, the leading groups of many governmental parties, secularized liberals, republicans and social democrats, and notably of the leading Christian Democratic Party. The first initiatives for a democratic constituent assembly were carried out immediately after the war thanks to Altiero Spinelli, who was able to influence the leadership of the new Republic and, most importantly, the Catholic Prime Minister Alcide De Gasperi.

However, the domestic impact of the international political cleavage between pro- and anti-Americans for many years made it hard to move from divergence to convergence as far as the concrete steps towards a European construction are concerned. Only in the 1970s, even the main opposition party, the Italian Communist Party of Enrico Berlinguer and Giorgio Napolitano, accepted Spinelli's vision. Moreover, during the following decades there is evidence of the gradual mobilization of important leading members of the intellectual elite (Umberto Eco, Massimo Cacciari, Biagio de Giovanni, Claudio Magris, Leonardo Sciascia among others). Last but not least, through the popular refer-endum of 1989, the vast majority of Italians (88.1% of the voters, 80.7% of the potential electorate) voted in favour of providing the new European Parliament with constitutional powers, one of the main demands of the federalist movement.

During the decades following 1945, the federalist democratic movement was able to spread throughout the founding member states, notably in Belgium and Germany, as well as the main democratic par-ties and cultural streams, from Catholics to liberals and socialists. Historical circumstances explain why the federalist stream has been strong enough to influence deeply several national political cultures in Europe for many decades. Even before UK membership in 1973, already in 1948, a few years after the Second World War, the Congress in The Hague was the first symptom of the limits of the federalist influence at the European level. It became more evident in the next few years and the next experience of the Council of Europe resulted in a weak and merely intergovernmental institution, clearly distinguishing European multilateral co-operation for the protection of human rights and the monitoring of domestic democracy consolidation from the construction of the democratic political unity of Europe. The creation of the weak and ephemeral rising star of free trade and intergovern-mental organizations, like the European Free Trade Area (EFTA) in 1960, proved both the resilience of the anti-federalist vision of the EU and its shortcomings even from the perspective of the interests of mainly Eurosceptical countries.

However, with the inevitable progress of the enlargement process, federalist democratic culture increasingly became a minority stream. With the partial exception of the Iberian Peninsula (Spain and Portugal joined in 1986) and of marginal groups elsewhere in Europe, from France to the UK, from Scandinavia to Central–Eastern countries, this Hamiltonian federalist culture remained either marginal or highly con-troversial, which could only have a negative impact on the construction of a fully democratic EU polity.

Before focusing on the vast impact of the federalist ideas of European democracy, it should be mentioned that the increasingly sig-nificant obstacles are deeply rooted in Europe's diverse national his-tories, notably the differences between the winners and losers of the Second World War. Only the constitutions of the losers—Italy and Germany—entail provisions in favour of European construction and international co-operation, whereas in other cases every step towards integration requests a statement by the Supreme Court or a constitutional revision. Other differences include the varying degrees of credibility of the tradition of the national parliament (particularly high in the UK), and the degree of distance of member states from the very centre of the EC, the hard core situated in the European power triangle, Brussels, Strasbourg and Luxembourg, seats of the EU institutions.

3 The role of democratic federalism through the EC/EU democratization process

Altiero Spinelli campaigned for his version of the Hamiltonian vision from 1945 to his death in 1986. His deep conviction was that only the powerful leverage of popular participation could break the opposition of European states to regional integration and their strenuous defence of national sovereignty. The 'constituent assembly of the European people' was considered both an instrument and a goal, the driving force of the legitimizing process of the construction of a European state and the concrete anticipation of the democratic European federation.

However, Spinelli pursued his European federal objective in various ways: in the first years after the Second World War, he strongly asserted the radical idea of a 'Congress of the European People' (similar to Gandhi's 'Indian National Congress'), which was in opposition to intergovernmental diplomacy and functional integration; later on, he adjusted his strategy several times towards a European democratic polity.

Regardless of the degree of diffusion throughout Europe, the federal/democratic model of the United States of Europe has played an important role, both ideal and practical, over many decades. We would like to mention the following turning points:

- The Italian proposal to include Art. 38 in the Treaty for a European Defence Community in 1952 was conceptually ela-borated by Spinelli and politically carried on by De Gasperi. For the first time an intergovernmental treaty included the concept of a European political community framing the European army, even if its concrete features remained unde-fined. Even though the negative vote by the French Assemblée Nationale in 1954 stopped the political process, Art. 38 remains a symbol of a political project for Europe. In the new context of the Treaties of Rome and the Charles de Gaulle election in 1958, Spinelli adjusted his strategy, combining his fight for a European democracy with his opposition to a confederal

Europe. For example, through his letter of 1963 to Walter Hallstein and his actions as commissioner in the 1970s, he conceived of the Commission as the leader of the political movement for European constitutional reform. His hard criticism of the 'European nationalism of de Gaulle' was due to the intergovernmental approach of the French President.

- The democratic election of the EU Parliament. After the first agreement of the six founding member states, reached during the 1969 Hague summit, the federalist campaign was strong enough to achieve the first election of a supranational parliament in 1979.

- The vote on Spinelli's draft treaty by the European Parliament in 1984. Eventually, in the last part of his life, Spinelli acknowledged that the European Parliament was the best channel of the constitutional democratic way. Once elected as a member of the European Parliament, he led or inspired two major initiatives: first, through the transnational and cross-party network 'Club du Crocodile', he was able to create a large convergence on the European Union draft treaty, approved in 1984 by an overwhelming majority of the European Parliament with the support of François Mitterrand. Second, as previously mentioned, in 1989, following the moral recommendation of Spinelli (dead in 1986), the Italian people were consulted about the transformation of the European Parliament into a constitutional assembly through a national referendum (approved by 88.1% of the population).

- In 1994, the approval of the European constitutional draft, called 'Herman's draft' (Fernand Herman, a Belgian Catholic, was member of the Club du Crocodile), through the standing Institutional Affairs Committee of the European Parliament indicates both the endurance and limits of federal democratic recommendation. Herman's draft was never discussed and voted on by the plenary Assembly. However, the four treaty revisions carried out from 1997 (Amsterdam Treaty) to 2000 (Treaty of Nice), from the Constitutional Treaty of 2004 to the Reform Treaty (Lisbon 2007), were largely inspired by Spinelli's and Herman's influential drafts in many of their chapters, notably the co-decision powers of the European Parliament, the extension of Qualified Majority Voting in the Council, the strengthening of the president of the Commission and parliamentary democracy, the first steps of a participatory democracy.

4 The early federal-functional model of European democratization

At the same time, mainly due to the contribution of the President of the European Commission Jacques Delors, huge concrete progresses were accomplished regarding the democratic participation of the social organized actors, unions' and employers' organizations in the EC/EU decision-making process. The first experiments of a European social dialogue carried out by the Commission president took place in the Brussels castle of Val Duchesse in the mid-1980s. The European Social Charter was approved by 11 member states in 1989, in spite of the rejection of Margaret Thatcher's government. The unusual solution of a 'Social protocol', annexed to the Maastricht Treaty of 1992 (and signed by only 11 out of 12 member states) as a compromise with the UK conservative government veto (John Major) to any inclusion in the Treaty, was eventually overcome in 1997, when the newly elected UK Labour Government (led by Tony Blair) allowed both the Social Chapter and the mentioned Protocol to be included in the Amsterdam Treaty.[10] Under this provision, strongly influenced by the Scandinavians, notably Swedish membership,[11] every future agreement between the two main socio-economic actors should be transferred into a directive proposal by the European Commission, provided that the topic is included within the European treaty competences.

What about the relationship between the EU social and political democratization processes? While federalist leaders addressed severe criticisms of the functionalist features of the early European integration process, from the European Coal and Steel Community to the Treaties of Rome and the Single European Act, precisely because of the very marginal position of the objectives related to democratic constitutional legitimacy, prominent scholars (for example, Philippe Schmitter (see Schmitter et al. 1996), the main pupil of the leading functionalist scholar Ernst Haas, and Mario Telò (1995)) argue that a 'federal/functionalist model' characterized the European construction during the first decades, combining several approaches in a complementary way, with

the same teleological aim of gradually constructing the United States of Europe. They are right in underlining the interaction between federalist streams and functional trends and in stressing the practical impact of federalist thought.[12]

5 Towards new ways of building a democratic European Union: theoretical debates

Despite the practical failure of two explicit constitutional projects,[13] notably 'Spinelli's treaty' project (1981–84) and 'Herman's draft' (1993–94),[14] the federalist pressures for a more democratic EU polity strongly influenced the European construction and inspired many EC and EU decisions and institutional provisions during the years of treaty revision from Maastricht to Nice and Lisbon, notably: the increasing co-decision power of the European Parliament; the extension of the qualified majority voting procedure (QMV); the gradual 'communautarization' of the pillar structure; the enhanced role of the European Commission as an executive power; and the role of the European Court of Justice and its jurisdiction.

However, starting with the controversial ratification of the Maastricht Treaty, i.e. for a couple of decades already, an increasing number of experts and observers have been witnessing a growing discrepancy between the high expectations of a state-kind of constitutional legitimacy raised by this founding model on the one hand, and on the other hand the real process of European construction, notably after the major socio-economic crisis and inevitable enlargements. The historic systemic change of 1989–91, namely the quasi-continental widening of an increasingly internally diversified EU, raised the question of the changing nature of European construction. National egoism or narrow-minded orientations no longer fully explain why the federal/functionalist model came up against the hard realities of dramatically growing internal diversities and member state leaders with very different, and more limited, ideas of what the EU was or should become.

The continuously changing nature of the European polity, compared with the small Community of the early Cold War era, up to the actual EU, a stable but complex mix of intergovernmental and federal features, gave rise to a vast amount of new literature notably in political science, focusing on the deep causes of the above-mentioned discrepancy. For example, the literature draws attention to two paradoxes. The European Parliament, from the former driving force of democratic federalist integration, as the expected main leverage of the democratic federalist idea, is increasingly and obviously becoming the mirror of 28 national public opinions where federalist ideas are only asserted by minority groups.

Second, what was considered the second most important avenue of people's pressures for a European democratic federation, i.e. the referendum, either proved impossible at the European level or, at the national level, becoming between 1993 and 2009 a true nightmare for integrationists. In France (1993, 2005), the Netherlands (2005) and Ireland (2001, 2003, 2007), it channelled Eurosceptic trends, which are spreading throughout many Western and Eastern member states, and serving as a sword of Damocles hanging over every attempt at treaty reform. According to a large part of the literature, the quasi-continental widening of the European Union[15] and the current European polity no longer make the traditional US model the most appropriate path for the European construction of the 21st century (among others, Magnette 2005, 2006). This change profoundly affects the nature of the democratic legitimacy issue.

All in all, even the successful process of strengthening the powers of the European Parliament is clearly not effective enough to limit the so-called 'democratic deficit'. Some 60 years after the 'Schuman Declaration', and apart from single events and treaties, a longue durée approach helps us to draw an initial conclusion: the more and more intensive history of treaty revisions brings evidence of a structural institutional mix of progresses of federalist ideas on the one hand with, on the other hand, intergovernmental trends, derogations and opting out, annexed declarations and exceptions, overlapping levels of regulation, resulting in further complexity, which makes the European polity something extremely far from a federal state. In this controversial public context, a true 'constitutional momentum' took place between 2000 and 2005.

6 The 'constitutional momentum' and the Constitutional Treaty of 2004

A partially alternative path towards European democratic constitutionalism is represented by the Constitutional Treaty, which was elaborated by the European Convention chaired by Valéry Giscard d'Estaing between February 2002 and July 2003, and adopted with few amendments by an Intergovernmental Conference (IGC, October 2003–June 2004), signed by 27 heads of state and government in Rome in October 2004, ratified by 18 member states (out of 25), while rejected by two referendums held in France and the Netherlands in May and June 2005. The vicissitudes of the following 'Reform Treaty' (signed in Lisbon by 27 heads of state and government in December 2007 and entered into force in December 2009) allow us to argue that the constitutional momentum has characterized, directly or indirectly, almost a decade of European public debate.

This constitutional momentum actually started with the works of the first Convention, which in 2000 elaborated the 'Charter of Fundamental Rights', an essential pillar of European citizenship and democratic polity. In December of the same year the European Council, which rejected the insertion of this Declaration within the Treaty of Nice, approved a mandate for a further treaty revision annexed to the Treaty of Nice, setting a four-issue agenda.[16]

A year later, the ambitious 'Laeken Declaration' of the European Council (Belgian presidency), included for the first time the possible option of a 'European Constitution' as an issue for the next European Convention: 28 February 2002 marked the start of the intense 16 months of the second European Convention (charged with revising the treaty according to both mandates, Declaration 23 and the 'Laeken Declaration'). However, the Convention was no more than a consultative body. In 2003–04, as with every new treaty, the Intergovernmental Conference (IGC) took place, leading to the Constitutional Treaty, signed in Rome in October 2004, and followed by the complex ratification debate with the above-mentioned controversial outcomes. More recently, after a two-year 'pause de réflexion', a new IGC was able to lead the 27 member states officially to sign the 'Reform Treaty' in Lisbon (December 2007), including 90% of the innovations of the Constitutional Treaty submitted to the ratification of each member state.

Contrary to the federalist model and to ambiguous self-definitions of the Convention and the Treaty itself (as a Constitution for Europe), the Constitutional Treaty of 2004 is not properly a Constitution but rather a combination of explicit constitutional features and a classical international treaty. However, the process of elaboration and public discussion, from 2000 to 2005, makes it not only a significant reference for coming years but also a workshop for supranational democratic constitutionalism.

Why is this 'constitutional momentum' significant enough to represent a distinctive chapter of the European legitimacy debate? Even though it is not a state-kind of political legitimacy, this treaty required and actively fostered a high degree of both supranational and national legitimacy. The transnational public sphere was significantly affected in several countries, as far as the transnational democratic dimension is concerned, to the extent that prominent opinion leaders and intellectuals supported a process of 'constitutional patriotism' at the European level (Habermas 1998, 2001). According to many key observers, Europe was about to shift from a co-ordinative discourse among policy elites with regard to the federalist vision to a communicative discourse with the general public.

However, the real European multi-level and pluralist public sphere was and is more diverse and larger than the significant sectors of national public opinion that welcomed this constitutional momentum, and there is some evidence that precisely the repeated rhetoric and ambiguous references to the model of a 'convention' for a 'constitution' mattered in strengthening Eurosceptical public opinion provoking boomerang effects at least in some troubled national democracies such as France, Poland and the Netherlands. The controversial ratification process resulted not only in a two-year institutional stagnation, but also in a new wave of 'Spenglerian' rhetoric about 'finis Europae', the final roll-back of any European project, and so on, which is profoundly affecting the current debate about EU legitimacy.

What seems at first to be a paradox is that precisely the achievement of enhanced legitimacy through an explicit and public 'constitutionalization' process (even if ambiguous) was the main goal as far as the official European discourse is concerned.

The mandate of 'Declaration 23' approved by the EU Council of Nice in December 2000 entails three issues related to legitimacy and democracy deficit (enhancing the role of national parliaments, setting the legal status of the Charter of European Fundamental Rights and clarifying the so-called 'Kompetenzabgrenzung', which was requested by Germany in order to strengthen the role of Bundesländer) and one indirectly related (treaty simplification). Increasing EU legitimacy is mentioned twice in the EU Council 'Laeken Declaration' of December 2001. While it leaves open the question of whether a constitution would be the best way, it looks at an enhanced EU legitimation process through two complementary means:

- Elaborating new treaty provisions, including a chapter on 'EU democratic life' (title VI, including Arts I-44 on the principle of democratic equality, 45 on representative democracy and European Parliament co-decision power, 46 on participatory democracy, 47 on autonomous social dialogue, 48 on the ombudsman, 49 on institutions proceedings transparency, 50 on protection of personal data, and 51 on status of churches and non-confessional organizations).
- Revising the traditional diplomatic method of treaty reform through a three-step process: open debate with national public opinion, convention (open to the EU Parliament, national parliaments, civil society, transparency) and a final IGC. Furthermore, the convention was a framework for deepening and broadening the European common public sphere, transnational communication and public debate.

If compared with Spinelli's constitutional approach, does this second model consider democratic legitimacy any more or less than the first one? They both raise the expectations of a constitutionalized democratic EU polity. However, given the vast amount of scientific literature and the practical experience acquired between 2000 and 2005, it is not so clear whether the second model is more realistic or more 'utopian'. Opposing interpretations are possible, explaining the very broad acceptance during the winter of 2002/03 of Giscard's proposal to include the ambiguous word 'constitution' both by federalists and the UK representative at the Convention, Peter Hine.

Not only the concept of constitutional democracy, but the notion of constitution itself takes on different and even opposite meanings according to the various schools of thought and national constitutional traditions. It is probably trivial to reiterate that since the time of the French pre-modern authors, the liberal philosopher John Locke, and the Madison-Hamilton controversy within the American Convention, at least two divergent concepts and traditions have characterized the history of constitutionalism. The first is strictly limited to setting rules and procedures defending rights, while stressing clearer limits to central power. The second one aims not only to combine rights protection with enhanced unity (namely the political unity) of the polity (state or whatever), but also to enhance its democratic input-legitimacy through people's participation.[17] While the 'Laeken Declaration' raised expectations concerning the second type and particularly emphasized an idea of legitimacy based on a deeper European democratic life, as opposed to the traditional one, based on the democratic nature of member states, the final text of the Constitutional Treaty is more ambiguous, and takes (obviously) into account the two differing understandings of constitution.

Compared with 'Spinelli's approach', this second type of constitutionalization process was not legitimate enough: not only did states maintain the final say through the IGC and was the convention only a consultative body, even though it was endowed with the drafting power of constitutional texts and mixed as well as varied in its composition, including the European Parliament and top representatives of governments and delegations of national parliaments. Moreover, the Convention adopted a deliberative democratic approach,[18] deciding by 'consensus' and never by majority voting procedure in order to enhance its impact on the IGC—which seems reasonable and was confirmed by the facts. Third difference: according to art. 52 of the TEU, the unanimous ratification of all (27) member states is required (even if the annexed protocol would make the ratification by 20 member states a political issue for the European Council). The text confirms other differences as well. Furthermore, several researchers remark on the reduced democratic representation of the convention (gender imbalance, the selection of political parties, the merely consultative role of civil society, interests and trade unions; see Eriksen et al. 2004).

However, compared with previous European and international treaties, that of October 2004 was discussed in a way that was incomparably broader and more open than ever before. The process itself raised higher expectations of an open constitutionalization than at any previous moment in the history of EU integration. That is why many comments emphasize the 'constitutional momentum' of 2000–05. A

public and largely transparent convention took place in the context of a decentralized multilevel, multi-actor, cultural and political debate, which started in 2001 and has not yet been concluded (despite the turning point of 2005). Thousands of meetings around the main constitutional issues mobilized millions of citizens in every European country (and beyond). Moreover, the convention decision not to apply majority voting procedures was considered an original example of deliberative democracy and of the shared will to strengthen its potential political impact, according to several specialists (European Commission DG Culture 2002).

In addition, more than ever before, important philosophers such as Habermas, Derrida, Morin and de Giovanni took part in the public debate, and this happened precisely because it was *not* simply a federal state in the making but something else: 'a post-national polity', a 'supranational democracy', a 'deliberative process', a '*Verfassungsexperiment*' (Liebert *et al.* 2003) towards a '*Verfassungverbund*', a kind of federation based on a constitution.[19]

Regarding the outcome of the process, excessively high expectations were disappointed by the very simple fact that the 'Constitutional Treaty' of 2004 was not a constitution, while widespread fears were provoked, in opposite milieux, by the word 'constitution'. Giuliano Amato, one of the convention's vice-presidents, defined it as a 'hybrid' or a hermaphrodite: half male, half female; half international treaty, half constitution. Some constitutional features were strengthened: the single international legal personality, the inclusion of the Charter of Rights, the concept of the primacy of EU law, the clarification of the sharing competences and the hierarchy of norms. However, the inclusion of the Third Part, focused on EU policies (300 articles out of 400), dramatically weakened the treaty's credibility and the constitutional rhetoric of the new-born Montesquieu, Valéry Giscard d'Estaing, the convention's president (Giscard d'Estaing 2003).[20] Ambiguities on the very nature of the treaty were and are fatal not only for the successful ratification process in several countries but, according to many, also for the credibility of the so-called 'Habermas version' of 'constitutional momentum'.[21]

The subsequent commitment of several streams and leading figures such as Jürgen Habermas (2006) to saving the Constitutional Treaty via a European referendum to be held in 2009, at the moment of the European Parliament elections, is very significant. It is consistent with the shared idea that this second model of democratic constitutionalism could be seen as a new version of the federal model of 'an even closer union', revised through Habermas' concept of 'constitutional patriotism' from below, rooted in common feelings and ideals, aiming at a 'European *modus vivendi*', rather than in a purely political 'constitutional assembly'.[22] Within this constructive vision, the 'European people' are not seen as a pre-existing reality, but as the result of a constructive process, rooted in a shared '*Wille zur Verfassung*' and in an incipient and pre-political 'European public sphere'. Parallel comments stressed the concept of 'democratic legitimacy through constitution' and the link between (anti-technocratic) politicization and the differentiation of the EU polity within the globalized and unstable world, as a condition of its constitutionalization.

However, the debate about the following question is still open: to what extent are the compromising or utopian features of the Constitutional Treaty of 2004 mainly responsible? The Eurobarometer indicates that opposition to the treaty is widespread among both French anti-globalist sovereignist voters and Dutch hyper-globalists/free traders. Even the negative Irish referendum of 2007 on the ratification of the Lisbon Treaty has contrasting roots: people's desire for less Europe or more Europe? The controversial referendum and public debate could be considered counter-arguments to this second constitutional democratic model. What about the consequences of the clear standstill in the second attempt to build a fully achieved European democratic polity? What lessons may be drawn from this?

7 EU democracy through the process of constitutionalization without a constitution

From a *longue durée* perspective, the EU system as such is gradually moving through the controversial outcomes of two constitutional paths to EU democracy. That is why an increasing number of scholars and observers are looking at the already existing EC/EU through new eyes: a material constitution has existed *in nuce* since the Treaties of Paris (1951) and Rome (1957) and has been strengthened through four treaty revisions until the one in Nice (2000), the enlargement process (Copenhagen criteria, 1993), the secondary jurisdiction of the Europen Court of Justice,[23] and the Europeanization process of national polities, constitutional courts and national administrations, for 50 years. This material constitution, undoubtedly, has been and will be further

influenced by the two aforementioned attempts at explicit constitutionalization; however, other approaches and inputs do play a role as well (confederalist, functionalist etc.).

This process of 'constitutionalization without an explicit constitution' makes the existing EU, considered to be a *longue durée* integration process, an irreversible international and supranational polity. The Europolity is different from national polities: the Weberian kind of traditional and plebiscitary dimension of legitimacy does not exist and the background of a shared cultural identity is missing and will probably be missing in the future. However, like every polity, the EU decision-making system is supported by a certain degree and various kinds of legitimacy: output legitimacy and input legitimacy, mostly national (through the Council), but also supranational, substantial (based on concrete benefits for ordinary citizens) and legally formalized (by treaties). The Union has existed and has developed for 60 years not as an 'empire',[24] but as a free and democratic polity underpinned by both the legitimate decisions of member states (willing to deepen their multilateral co-operation) and citizens' legitimacy (both through national and supranational representation mechanisms).

The 'Reform Treaty' of 2007 is sort of 'Nice II', or 'Maastricht IV', or 'Rome VI', i.e. a chapter in an enduring reform process, rather than the final Constitution of the United States of Europe. Whatever the timing, its provisions will be fostered by further functional demands, the convergence of interests, citizens' pressures and the need to cope with external challenges. It will probably strengthen democratic legitimacy requirements in order to balance the increasing central regulation through people's participation rights, the involvement of social partners, the enhanced co-decision powers of the European Parliament, further early-warning mechanisms in favour of national parliaments (as required by the German Constitutional Court in June 2009), the enhanced role of European political parties, and new ideas coming from states and from epistemic communities as well. However, it is widely accepted that every expectation of a state-type of legitimacy is and will remain no more than one voice among other, even opposite, expectations.

Despite these limits, the current European democratic constitutional model is much more significant than a mere area of shared legal principles, as ensured by the Council of Europe.[25] Like a de facto concentric circle, the legal integration of the EC/EU member states is substantially more advanced than the area covered by the Council of Europe, and rich in unique provisions such as 'direct effect', 'exclusive competences' and 'doctrine of primacy' (Weiler 1985). Such unique legal integration has been part of the gradual process of EU constitutionalization since the early stages of European integration. Through the *acquis communautaire*, it has even influenced the expansion process from 6 to 28 member states. J.V. Louis (1995) underlines that the Court of Justice has already considered the treaties as the 'constitutional Charter of a community of law' since its decisions of 23 April 1986 and 14 December 1991.[26] Joseph H.H. Weiler (1999) was the first to define the current outcome of this lengthy process as a 'constitution without constitutionalism', entailing constitutional implications and combining for 60 years the achievements both of deepening and enlarging the club.

As everybody knows, this point of view is not totally shared by the German Constitutional Court: according to its decision of 12 October 1993, within an association of states (*Staatenverbund*) like the EU, democratic legitimacy works by linking the action of the European institutions to national parliaments. Additionally, this is about to be complemented, within the framework of the EU, to the extent that European integration makes progresses, through the democratic legitimacy provided by a European Parliament elected by the citizens of member states. Moreover, its decision of 30 June 2009 further stresses the role of national parliaments while clearly establishing a clear end to further integration: the Court emphasized the sovereignty—as a law-making body—of the national Bundestag and Bundesrat.

The majority of European law experts shares the conclusion that the current treaties and the present EU political system already entail very important constitutional features and that its 'double legitimacy' (citizens and states) relies on the solid background of its own institutional structures, i.e. the Council, the Commission and notably the European Parliament.

8 The European Parliament at the centre of the EU supranational democracy

The European Parliament, as the first case of a supranational parliament on a regional scale elected by direct universal suffrage, is still a unique

case study. The European Parliament already represents the main pillar of what we can call the democratic system of the European Union, by including:

- fledging forms of participatory democracy such as right of petition, the ombudsman, and the new people's initiative provision of the Lisbon Treaty;
- consultative bodies (the Committee of Regions and the European Economic and Social Committee); and
- the relatively marginal but increasing role of national parliaments.[27]

Born as the driving force behind the European integration process, the democratically elected European Parliament (at its seventh legislature)[28] increasingly mirrors the contradictions and oscillations of (currently 27) very different national public spheres, including strong Eurosceptical tendencies.[29] However, it still includes a pro-European majority,[30] which largely explains its strong support of both the Constitutional Treaty of 2004 and the Lisbon Treaty of 2007. The history of the European Parliament can be summarized as an enduring struggle to become a true parliament with powers and functions similar to national parliaments. Under this respect, 30 years after its first election by universal suffrage, its record is still controversial and discussed by observers and scholars (Corbett *et al.* 2007; Rittberger 2005; Hix *et al.* 2007; Magnette *et al.* 1999; Costa 2001).

We have already mentioned the process of the gradual increase in the Parliament's competences and powers. It started as a quasi-cultural club in 1979 first obtaining budgetary power and now arriving—under the Lisbon Treaty—to a co-decision power with the Council (even though with some significant exceptions such as the Common Foreign and Security Policy (CFSP) and the European Security and Defence Policy (ESDP). Furthermore, co-decision by law making is accompanied by increased control of scrutiny of the accountability and legitimacy of the EU Commission (veto power on the appointment under the Treaty of Nice and election of the president of the Commission according to the Treaty of Lisbon).[31] Internal differences and diversities within the enlarged EU make the direct election of the European Commission by the Parliament (like in national parliament-government relations) at the same time necessary and difficult: necessary, in order to overcome fragmentation and strengthen the political authority and stability of the European Commission (which explains the step forward of the Lisbon Treaty); difficult, because democratic legitimacy through supranational entities requires broader majorities, inclusive consensus and deliberative democracy procedures.

How does the European Parliament act on a practical level? In terms of membership, in 2009, the European Parliament accounted for 736 members elected for a five-year term in the 27 member states.[32] What does not fit with the usual rules of national parliaments (including federal states) is that they are elected according to very different national electoral systems.[33] Second, the seats are shared according to the principle of 'degressive proportionality', a compromise between the democratic criterion of proportionality (taking into account the population of each state) and the diplomatic criterion of the equal rights of states: the maximum is 99 seats allocated to Germany and the minimum is five for Luxembourg. According to several scholars, decreasing proportionality results in a deeper democratic deficit within the member states with greater population because of an excessively large constituency.

As far as the balance between national and supranational belonging is concerned, the parliament members sit according to their political and ideological affinity and not according to their nationality. Moreover, this distinctive feature has been strengthened by the evolution of the European parties, which receive funding, and can create their own structures and cultural foundations as well as larger parliamentary groups. However, national delegations within the supranational parties play a very crucial role, orienting the vote of individual parliament members by the relevant issues at stake.

How does the Parliament work on a practical level? The Parliament carries out its activity through 12 plenary sittings in Strasbourg (its official seat, according to the Treaty) and Brussels (seat of the very important 'parliamentary committees',[34] meetings of political groups as well as of the extraordinary plenary sessions). Such an onerous and heavy double location as well as the splitting of the EU institutions among many European cities is also symbolic of the no-state character of the EU political system: the main institutions and agencies are not concentrated in a single city like state institutions (the European Commission in Brussels, the European Court of Justice in Luxembourg, the European Parliament in Strasbourg, the European Central Bank in Frankfurt, the European University in Florence, and so on). Inter-parliamentary delegations have been created in order to strengthen dialogue and co-operation with parliaments elsewhere ('Eurolat' with Latin America is particularly important but also Transatlantic Legislators' Dialogue, the ACP (African, Caribbean and Pacific)-EU Joint Parliamentary Assembly, the Euro-Mediterranean Parliamentary Assembly should be mentioned, as well as the Euro-Indian and so on). This open and structured dialogue, on a regular basis, with several extra-European parliaments is spreading the idea of regional supranational parliaments abroad.

Regarding its everyday activities, the European Parliament benefits from a relatively large administration, organized according to traditional job sharing (communication, external relations, relations with political groups, budget, etc.), plus an important translation service from among the 23 official languages (every MP and every citizen has the right to follow discussions and every MP has the right to take the floor in his national language). A significant part of its permanent, temporary and freelance staff works to translate or interpret the European Parliament proceedings. The Parliament's budget is part of the General Budget of the EU (1% of the total EU annual GDP), of which it makes up about 1%—or one-fifth of the total administrative costs of all EU institutions (€1,320m. in 2006).[35]

Concerning the political dynamic of deliberation of the European Parliament, the consensual model of the 'grand coalition' between the two largest parties and parliamentary groups still seems to be the prevailing rule both for law making and for appointing the main charges (starting with that of the president of the European Parliament, alternatively Socialist or from the EPP). However, this parliamentary praxis, which is creating a huge consensus, contrary to the classical Westminster blueprint of majority/opposition dialectic (majority rule of competing parties and coalitions), is gradually evolving. European Parliament politics are becoming increasingly 'normal': towards a new balance between the deliberative and consensual democratic model and 'normal' right/left opposition. The cohesion of the party groups has increased, particularly in the fourth and fifth parliaments (Hix *et al.* 2007).

9 The controversy about the EU's 'democratic deficit' and its perspectives

A large part of the European public sphere, including national public opinion, national and European policy makers, high servants and experts, share concerns about the EU's 'democratic deficit', which seems less worrisome to other observers given the democratic nature of member states and the international context. Comparative politics may help by providing this controversy with roots in real life and looking at the EU's internal dynamics and ability to adjust to external change. According to comparative politics, this dialectical interaction between the existing European institutional system and national courts suggests focusing on the general problem of 'Europeanization' as both a top-down and a bottom-up process of *longue durée* interplay between the EU polity and the national polities, illustrating the achievements and limits of EU integration (Schmidt 2006).

This debate has two major sides:

- Top-down: does the EU strengthen or weaken national democracies?
- Bottom-up: is the current level of EU supranational democracy satisfying given the tendency to the concentration of decision making?

How does the EU affect domestic democratic legitimacy and how does it interplay with national democracies? On the one hand, we have already mentioned that the European unification process was and is an historical aspect of the consolidation of post-fascist and post-communist national democracies (Telò 1995) and the 'Copenhagen criteria' (1993) act as the 'constitutional' factor of the democratization of the new member states. According to J.H.H. Weiler, they imply a constitutional decision for the widening EU as well, to the extent that they foster commitment to market economy, human rights and democracy (Weiler 1999). On the other hand, the EU plays as a factor empowering executives and weakening national parliaments and various forms of input legitimacy, according to a part of the literature. All in all, the EU plays as a factor of transformation of domestic democracies. It instigates various adjustment processes of lobbying, networks and interests groups, strengthening some of them while weakening others and new balances between national constitutional powers.

Research in political science is focusing on the link between the European and domestic 'democratic deficit', while taking into account

the weight of external variables from the global system. During the first decades of the above-mentioned federal/functionalist model, not only did both EU and states take advantage of the first steps of the European co-operation/integration, but also the process of 'constitutionalization without constitution' resulted in a win-win game, a 'de facto and *de jure*' alliance between the two EU legitimacies: direct legitimacy based on citizens (European Parliament) and the one based on democratic member states.

However, Philippe Schmitter and other functionalists are wrong to deny that this successful model began to have difficulties in the 1990s, also because of the destabilizing effects of the changing external environment. Economic globalization on the one hand and international change following the end of the bipolar world in 1989–91 (with the consequence of strengthening supranational regulation) on the other, are making the previous EU-member states' alliance harder to be maintained as such, which largely explains the increased pressures for treaty reform for a more democratically legitimized EU. Are these troubles destabilizing enough to threaten the constitutional *acquis* of 60 years?

That is why the second side of the debate is becoming more challenging than ever before: strengthening the mechanisms of supranational democracy. The previous solutions are no longer satisfactory. Since their foundations, the European Communities have coped with several classic national democratic standards.[36] However, for 20 years now, their nature has seemed to most observers inappropriate to the demand for democratic legitimacy at the supranational level. The spreading criticism of technocracy and elitism is significant even if ambiguous: on the one hand it explains the gradual growth of Euroscepticism over recent decades, notably in France and the UK, but also in Germany and elsewhere, and on the other hand it underpins the various demands for stronger democratic legitimacy by transnational pro-European movements.

The 'legitimacy deficit' debate emerged in the 1990s mainly as a consequence of two factors: first, several national democracies and their domestic social cohesion are facing the necessary socio-economic adjustments to the pressures of the globalization process, which leads important forces totally to identify democracy with its traditional national republican framework (Gauchet 2006; Thibaud 2006). The European Union became a kind of scapegoat for national politicians incapable of adjusting to the new global environment, while spontaneous and 'substantial' legitimacy (Weiler 1999) or 'output legitimacy' (Scharpf 1999) seemed to decline, due to the lower growth rate, the worsening international environment and internal social security caused by booming unemployment in the 1990s and the economic crisis from 2008.

Second, the two consequences of 1989–91 were contradictory for Europe: the new global responsibilities are fostering institutional centralization, efficiency (*Handlungsfaehigkeit*) and more regulations, while the inevitable and successful pressures for enlargement are increasing decentralization and stressing the respect of the cultural, economic and national diversities. There is no doubt that the Treaties of Maastricht (1992), Amsterdam (1997) and Nice (2000) include several new provisions addressing the legitimacy deficit, often welcoming federalist proposals and strengthening implicit constitutional features: EU citizenship, a social Europe, the institutionalization of the ombudsman, the right to petition, the significant progress of the European Parliament co-decision power, double majority (including population size). However, every progress towards a more direct legitimacy was parallel to reforms enhancing the institutional system complexity and what F.W. Scharpf defined the EU *Politikverpflechtung*.

Furthermore, according to several comments and national perceptions, some of the features of constitutionalization without constitution are making democratic deficit even deeper: for example, as a reaction to the trend towards a 'government of judges', i.e. the vast jurisdiction of the European Court of Justice, further fostering federal integration without appropriate political legitimacy; a second example is the protest against the so-called 'flexibility clause' opening to a borderless extension of community action (art. 308 TEC); third, some national public opinion perceives the 'closer co-operation' provisions—or the practice of enhanced integration outside of treaties (Schengen Agreement) or within the treaties (Eurogroup)—as a threat of the internal hierarchy, against national democracy and sovereignty.

However, comparative political sociology also shows the spread of several advocates of the 'European democratic deficit' during the hard times of economic crisis and global change, a wide range of groupings, emphasized by manipulators of both extreme left and extreme right wings: populist leaders and private lobbying, xenophobic movements and defenders of fortress Europe, *Wohlstand-Egoisten* and nationalists, reactionaries nostalgic for the Cold War or the vassalage to the George W. Bush USA, who dislike a stronger and more autonomous EU. This democratic malaise largely affects domestic politics as well, and the issue of the 'crisis of democratic legitimacy' has also been addressed within national contexts.

All in all, both the changed external and global environment and the troubles in the interplay between the EU and the national polities in part explain why the multiple attempts at rationalizing and simplifying EU decision making and legitimacy did not result in a new, accomplished model of European supranational democratic polity. The objective of increasing input legitimacy was not fully achieved, in spite of various and innovative attempts not only at the level of treaty reform (in favour of European Parliament co-decision power), including the 'constitutional momentum' of 2000–05, but also the several democratic reforms of practical governance, according to an enlightened technocratic model (see, for example, the European Commission 2001), and some concrete progresses concerning the transnational public sphere. The absolute progresses are significant, but considering the size of the demand and the magnitude of the challenges, they are not enough and the European democratic deficit is becoming a dominant discourse with possible multiplying effects on the real developments.[37]

All in all, the call for enhanced democratic legitimacy must be clearer regarding the diverse nature of a state kind of democracy and the EU's eventual supranational democratic system (Quermonne 2009). Moreover, the EU's democratic legitimacy is and will be based on two pillars, the citizens and the states, but its legitimacy as a regional multilateral organization will be based even in the future on multiple criteria and among them efficiency and competence will remain of crucial relevance. This is well illustrated by the symbol of the EU system, i.e. the 'community method': it combines the law-making initiative monopoly for the Commission and the law-making power for the Council of Ministers (with increasingly large co-decision by the European Parliament) and the legal control power for the European Court of Justice. This method is not entirely democratic by nature and, what is more, it was not applied to the internal and external security policies (as shown by the baroque structure of the Maastricht Treaty including one community pillar and two intergovernmental political pillars), and was combined with even softer methods of governance in the framework of the Lisbon strategy for a knowledge society, the 'open method of co-ordination'.[38]

Some 60 years after the 'Schuman Declaration', in spite of the huge progress towards European democracy and citizenship, from the Treaty of Maastricht to the Treaty of Lisbon, the technocratic power of the European Commission (and of the Central European Bank) and the political power of the European Council and, under the Maastricht Treaty and Lisbon Treaty, of the European Council as well, are confirmed as the twofold limit to a fully accomplished model of supranational European democracy.

However, an historical and legal analysis shows that, on the one hand, the EU democratization process in the long term was quite successful and, on the other hand, that the gap between demands and institutional answers remains considerable enough to enable populist leaders, public opinion manipulators, left- and right-wing extremists and nationalists to take stock of social crises and make the EU an easy scapegoat for internal political conflicts. The peoples' referendums of 2005–07 in France, the Netherlands and Ireland provide plenty of evidence for this by offering wonderful windows of opportunity for such manipulation.

The wisest way to react is to avoid any misunderstanding about the non-state nature of the EU's supranational democratic legitimacy mechanism. Mimetic processes risked and still risk causing misunderstandings, frustration and defeats for the EU democracy. That means, on the one hand, downgrading the expectations of a similar degree of participation by the gradual learning process of national public opinion and, on the other hand, improving democratic participation at the national and European levels, by deepening the European multi-level democratic public sphere and various kinds of networking at the level of organized civil society.

The thesis of this paper is that *la nave va*:[39] in spite of the major obstacles to transforming the real existing EU into a fully achieved blueprint of a supranational openly constitutionalized democratic polity by enhancing its legitimacy requirements, '*la nave va*' (if I may quote the title of Fellini's successful film of 1983). The price of the failed open constitutionalization, from a democratic point of view, is the return to traditional treaty revision procedures, which implies lack of transparency and diplomatic secrecy. However, the institutional system looks efficient and legitimized enough to deliver outcomes that bring benefits to ordinary citizens. Even within the current stagnation, the EU is increasingly delivering, both in terms of internal policies[40] and external action.[41] How can we explain that *la nave va*?

The democratic legitimacy requirements of the implicit con-stitutionalization process are inevitably lower than those of the other two constitutional models, mentioned in the first part of this chapter. Some observers consider that the current dialectic between multiple demands for enhanced democratic legitimacy on the one hand, and increased institutional complexity on the other hand, is the distinctive mark of a new democratic polity. There is some evidence that the current EU is no longer a provisional step in an ongoing and open-ended process, but the enduring and relatively stable stage of maturity of a *sui generis* polity. In other words, the very question at the heart of the current debate is whether the experimental, supranational democratic system is an established model, balancing different and even opposite principles in a distinctive way, or whether it is still an unachieved step in an open process towards a supranational democratic polity.

10 The EU democratic experiment: an isolated case study, or both a laboratory and a reference for democratic regional co-operation abroad?

This chapter is also expected to provide some insight into the crucial question concerning the ongoing research project underpinning this book: is the EU democratic regional experiment an isolated case study, or is it part of a general tendency towards a more democratic global multilevel governance, where the regional dimension of the democratization process particularly matters?

On the basis of the achievements of the previous 40 years, the influence of the EU democratic model on the near abroad and far abroad has dramatically increased since 1989–91, in conjunction with both multiple bottom-up tendencies and pressures towards democratization in Europe and elsewhere in the world. On the other hand, the proac-tive impact of the unique network of external partnerships and the EU's material influence as a new kind of global actor, a civilian power. Eastern enlargement is according to the literature the main success of the EU as the first global democratizer. In other contexts, the balance is not so positive, however. Whereas the record of the outcome of inter-regional relations with the southern rim of the Mediterranean and with the ACP countries is still far from being satisfactory, evidence exists of a significant and deeper interplay with ASEAN partners[42] and, particularly with Latin American countries and their own regional co-operation process, in the framework of the Rio de Janeiro inter-regional process started in 1999. This ongoing experience confirms the weight of ideas through emulation processes (de Vasconcelos 2007; Franzoi Dri 2008).

Latin America offers two diverse examples of the parliamentary democratization of the regional organizations of neighbouring states: the Andean Community (CAN) and MERCOSUR. Contrary to con-ventional wisdom, the most advanced and oldest association in terms of institutional supranationality, almost a copy of the EU (Commission, Court of Justice, Council and a Parliament since 1979) is the least reli-able in terms of the real process of regional construction, economic integration, internal market dynamics and political salience. Institutional construction is a necessary but insufficient condition for succeeding and the CAN record in regional co-operation/integration is much less positive than MERCOSUR, which has been so successful over 20 years that it already represents a turning point in Latin American regional history, attracting new members (Venezuela, Bolivia and Chile as associate states) and fostering political dynamics throughout the whole subcontinent through the new Unión de Naciones Suramericanas (UNASUR—Union of South American Nations).[43]

MERCOSUR[44] shares with the EU the aim of consolidating democracy within the member states and has done it better than any other organization acting in Latin America since the Asunción Treaty of 1991 (compared, for example, with the OAS, which is not credible enough because of its past support of dictatorships). MERCOSUR not only framed the exceptionally successful democratic consolidation of every member state but, furthermore, in 1996 was able effectively to help support democracy in Paraguay against the military coup of General Lino Oviedo.

However, coping with the demand of democratizing the organiza-tion itself is the second and hardest challenge that deserves international consideration. Even if the current powers of the MERCOSUR Parliament can hardly be compared with seven legislatures-worth of experiences of a directly elected European Parliament (which makes 30 years, plus 27 years of the previous parliamentary assembly), many scholars agree that they are not symbolic and fragile. How could we explain such an ongoing innovatory process?

Both endogenous and exogenous factors must be taken into account. First, the success of MERCOSUR and its increasing regulatory powers at the intergovernmental level (the Council and Permanent Minister Committee—a kind of committee of permanent representatives, COREPER—in Montevideo) are fostering an increasingly bottom-up demand for improving legitimacy, notably by the wide range of social networks, interest associations and cross-border pressures that have developed over the last two decades, starting with the business com-munity, the unions and the civil society networks. Second, the previous experience matters as a counter-example: the negative record of pre-vious organizations of regional co-operation merely at the inter-governmental level. Certainly, as in the EU, the democratic ideology and notably—after 1989—the second wave of democratization created a favourable environment which was also confirmed later on, as democratic consolidation and its limits, by the 2005 UN Development Programme (UNDP) Report on 'Democracy in Latin America'.

Third, among the exogenous factors, the above-mentioned influence of the EU example of democratic common belief applied at the supra-national level should be mentioned to explain the decision to open this new, very important laboratory: inter-parliamentary co-operation between the European Parliament and Latin American parliaments (on average every second year, in parallel, at the level of EP-MERCOSUR since 1994, and of Eurolat since 1991), EU-MERCOSUR inter-regional dialogue within the framework of the 'Rio de Janeiro process' started in 1999[45] and, even if indirectly, also the cultural impact of forums such as the Inter-Parliamentary Union. These many examples of parliamentary democracy played a significant role by spreading the idea of a necessary parliamentary legitimacy of regional organizations. Finally, what indirectly matters within the context of the transatlantic triangle (USA-EU-Latin America) is also the failure of the counter-example of the Free Trade Area of the Americas (FTAA), sponsored by the USA from 1994 to 2005, with the narrow objective of liberalizing trade without any implication for multidimensional co-operation and democratization.

However, the weight of endogenous factors is evidence that it is not simply a mimetic process (driven by the EU and the EP) but an original attempt to balance the achievements of intergovernmental co-operation through a democratic body, even if the traditional influence and the historical/ethnic/ideal links with the European states do certainly matter in the context of the evolution of Latin American democratic public spheres. Without the bottom-up reaction of domestic and regional agents, the imported ideas from models already working abroad (in this case from the EU) cannot become an active driving force for institution building, which needs to be adapted in an appro-priate way to the new historical, cultural and political circumstances. MERCOSUR (like every non-European regional parliament) can cope with the twofold risk of idealizing the European Parliament and/or of transplanting models out of their historical context, through a wise combination of universalism and relativism, assertiveness of the values of democracy and human rights, and defence of legitimate regional interests against other regional interests (including those of the EU).

However, the first function of a regional parliament is to balance the growing importance of intergovernmental regulation at the regional level through enhanced legitimacy and, indirectly, to foster regional co-operation. However, the EU proves also that it is not a miracle solution to the multiple legitimacy deficits. The EU experience is evidence that a regional parliament compensates only to a certain extent for the frustrations of national parliaments (declining within their respective domestic institutional systems) and the differentiated capacities of interest organizations and lobbies to adapt to the regional decision-making process. It can afford to play this important role only provided that its record is not only symbolic and that it gradually acquires some co-decision powers capable of influencing the decision-making process in a visible way.

Undoubtedly, there are many kinds of political development, including the one that we could summarize as a regional protectionist fortress, where not only trade wars express the need for economic security but also where regional identity building is done against external actors ('wall identity', according to Cerutti and Rudolph 2001) and the priority of political security can evolve into intolerance against immigrants and aggressive foreign policy within increasingly controversial globalization. However, this scenario is not inevitable at all, no more than the opposite one, the revival of traditional or cosmopolitan forms of mere economic regional co-operation.

All in all, even if it is becoming comparable with the mimesis of the unification process of the USA, the EU's polity is not an isolated case. It can now be compared with the wide range of regional entities

world-wide, a new generation of associations which are spreading into every continent from Latin America to East Asia. Comparative studies are evidence that regional multilateral co-operation among neighbouring states is not only increasingly becoming a structural feature of global governance between the end of the 20th and the early 21st centuries, but also something very significant for the purpose of this research project:

- New regional entities are not at all limited to free trade areas but are multidimensional, including political co-operation, which historically underpins demands for enhanced democratic legitimacy;
- Contrary to previous forms of regional co-operation, they seemed to be driven by bottom-up tendencies of endogenous forces (civil society, the business community, the needs of common belonging) and not only by the top-down and exogenous pressures of the hegemonic powers; and
- The more the regional organization is becoming a stable level of governance, efficient regulation and conflict prevention, the more it must provide innovative forms of democratic legitimacy according to international standards, which leads to the consideration of the EU experience. Even if the forms of institutionalization vary according to the diverse regional, historical background, they are all facing a common challenge of combining widening and deepening, efficiency and legitimacy, institutional supranationality and democracy.

The spread of regional co-operation and the consolidation of bottom-up, economic/political, post-hegemonic, institutionalized, regional entities now imply a democratization of global governance towards the increased influence of new actors, each one characterized by its own path to regional co-operation and democracy. This is as such a challenge for global organizations, which have to cope with an increasing demand for more solid roots within continents and territories as well as for enhanced democratic legitimacy at different levels, and could take stock of regional entities in order to strengthen their bases within the various continents and subcontinents.

11 Conclusions: precise indicators and broader criteria for supranational democracy; the EU's role in international democratization

We have presented the historical and ideal development, the achievements and challenges, of EU democracy building: a multi-layered system, including local, social, national, transnational, supranational and democratic governance. Even if it is not yet mature enough to be defined as a new model of supranational democracy, the EU has already gradually accomplished significant progresses by implementing to a large extent the 14 *micro-indicators* featuring representative democracy[46] selected by International Democracy Watch (IDW), and also the four broader criteria of democratic legitimacy.

The 14 indicators allow us to evaluate to what extent the sophisticated supranational and intergovernmental EU system, including various forms and levels of authority and accountability, combines supranationality and democratic legitimacy. According to our understanding, the EU conforms to the following 13 IDW indicators:

- As a law-making power: the EU has conformed to indicator A1 (parliamentary assembly) since the early times of the ECSC (1951) and, by a directly elected parliament, since 1979 (indicator A6). Furthermore, the European Parliament is empowered with increasing co-legislative powers (A7).
- As an executive power: the EU conforms to indicator A2, despite the sharing of executive power between the Commission and the Council according to the various policy fields. The Commission is accountable to both the Council and, to an increasing extent, to the Parliament (A8). European Law has a 'direct effect' on citizens thanks to the decision of the European Court of Justice (ECJ) of 1963 ('Van Gend and Loos') (A9). The 'Doctrine of Primacy' (on the legal basis of the ECJ decision, *Enel-Costa*, 1964) ensures the power of the EU law over states and citizens, also in the event that it is in conflict with national law (A10). States are represented in weighted ways within the Council of Ministers. The Commission has to include nationals of every member state, even if Commissioners do not represent their respective state and must act

independently according to the general interests of the EU (Treaty of Nice). This corresponds to indicator A11. The Commission is appointed by the European Council, but a confirmation vote is required by the European Parliament (indicator A12); furthermore, the Treaty of Lisbon provisions include the election of the Commission's president by the Parliament.
- As a judiciary power: the EU conforms to indicator A3, given the relevant role of the ECJ, with seat in Luxembourg, within the EU's institutional system. This judiciary body is completely independent (indicator A13), even if the magistrates are nationals of the EU member states and appointed by the governments.
- Regarding supranationality in monetary policy: the EU conforms to indicator A4/A5 thanks to the creation of the European Central Bank (ECB) under the Maastricht Treaty. The ECB has its seat in Frankfurt and the euro has existed as the common currency since 1997.

However, the EU does not conform to indicator A14, focused on the separation of powers: on the one hand, the judiciary body is independent; on the other hand, executive power is divided between the Commission and the Council and law-making power is shared between the Parliament and the Council, which makes the Council the most powerful body with both law-making and executive powers.

This chapter illustrates further criteria of the EU's democratic legitimacy:

- The EU fosters multiple mechanisms of input democracy: democratic participation in the form of social dialogue with social partners, direct participatory democracy of citizens and the growing role of national parliaments.
- The EU delivers policies and public goods that benefit citizens, improve efficiency through competence delegation by member states to the centralized institutions; for 60 years it has provided peace, prosperity and democracy consolidation to the member states (which increases the EU's output legitimacy).
- The EU (the Commission, Council and Central Bank) interplays and co-operates with the epistemic community of experts and various representatives of competence and technical know-how, which increases its legitimacy through knowledge networks and civil society.
- The EU democratic system benefits from historic legitimacy based on shared values and principles asserted by the ratified treaty provisions, which are rooted in the common tragic history and are an essential part of its democratic international identity.

Despite its relatively good record with regard to indicators A1–A13, these criteria are not yet fully applied within the EU. Therefore, both citizen pressures and treaty reforms might improve the degree of their implementation in the years to come. However, even if imperfectly implemented, these indicators and criteria have proven and continue to prove to be realistic and feasible enough to make the EU, beyond any rhetoric, an international reference both within the continent and outside Europe.

The European Union is providing a broad and rich contribution to global democratic governance through the external influence of its concrete experience as such (on both neighbours and faraway partners). Second, the EU is including democracy building, rule of law and human rights protection within all its external policies, whatever interregional multilateral relations or bilateral strategic partnerships it has with individual countries.

Notes

1 Among several classifications we should mention that Robert A. Dahl provided the famous distinction between the 'Madisonian model', constitutionally limiting central power, the 'Populist model' of sovereignty of the majority, and the 'Polyarchical model' combining representation and limits to central power through free elections, majority decisions, associations network, power control mechanism, etc. (Dahl 1956, 2006). Regarding the differences with the federal Hamiltonian model, see below.

2 See, for example, the US relationship with Spain, Mexico and the UK.

3 In this chapter by the term 'region' we intend the macro-region, i.e. a region of the world where co-operation among neighbouring states is

possible (and not the sub-national region, such as Bavaria, Flanders or Tuscany).

4 The Council of Europe was founded on 5 May 1949 by 10 member states in The Hague and, after the historic change of 1989, it covers the whole European continent with its 47 member countries. Its objective is to spread throughout Europe democratic principles based on the European Convention on Human Rights. Its institutions are the Committee of Ministers (including the member states' foreign ministers) and the Parliamentary Assembly. One year after its foundation, the Council of Europe adopted the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights—ECHR). After decades as a kind of sleeping beauty—during the Cold War—the process of Eastern enlargement revived the Council of Europe which got a new start as an organization under-pinning the democratic transition process. The Council of Europe's member states are party to the Convention and early ratification of the Convention is expected for new members. The Convention estab-lished the European Court of Human Rights, situated in Strasbourg as well as the Council of Europe.

5 The Organization for Security and Co-operation in Europe (OSCE) is an inter-governmental organization supporting multidimensional co-operation on the European continent. Its institutions are the Council and the Parliamentary Assembly. Its mandate includes not only issues such as security and arms control, but also human rights, freedom of the press and fair elections. The OSCE since 1990 has been concerned with early warning, conflict prevention, crisis management and post-conflict rehabilitation. Most of its 3,500-plus staff are engaged in field operations. The OSCE should be considered a regional organization under the UN Charter (Chap. VIII). Its 56 member states are from Europe but also from the Caucasus and Central Asia. The USA and Canada are also founding members and have been playing an active role since the CSCE 'Helsinki Charter' of 1975 (35 signatures). The OSCE's Secretariat is located in Vienna.

6 The EU is an economic, monetary and political union of 28 member states, committed to regional co-operation and integration. While the European Communities were founded in 1951 and 1957, respectively, with the Treaties of Paris (European Coal and Steel Community—ECSC) and Rome (European Economic Community—EEC and Euratom), the EU was established by the Treaty of Maastricht signed in 1992 but entered into force on 1 November 1993 upon the foun-dations of the pre-existing European Economic Community, plus the political Union and the EMU. With 500m. citizens, the EU generates an estimated 30% of the nominal gross world product. In order to provide the reader with a practical comparison of the magnitude and relevance of the three mentioned European organizations, the European Community (EC)/EU budget (even if legally limited to 1.27% and in practice to 1% of the EU total gross domestic product (GDP)) represents many hundred times the budgets of the OSCE and the Council of Europe. Since 1979, the EU parliamentary democracy has evolved from an early second-degree parliamentary assembly to a parliament elected by citizens via universal suffrage. In 2009 the seventh European elections were held. The strengthening of parliamentary democracy was parallel to the development of a series of European regulatory powers: a single market through a system of laws applied in all member states, ensuring the freedom of movement of people, goods, services and capital, common policies on trade, agriculture, fisheries and regional development, a common currency (the euro) adopted by 17 member states thus known as the eurozone. Whereas its multiple external relations make it the second global actor, the EU has devel-oped a very limited role in foreign policy, having representation at the World Trade Organization (WTO), G8 summits, the United Nations and other international organizations. It enacts legislation in justice and home affairs, including the abolition of passport controls between many member states that signed the Schengen Agreement. As a *sui generis* international organization, the EU operates through a hybrid system of supranational and intergovernmental institutions and proce-dures. In certain areas, it depends upon unanimous agreement among the member states; in others, supranational bodies, including the Parliament and the Council, are able to make decisions without unanimity, based on the Commission's proposals. Important institu-tions and bodies of the EU include: the European Commission, the Council of the European Union, the European Parliament, the European Court of Justice and the European Central Bank.

7 Democracy needs a constitutional basis both as a way of detailing and limiting the exercise of democratic power by the majority and as a way of framing the behaviour of the people's representatives against any oligarchic tendency. Isaiah Berlin is still a classic reference author,

combining the 'positive liberty' of democratic participation with 'negative liberty', as warranties against the state's interference with individual liberties and rights (Berlin 1969).

8 During the Convention and through its contribution to the 'Federalist papers', Alexander Hamilton fostered the federal evolution of the new US polity, while opposing James Madison's model of democracy, essentially focused on the constitutional limitation of the central powers (Dahl 1956).

9 It started with Habermas's well-known article 'Does the EU Need a Constitution?' and Grimm questioning the existence of a European 'demos'. J.H.H. Weiler contended the need for a European explicit constitution, arguing that it had already been included within the European treaties and material constitution. See following paragraphs.

10 See Title XI and notably Arts 138 and 139. The role of social partners is also mentioned in Arts 126.2 and 130 of the new Title VIII, 'Employment', providing the European employment strategy with a legal basis.

11 A similar social decision-making process has existed in Sweden since the famous Saltjoebaden Agreement of 1938 between the Unions (LO) and the employers' organization (SAF). The social democratic govern-ment did not sign the protocol, though they strongly sponsored it. For many decades it has been one of the main pillars of the Swedish social model.

12 Despite Spinelli's very tough criticism that both the Treaty Rome and the Single European Act were anti-federalist.

13 We should also mention the European Defence Community in 1952–54, including Art. 38, drafted by Spinelli which institutionalized a 'European Political Community'.

14 Qualified as 'historic' by President of the Constitutional Affairs Committee of the European Parliament Jo Leinen (2004–09).

15 Making comparative studies with other regional organizations at least as legitimate as the traditional ones with the US and federal states.

16 'Declaration 23', listing four issues: providing treaty simplification; clarifying the sharing competences between the states and the EU; providing the national parliament with an enhanced role within the decision-making process; and setting the legal status of the 'Declaration of Fundamental Rights'.

17 The US controversy is the main reference. However, see also the European debate of the 16th and 17th centuries: see, for example, de Seyssel, an important author, as compared to Jean Bodin and his sovereign state theory and J. Locke's plea in favour of the minimum government.

18 It was based on four pillars (national parliament members, European Parliament members, the European Commission, national ministers) and the consensus reached within each pillar. The working groups adopted a consensual approach as well. This deliberative model provided the president and, in general, the Convention Presidium with significant power of synthesis. For the concept of deliberative democracy, see Gutmann and Thompson 2004.

19 Regarding the large international scientific debate about the Constitutional Treaty see also Morelli (2005); Norman (2005); Magnette (2002); Dony and Bribosia (2005); Eriksen *et al.* (2004); Liebert *et al.* (2003).

20 For a critical view on the European Convention, see Duhamel (2003).

21 For a deeper presentation of Habermas's vision, see Müller (2005); Malandrino (2002); Dellavalle (2002).

22 See Jean Marc Ferry's definition of this bottom-up, transnational approach to constitutionalism as '*La voie kantienne*' (Ferry 2006), which combines federal and republican elements with a kind of European cosmopolitanism.

23 Starting in 1964 with the 'doctrine of primacy' of European law in the event of conflict with national law (*Costa-Enel* sentence of the EC Court of Justice).

24 The definitions of the EU as an empire are alternative to our inter-pretation of the EU as a *sui generis* democratic polity. However, while Ulrich Beck's 'Cosmopolitan Empire' (Beck and Grande 2006) looks both Eurocentric (in a normative understanding) and inappropriate for a multilateral and, by definition, non-hierarchical polity, Portinaro's reference to the Medieval model of Dante's supranational kind of empire entails relevant references to the internal centrifugal and non-hierarchical multilevel governance which are particularly challenging to the democratic theory (Portinaro 2007).

25 This interesting but narrow definition by Göran Therborn ('EU as the World's Scandinavia'; Therborn 1997) seems to underestimate the driving role of the EU's hard core, even as far as legal integration and co-operation are concerned.

26 Jean Raux suggested the expression 'objet constitutionnel en devenir' (in Blanchard 2001).

27 Besides the 'early warning procedure' of the Treaty of Lisbon (information from national parliaments about new directive proposals and, according to the principle of subsidiarity, possible request to the Commission by a certain number of them to redraft the directive proposals), the German High Court required by its decision of 30 June 2009 (and obtained in September 2009) a *Begleitungsgesetz*, a new law to be approved by the Bundestag stating that every transfer of sovereignty to the EU had to be approved by the national parliament.

28 1979, 1984, 1989, 1994, 1999, 2004, 2009.

29 The spread of very different Eurosceptical tendencies combined with the general problems of national democratic systems explains, first, the declining turnout in the European Parliament elections. Since 1979 the European Parliament elections have looked like a kind of 'mid-term election' in the USA, which implies a 20% lower turnout than for national elections. However, the European election turnout declined from 61.99% in 1979 to 58.98% in 1984, 58.41% in 1989, 56.67% in 1994, 49.51% in 1999, 45.47% in 2004 and 43% in 2009. Regarding national differences, it ranged from 90% in Belgium to 19% in Slovakia. Second, the representation of several Eurosceptical parties in the European Parliament (in the UK, Poland, Italy, Belgium, France and other countries), both right and left wing. Finally, the creation in 2009 of a new, important Eurosceptical group in the European Parliament, the ID, Independence and Democracy (resulting from a division of the European People's party), based on the UK Conservative Party, and several MPs from Poland, France and the Czech Republic.

30 What could in general be defined as a pro-European majority includes in the 2009–14 European Parliament, in decreasing order of political significance: the European People's Party (EPP, 265), the Party of European Socialists (PES, 184 seats as parliamentary Group 'S&D', Socialists and Democrats, including the Italian Democratic Party as well), the European Liberal and Democrat Reform (ELDR, 84), the European Green Party (EGP, 55). Other political families are the GUE (Party of the United Left, 35), ECR (European Conservatives and Reformists, 54), and EFD (Europe of Freedom and Democracy, 32).

31 Milestones were in 1999 with the European Parliament Resolution demanding the withdrawal of the Santer Commission, and in 2004 when President José Manuel Barroso was forced to change his Commission team.

32 Regarding the gender dimension, in 2009–14 about one-third of MPs are women.

33 However, all member states must respect the essential principles of secret ballot and equality of sexes. The voting age is 18, with the sole exception of Austria (16).

34 The 20 specialized standing committees include from 24 to 76 MPs reflecting the political weight of each political family. The committees have a chair, a bureau and a secretariat. They meet once or twice a month in Brussels. The committees, through their public meetings, debate and adopt legislative proposals and their own-initiative reports, consider the Commission and Council proposals and, where necessary, draw up reports to be presented to the plenary assembly. The Parliament has also set up sub-committees and special temporary committees to deal with specific issues (for example, in matters of defence policy).

35 Of which 44% is for staff expenses, mainly salaries for the 6,000 employees working in the administration and, to a lesser extent, in the Political Groups, 9% for the Parliament's buildings, 5% for activities and products, 5% for the IT and telecommunications sector and 4% for Political Group activities.

36 For example the ECSC included a special Council of Ministers responsible for their respective national parliaments, a Parliamentary Assembly entitled to distrust the High Authority, a Court of Justice responsible for the respect of the rule of law: more than any international organization.

37 The declining turnout at the 2009 European Parliament elections is both an effect and a cause of the prevailing rhetoric of democratic deficit: the aggressive international campaign to de-legitimatize the European Parliament would neglect several facts: not only that the most powerful man on our planet (the US President) is elected by a similar turnout, but that for the first time in the history in Europe, and only in Europe, millions of electors belonging to 27 countries voted for a supranational parliament provided with real co-decision powers, which would have an impact on their future life.

38 This method, as an intermediate way between the community method and the intergovernmental procedure, provides the Council with a major role in national policy co-ordination, the Commission with expertise and monitoring roles, and the Parliament only with an information and consultation role.

39 Literally: The ship is sailing.

40 For example, the 'services directive', substituting the highly controversial 'Bolkenstein directive', the *Reach* regulation, the recognized progress in the implementation of the Lisbon agenda for 'growth and jobs', the progress regarding the third pillar, the agreement on energy policy and the co-ordination of anti-crisis national policies.

41 Playing a leading role within the G20, setting the new trade policy after the blockage of the WTO 'Doha Round', strengthening the eurozone in the context of the worst financial crisis ever, multiplying the humanitarian missions, the strategic partnerships and the multiple co-operation policies with emerging powers and the developing world.

42 Besides the EU's support of every domestic democratization process (Indonesia, Malaysia, the Philippines, Thailand), the EU underpinned endeavours to draw up and approve the ASEAN Charter in 2007. The Charter is not very much more than symbolic of the shared values and will to respect democracy and human rights, without any binding power yet. However, the internal debate regarding regional pressures on Myanmar (Burma) are increasing: see, for example, the ASEAN Board's extraordinary meeting and repeated intervention regarding Myanmar's opposition leader's sham trial (Aung San Suu Kyi) and in view of the 2010 elections. The AU, the SADC, the Andean Pact and other organizations are analysed in other chapters of this study. However, some evidence proves the importance of the political factors underpinning regional co-operation and we can argue that the EU experience illustrates well that the existence of a founding political aim is the main precondition for a regional organization to try, sooner or later, to cope with internal democratic legitimacy expectations.

43 Brazil in particular supported the creation of UNASUR as a political association of all South American states.

44 The so-called 'PARLASUR' was officially installed in December 2006 and began its work sessions in May 2007. The presidents of MERCOSUR member states signed the Constitutive Protocol of MERCOSUR's Parliament in December 2005. However, PARLASUR is not yet formed by directly elected representatives (see the constitutive Protocol of 2005 and the first experience as Joint Parliamentary Committee). The recent 'Acuerdo politico para la consolidación del MERCOSUR' (approved by the Consejo do Mercado Comun—CMC) establishes the following share of seats which adjusts to MERCOSUR's internal asymmetry and the European criterion of decreasing proportionality among member states: Brazil 75, Argentina 43, Paraguay and Uruguay 18 each. At the moment, the representation of Venezuela has not been established. The sum of the three junior members is 79, four more than Brazil. The proportionality is also adapted to the Tribunal de Justicia (and the Tribunal Permanente de Revision).

45 Regarding the inter-regional relationship between the EU and Latin America, see Telò (2007), particularly the introduction and the chapters by B. Hettne and A. Vasconcelos.

46 IDW micro-indicators, which have been conceived for quantitative purposes, are available at www.internationaldemocracywatch.org. Indicators concerning representative democracy are: A1) Does a parliamentary body exist? A2) Does an executive body exist? A3) Does a judiciary body exist? A4) Does a central bank exist? A5) Does a common currency exist? A6) Is the parliamentary body directly elected by citizens? A7) Does the parliamentary body have legislative powers? A8) Is the executive body accountable to the parliamentary body or directly to citizens? A9) Do executive bodies' decisions have a direct effect? A10) Does the executive body have direct power over citizens or member states? A11) Are states represented on a parity footing (or on a weighted one) in the executive body? A12) Is the executive body elected by the parliamentary body or is it formed by the governments of member states? A13) Is the judiciary body independent ? A14) Are the legislative, executive and judiciary powers exercised in a separated manner?

References

Beaud, O. (2007) *Théorie de la fédération*. Paris: PUF.

Beck, U. and Grande, E. (2006) *Das kosmopolitische Europa. Gesellschaft un Politik in der Zweiten Moderne*. Frankfurt am Main: Suhrkamp.

Berlin, I. (1969) *Four Essays on Liberty*. Oxford: Oxford University Press.

Blanchard, D. (2001) *La Constitutionnalisation de l'Union Européenne*. Rennes: Apogée.

Bobbio, N. (1999) *Etat et démocratie internationale*, ed. by Mario Telò. Bruxelles: Complexe.

Bobbio, N., Matteucci, N. and Pasquino, G. (eds) (1991) *Dizionario di politica*. Milano: TEA.

Cassese, S. (2009) *Il diritto globale*. Torino: Einaudi.

Cerutti, F. and Lucarelli, S. (eds) (2008) *The Search for a European Identity. Values, Policies and Legitimacy of the European Union*. New York: Routledge.

Cerutti, F. and Rudolph, E. (eds) (2001) *A Soul for Europe*, Vol. 2. Leuven: Peeters.

Conseil de l'Union Européenne (2004) *Projet de traité instituant une Constitution pour l'Europe*. 2 Volumes. Luxembourg.

Convention Européenne (2003) *Projet de traité instituant une constitution pour l'Europe*. Luxembourg.

Corbett, R., Jacobs, F. and Shackleton, M. (2007) *The European Parliament*. London: Harper.

Costa, O. (2001) *Le Parlement européen, assemblée délibérante*. Bruxelles: Editions de l'Université de Bruxelles.

Dahl, R.A. (1956) *A Preface to Democratic Theory*. Chicago, IL: University of Chicago Press.

Dellavalle, S. (2002) *Una Costituzione senza popolo?* Milano: Giuffré.

Delwit, P., de Waele, J.M. and Magnette, P. (1999) *A quoi sert le parlement européen? Strategies et pouvoirs d'une assemblée transnationale*. Bruxelles: Complexe.

de Vasconcelos, A. (2007) 'European Union and Mercosur', in M. Telò (ed.) *European Union and New Regionalism*. Aldershot: Ashgate, 165–84.

Dony, M. (2006) *Après la réforme de Lisbonne. Les nouveaux Traités européens*. Bruxelles: Université de Bruxelles.

Dony, M. and Bribosia, E. (eds) (2005) *Commentaire de la Constitution de l'Union Européenne*. Bruxelles: Université de Bruxelles.

Dony, M. and Rossi, L.S. (2006) *Démocratie, cohérence et transparence*. Bruxelles: Université de Bruxelles.

Duhamel, O. (2003) *Pour l'Europe*. Paris: Seuil.

Elazar, D.J. (ed.) (1987) *Federalism as Grand Design*. Lanham, MD: University Press of America.

Eriksen, E.O., Fossum, J.E. and Menéndez, A.J. (2004) *Developing a Constitution for Europe*. London: Routledge.

European Commission (2001) *European Governance: A White Paper*. COM (2001) 428 final. Brussels, 25 July.

European Commission DG Culture (ed.) (2002) *Europe 2004. Le grand débat. Setting the Agenda and Outlining the Options*. Bruxelles.

Ferry, J.M. (2006) *Europe, la voie kantienne: essai sur l'identité postnationale*. Paris: Cerf.

Franzoi Dri, C. (2008) *The Mercosur Parliament: Integration on European Patterns?* Paper presented at the Workshop 'Parliaments in regional integration', Bordeaux, Network Garnet, September.

Garrett, G. and Weingast, B.R. (1993) 'Ideas, Interests and Institutions: Constructing the European Community's Internal Market', in J. Goldstein and R.O. Keohane (eds) *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*. Ithaca, NY: Cornell University Press, 173–206.

Gauchet, M. (2006) 'Le problème européen', *Le Débat* 129: 50–66.

Giscard d'Estaing, V. (2003) *La Constitution pour l'Europe*. Paris: Albin Michel.

Goldstein, J. and Keohane, R.O. (1993) 'Ideas and Foreign Policy: An Analytical Framework', in J. Goldstein and R.O. Keohane (eds) *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*. Ithaca, NY: Cornell University Press, 3–31.

Gowan, P. and Anderson, P. (eds) (1997) *The Question of Europe*. London: Verso.

Gutmann, A. and Thompson, D. (2004) *Why Deliberative Democracy?* Princeton, NJ: Princeton University Press.

Haas, P.M. (1992) 'Introduction: Epistemic Communities and International Policy Coordination'. *International Organization* 46(1): 1–35.

Habermas, J. (1998) *Die postnationale Konstellation*. Frankfurt am Main: Suhrkamp.

——(2001) *Zeit der Übergänge*. Frankfurt am Main: Suhrkamp.

——(2006) *Sur l'Europe*. Paris: Bayard.

Hamilton, A., Madison, J. and Jay, J. (2009) *The Federalist*. Cambridge: Belknap.

Held, D. (2006) *Models of Democracy*. Stanford, CA: Stanford University Press.

Hersant, Y. and Fabienne, B. (eds) (2000) *Europes: de l'antiquité au XX siècle*. Paris: Laffont.

Hix, S. (1999) *The Political System of the European Union*. Basingstoke: Palgrave MacMillan.

Hix, S., Noury, A. and Roland, G. (2007) *Democratic Politics in the European Parliament*. Cambridge: Cambridge University Press.

Keohane, R.O. (1984) *After Hegemony*. Princeton, NJ: Princeton University Press.

——(2006) *The Contingent Legitimacy of Multilateralism*. Garnet Working Paper No. 9. September.

Levi, L. (1979) *Verso gli Stati Uniti d'Europa*. Napoli: Guida.

Liebert, U., Falke, J., Packham, K. and Allnoch, D. (eds) (2003) *Verfassungsexperiment: Europa auf dem Weg zur transatlantischen Demokratie?* Münster: Lit.

Louis, J.V. (1995) 'La Constitution de l'Unione Européenne', in M. Telò (ed.) *Démocratie et construction européenne*. Bruxelles: Editions de l'Université de Bruxelles.

Magnette, P. (ed.) (2002) *La constitution de l'Europe*. Bruxelles: Université de Bruxelles.

——(2005) *What is the EU? Nature and Prospects*. Basingstoke: Palgrave MacMillan.

——(2006) *Au nom des peuples*. Paris: Le Cerf.

Magnette, P., Delwit, P. and de Waele, J.M. (1999) *A quoi sert le Parlement européen?* Bruxelles: Complexe.

Malandrino, C. (2002) *Un popolo per l'Europa unita*. Firenze: Olschki.

Mazzini, G. (2001) *Thoughts upon Democracy in Europe*, ed. by Salvo Mastellone. Firenze: CET.

Mitrany, D. (1943) *A Working Peace System*. London: Royal Institute of International Affairs.

Montesquieu, C.L. (1950–55) *Oeuvres complètes*. Paris: Nagel.

Moravcsik, A. (1998) *The Choice for Europe. Social Purpose and State Power from Messina to Maastricht*. Ithaca, NY: Cornell University Press.

Morelli, U. (ed.) (2005) *A Constitution for the European Union*. Milano: Giuffré.

Müller, J.W. (2005) *Constitutional Patriotism*. Princeton, NJ: Princeton University Press.

Nicolaidis, K. and Howse, R. (ed.) (2001) *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union*. Oxford: Oxford University Press.

Nicolaidis, K. and Magnette, P. (2009) 'The EU Democratic Agenda', in M. Telò (ed.) *The European Union and Global Governance*. New York: Routledge, 43–63.

Norman, P. (2005) *The Accidental Constitution*. Brussels: Eurocomment.

Pagden, A. (ed.) (2002) *The Idea of Europe: From Antiquity to the European Union*. Cambridge: Cambridge University Press.

Pistone, S. (ed.) (1975) *L'unificazione europea tra le due guerre*. Torino: Fondazione Einaudi.

Portinaro, P. (2007) 'Repubblica, stato, impero. La costituzione introvabile dell'Unione Europea', in P. Butti de Lima (ed.) *Idee d'Europa*. San Marino: AIEP.

Quermonne, J.L. (2005) *Le système politique de l'Union Européenne*. Paris: Montchretien.

——(2009) 'Le déficit démocratique de l'Union Européenne'. *Commentaires* 126: 301–8.

Rittberger, B. (2005) *Building Europe's Parliament: Democratic Representation beyond the Nation-State*. Oxford: Oxford University Press.

Rosenau, J.N. and Czempiel, E.O. (eds) (1992) *Governance without Government: Order and Change in World Politics*. Cambridge: Cambridge University Press.

Scharpf, F.W. (1999) *Governing in Europe. Effective and Democratic?* Oxford: Oxford University Press.

Schmidt, V.A. (2005) 'Institutionalism and the State', in C. Hay, M. Lister and D. Marsh (eds) *The State: Theories and Issues*. Basingstoke: Palgrave MacMillan, 98–117.

——(2006) *Democracy in Europe: The EU and National Polities*. Oxford: Oxford University Press.

Schmitter, P.C., Marks, G., Scharpf, F.W. and Streek, W. (1996) *Governance in the European Union*. London: Sage.

Spinelli, A. (1989) *Una strategia per gli Stati Uniti d'Europa*, ed. Sergio Pistone. Bologna: Il Mulino.

Telò, M. (ed.) (1995) *Démocratie et construction européenne*. Bruxelles: Editions de l'Université de Bruxelles.

——(2005) *Europe: A Civilian Power?* Basingstoke: Palgrave MacMillan.

——(ed.) (2007) *European Union, New Regionalism and Global Governance*. Aldershot: Ashgate.

——(ed.) (2009) *The European Union and Global Governance*. New York: Routledge.

Therborn, G. (1997) 'Europe in the Twenty-First Century: The World's Scandinavia?' in P. Gowan and P. Anderson (eds) *The Question of Europe*. London: Verso, 357–84.

——(2006) *European Modernity and Beyond*. London: Sage.

Thibaud, P. (2006) 'De l'échec au projet'. *Le Débat* 140: 17–29.

Weiler, J.H.H. (1985) *Il sistema comunitario europeo. Struttura giuridica e processo politico*. Bologna: Il Mulino.

——(1999) *The Constitution of Europe*. Cambridge: Cambridge University Press.

Weiler, J.H.H., Begg, I. and Peterson, J. (eds) (2003) *Integration in an Expanding European Union: Reassessing the Fundamentals*. Oxford: Blackwell.