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Can Europe be Democratic? Is it Feasible? It is Necessary? Is the Present Situation Sustainable?

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Abstract

Democracy and democratization at the European level have long been a non-problem. The issues related to democracy after the Second World War were purely national (would Italy and Germany finally be able to build up and consolidate their new democratic systems?) or international (would the Western-type democracies be able to resist and counterweight the Soviet-style Eastern European regimes?). When the first foundations of what would become the European Union ("EU") were laid down, very few had a democratic vision in mind. The then-dominant concerns were both economic (how to facilitate the reconstruction of Europe while avoiding again the economic and military domination of Germany over the continent) and security-related (how to strengthen the Atlantic alliance and reintegrate Germany in the defense of the West). Only a few idealist visionaries were dreaming of a democratized and united Europe, but few others were paying attention to what was perceived as intellectual fantasies.

CAN EUROPE BE DEMOCRATIC? IS IT FEASIBLE?
IS IT NECESSARY? IS THE PRESENT SITUATION
SUSTAINABLE?

Yves Mény *

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INTRODUCTION

Democracy and democratization at the European level have long been a non-problem. The issues related to democracy after the Second World War were purely national (would Italy and Germany finally be able to build up and consolidate their new democratic systems?) or international (would the Western-type democracies be able to resist and counterweight the Soviet-style Eastern European regimes?). When the first foundations of what would become the European Union (“EU”) were laid down, very few had a democratic vision in mind. The then-dominant concerns were both economic (how to facilitate the reconstruction of Europe while avoiding again the economic and military domination of Germany over the continent) and security-related (how to strengthen the Atlantic alliance and reintegrate Germany in the defense of the West). Only a few idealist visionaries were dreaming of a democratized and united Europe, but few others were paying attention to what was perceived as intellectual fantasies.

However, the worm was in the fruit. Like many other international organizations of the post-war period, the new European institutions, starting with the Coal and Steel Community, were paying lip-service to some formal dimensions

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of democratic settings. On the surface, the new international bodies were mimicking the structures of democratic institutions, following a pattern established after the First World War under the influence of the Wilsonian idealism. The institutional tool kit was not only made of the representatives of the national executives but some forms of separation of powers were introduced, such as an Assembly and some embryonic jurisdictional components. Notwithstanding these apparent improvements, not much changed as, actually, all components of the international organizations were deriving from and under the final control of the sovereign states. They were and still are, for most of them, like Potemkin-type artificial settings. They were supposed to create positive feelings and give the illusion that pure state power was mitigated but rather quickly nobody was fooled anymore by this imaginative *trompe-l'oeil*.

An ample body of historical, legal, and political research has explained why this has not happened with the European institutions even if, in a sophisticated but not fully convincing thesis, Allan Milward has argued that the construction of Europe has been mainly a successful rescue of the nation-states.¹ What made the difference was the supranational elements introduced in the European treaties: the worm. Community institutions were not only the extended arms of the states. If one accepts for a moment with Truman that everything, including institutions, are actually interests and only interests, it means that a new set of actors and interests could make a breakthrough and influence the working and evolution of institutions.² It also shows that if institutions are largely determined by their original genetic code, there is room for evolution and transformation if the appropriate ingredients for change are already there as potentials. In other words when the institutional setting is not completely locked in and actors are given tools for further developments, new initiatives or constructive interpretations are possible—or when any change or development calls for additional innovation, creates new contradictions, or needs requesting to go one step further. This cannot be seen as a classical spillover effect from

1. See generally ALAN S. MILWARD, *THE EUROPEAN RESCUE OF THE NATION STATE* (2d ed. 2000).

2. DAVID B. TRUMAN, *THE GOVERNMENTAL PROCESS: POLITICAL INTERESTS AND PUBLIC OPINION* 26–27, 43–44 (2d ed. 1971).

economics to politics but rather as a kind of mechanical effect of institutional dynamics. Every step triggers more requests for further change as it entails the mobilization of interested groups and creates new dissatisfactions or contradictions.

From this point of view the debate on the democratic dimension of Europe is illuminating and constitutes a never-ending illustration of the dynamics of the democratization processes. Since the 1950s, every new treaty has introduced some form of progress, and it is fascinating to observe that far from satisfying the elites or the public opinion, every improvement has increased frustrations and dissatisfactions, paving the ground for future changes.

Before examining the state of the democratic issue at the European level, two preliminary observations have to be made. First, since mankind's debates over democracy, i.e., from the time of ancient Greece, the same word is utilized to describe or prescribe very different realities. It is both a source of confusion—as shown for example by the present populist upsurge,³ which, beyond the peculiar rhetoric of these protest parties, is fundamentally a debate about what democracy is or should be—and a springboard for variegated claims and visions. As a result, the debate about the conditions and ways of crafting democracy at the European level has raged over time and still continues. It is striking to observe afterwards that the supposedly efficient remedies prescribed to the patient by many doctors of democracy have failed to cure the democratic malaise.

Second, the debates, analyses, and proposals in matter of democratization of Europe have been very much path-dependent on the ways democracy has been experienced at the national level. National democracies have served as yardsticks to gauge and assess the value of the democratic elements of the European system. They are good reasons for such an exercise. It is a common practice both for scientists as well for common people to start from the known to better understand the unknown or the new. Comparison is always a useful instrument for evaluating different realities. But the exercise may end both intellectually

3. See generally YVES MÉNY & YVES SUREL, *PAR LE PEUPLE, POUR LE PEUPLE, DÉMOCRATIE ET POPULISME* [BY THE PEOPLE, FOR THE PEOPLE: POPULISM AND DEMOCRACIES] (2000); *DEMOCRACIES AND THE POPULIST CHALLENGE* (Yves Mény & Yves Surel eds., 2002).

and in practical terms in an impasse when comparison is about objects very different in nature or structure. A good illustration of this has been the way in which democracy had been conceived until the American and French Revolutions, whose initial objectives were less democracy than the establishment of republics. The dominant thinking at the time was still deeply influenced by the experience of ancient times, that is, a system involving every citizen and as a consequence reserved to tiny polities endowed with virtuous citizens. The epistemological rupture, to use Kuhn's wording,⁴ occurred when the British principle of representation was combined with the principle of people's sovereignty, putting in place a system named Democracy but which had little to do with the regime invented in Athens. Since then the democratic regimes have considerably changed, to such an extent that it would be difficult by contemporary standards to recognize the quality of democracy in the France or United States of that time. But the matrix has remained more or less the same and has served as a reference model to all or most of the democracies established afterwards. Over time, a quasi indissoluble link between the concepts of nation, state, and democracy has been forged and has become an indisputable dogma. One can observe since the nineteenth century the growing standardization of forms of power organization. The French philosopher Henri Lefebvre underlined that our time is characterized by a process of elimination—at least in institutional terms—of the traditional forms of governance (tribes, kingdoms, fiefdoms, empires, etc.) and their replacement by what he calls “the catholicity of the State”—in other words its universality.⁵ The same can be said of the concepts of nation or democracy adopted everywhere as central values even when reality shows that it is a tragic farce. The world is still trapped in a conception of democracy limited to the nation-state in the same way that it was previously reserved to small cities. The skeptical attitude of a weekly such as *The Economist* is telling: “In the real world when democracy gets much beyond the nation-state, it stumbles.”⁶

4. THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* 42 (1st ed. 1962).

5. HENRI LEFEBVRE, *DE L'ÉTAT [ON THE STATE]* (1976).

6. *Charlemagne: Before the Altar of Europe*, *ECONOMIST*, July 3, 2010, at 52.

From this point of view, it is interesting to note the evolution of political thinking in the nineteenth century when it was argued that democracy was emerging first at the local level (promoted as a school of democracy) while such a line of thought is rarely transposed when it comes to the link between democracy at the nation-state level and democracy beyond the state. The dominant view today is similar to the previous impasse: democracy in spite of its intrinsic flaws and defects is the best possible regime but, unfortunately, it cannot be transferred to the supranational level. The European Union offers a fertile ground of observation for checking several questions from a normative and empirical point of view. The first question is related to its feasibility. Skeptics are ready to accept that a supranational democracy might be desirable but express many doubts about the possibility to make that dream come true. The harsh reality of international politics is the power of the states organized around the concept of sovereignty (established against the twin supranational power of the emperor and of the church). There is little or no room for democracy in this universe of cold monsters. The second question is related to its necessity. While the debate has been dominated by the so-called democratic deficit of the European institutions, alternative views have argued in the opposite direction and suggested that it was a false problem. The third set of question relates to the evolution of Europe as it stands today. The EU is in a half-way situation: there are some democratic features already in place but at the same time very few would characterize the present setting as a full-flesh democratic system. So the question becomes: Is this instable and unfinished equilibrium sustainable in the long-term? Is it possible for the EU to go forward with such an incomplete democratic setting? And if not, what consequences to be drawn? A deepening of the democratic instruments with the risk that such a modern empire knows the fate of the old ones? Or a more restrained strategy implying that democracy would remain a utopian dream?

I. *A DEMOCRATIC EUROPE: REALISTIC OR UTOPIAN?*

The coalition denouncing the democratic deficit of Europe is variegated and heterogeneous. It includes not only convinced federalists, advocates of supranational democratization such as the Greens or the alter-mondialistes but also the extreme right

and the extreme left, the euro-skeptics, and all the populist movements that have blossomed all over Europe. Obviously not all are advocates of a more democratic Europe as some are deeply hostile to the European construction as such. But as the dismantlement of the EU is not (yet) part of the dominant discourse, all, in one way or one another, have contributed to build up a wide consensus about the necessity of a more democratic Europe given the wide dissatisfaction with the present setting. The main beneficiary of these pressures has been the European Parliament, which has been prompt in using the argument (initiated by David Marquand in the early 1970s⁷) in favor of extending its powers.

However, many have insisted that the preconditions for the establishment of a European wide democratic system were not met. There is nothing such as a European People, but only a vast conglomerate of peoples speaking at least twenty different languages with no common identity, shared memories, or sense of solidarity. This argument is very strong as Europe's history is indeed plagued with conflicts, wars, and hostility, in particular vis-à-vis the closest neighbors. History is jammed with soft or dramatic examples of ethnic cleansing that have found their justification and legitimacy in the principle of self-determination of each nation usually defined by its cultural, religious, or linguistic homogeneity. It is an argument that is often heard in Britain and France, two countries with different but very strong stories and narratives of nation-building. It is actually rather paradoxical as the present historical outcome (a strong national identity) is the byproduct of a long process whose starting point was extreme heterogeneity and diversity. From a historical perspective they should be considered as the best possible illustration that a democratic system contributes as much to the nation-building process as it is conditioned by it. The homogeneity of the nation as a precondition for the legitimacy of the state and then of its democratic system is historically false. It is a particularly powerful ideological construct as it has become the dominant narrative and is part of elite and popular beliefs in most countries. Rare are those, such as Spain, that have accepted a diverse reading of their constitutive process.

7. See generally DAVID MARQUAND, *PARLIAMENT FOR EUROPE* (1979).

National homogeneity as a precondition of democratic legitimacy is not only historically false; it is empirically wrong. The example of compound and heterogeneous democracies are plenty. Without mentioning the United States, where a very strong identity has been built up over time out of a desperate mix of cultures and traditions, one can list Canada, India, and Switzerland as cases of successful democratic confederations in spite of extreme (and much more acute, for instance, in the case of India) diversity.

These factual considerations should not, however, hide the difficulties that Europe is facing in transforming itself into a full-fledged democratic system. First, as already underlined, even if historically and empirically wrong, the narrative about the definition of democracy as feasible only within the framework of the nation-state is extremely powerful. Alternative discourses have remained the privilege of small elites or parties. National leaders are not prepared to be the seconds in Rome and still prefer being the firsts in their villages. Second, European history, especially since the nineteenth century, is marked by its inability to build democratic systems incorporating populations of diverse linguistic, religious, or cultural origins. The empires of the past have failed and broken up while small countries have not succeeded in avoiding tensions between their various components. The fate of the former Czechoslovakia, the tragic destiny of Yugoslavia, and the endless saga of the Belgian linguistic and cultural divisions underline how much the Swiss case is the exception confirming the rule. Furthermore, the national dimension of democracy has been consolidated over time by the development and growth of the welfare systems.⁸ Welfare policies are nearly exclusively national in conception, scope, and fulfillment. As the Europeans consider by now that this dimension is intrinsically part of a “social market democracy,” it makes it more difficult to conceive of a European level without this crucial twentieth century addition.

The only way out of this apparently inextricable dilemma is time. There is probably no solution if one expects a full-fledged European democratic system as some activists of the European Constitution hoped. The Philadelphian moment has been missed

8. See Maurizio Ferrera, *National Welfare States and European Integration: In Search of a 'Virtuous Nesting,'* 47 J. OF COMMON MKT. STUD. 219 (2009).

for a basic reason: Unlike the fathers of the American Constitution, the European Convention was working with the peoples of Europe on their shoulders. Philadelphia was a successful coup, which could not be reproduced in the context of twenty-first century Europe. In Europe, national democracies are the result of a slow process of sedimentation and, for most of them, completed very recently. European democracy is not impossible; it is conceptually feasible but as put by Mitterrand in a different context: “Il faut laisser du temps au temps” and content oneself with imperfect and incomplete solutions.

Once this first obstacle is put aside, an embryonic democratic system can be put in place, using the tool kit available across the so many different types of democracies. Like its national counterparts and models, a democratic system of European governance must be representative, accountable, and capable of delivering. Assessed against this yardstick, the European system fits quite well the time predicament. Indeed, if judged by reference to present democratic standards, the European set of institutions might look predemocratic: the voters have no clue about who will lead the winning coalition, the Members of the European Parliament (“MEPs”) have no real influence on the choice of the president of the Commission, while the representation of the peoples, as underlined by the German Constitutional Court, is distorted to the benefit of small countries by a strong negative bias against the largest states. On the other hand, it is telling that when Marquand first used the famous “democratic deficit” catchphrase, he was criticizing the election of MEPs through indirect suffrage and was considering that a direct choice by the electorate would offset one of the main flaws affecting the election of peoples’ representatives. A few years later, his suggestions were fulfilled and yet, the democratic deficit debate raged even more, indicating that the issue could not be fully addressed only through the use of techniques void of real substance.⁹ Voting is fundamental provided that voters feel that it is meaningful if one wants to avoid populist backlashes.

Accountability is the second requirement invented by the representative government theory. The forms of political

9. See Yves Mény, *De la démocratie en Europe: Old Concepts and New Challenges*, 41 J. OF COMMON MKT. STUD. 1 (2002).

accountability are many, and while some are well defined by legal and constitutional rules, new ones linked to the rise of media and polls' influence have transformed the system to a large extent. It is telling, for instance, that in Great Britain few governments are censured by the Parliament, but leaders are thrown out by their party when there is a feeling that the elections will be lost unless the prime minister is sacked. No such thing exists in the EU, where the accountability of the Commission remains a rare occurrence (once in sixty years) and where the unclear decision-making mechanisms make it difficult—even for the experts—to attribute the responsibility of choices and orientations to a specific set of actors. As argued by Peter Mair, “[B]ecause we are denied an appropriate political arena in which to hold European governance accountable, we are almost pushed into organizing opposition to Europe.”¹⁰

Quite often, for instance, national governments blame the ill-defined “Eurocrats” for decisions that they have taken themselves. In Europe, the veil of ignorance is still very thick. Accountability is concentrated at the bureaucratic level and remains quite technical and formal while political accountability remains an abstract concept, contributing to the disenchantment and to the dissatisfaction of the European voters. Election after election, “Why bother to vote?” becomes the dominant attitude among the electorate. High turnover is secured only where voting is mandatory. As put by Jean Leca in his masterly review article of 2009,

The problem is not so much that it is impossible to provide a clear picture of the European types of policy-making, it is rather that it is impossible to trace those processes to a set of identifiable authors and thus to deal with the ‘intelligibility problem,’ whose democratic figure is the ‘accountability problem.’¹¹

The third component is the capacity of the accountable representatives to deliver. Faced with the weak representativeness and low accountability of the European institutions, Fritz Scharpf

10. Peter Mair, *Political Opposition and the European Union*, 42 GOV'T AND OPPOSITION 1, 12 (2007).

11. Jean Leca, *'The Empire Strikes Back!' An Uncanny View of the European Union: Part I—Do We Need a Theory of the European Union?*, 44 GOV'T AND OPPOSITION 285, 294 (2009).

has attempted to address the legitimacy problem by emphasizing the distinction between input legitimacy (resulting from popular support) and output legitimacy (resulting from the capacity to deliver appropriate public goods).¹² Europe, from that perspective could benefit from an enhanced legitimacy because of its unique capacity to provide policies that are beyond nation-states' ability. But this distinction could only partially answer the Lasswell question: "Who does what? When? And how? And to the benefit of whom?" His other distinction between negative integration and positive integration has contributed to better address the final part of the question but at the same time weaken the contribution of the policy output to the legitimacy issue, as these policies might not be the ones expected by the population. The latest analyses by Scharpf of European (non-) social policies show that he has adopted a more distanced approach. To this mismatch between capacity and expectations (underlined again and again by eurobarometer polls or other opinion studies), one must add the extreme—and growing—rigidity of competences attributed to the European institutions. While national democracies have no theoretical limits to their powers other than their willingness to act or not (the sovereignty paradigm), the European institutions have well defined and restricted competences whose extension is often the byproduct of crises or necessity. If one adds to this conceptual and constitutional limitation the bureaucratic *pesanteur* that affects the decision-making process and the implementation of European policies, it becomes obvious that Europe, by now, has a delivery problem that accentuates further the necessity to build up a full-flesh democratic system.

II. *DEMOCRACY: LUXURY OR NECESSITY?*

The development of Europe is fascinating as it makes us better understand the conditions under which democracy functions properly. Over time, the EC, and then the EU, have acquired nearly all the prerequisites of what makes a proper democratic system according to the most demanding standards.

12. FRITZ W. SCHARPF, *Negative and Positive Integration in the Political Economy of European Welfare States*, in GOVERNANCE IN THE EUROPEAN UNION 15 (Gary Marks et al. eds., 1996), reprinted in COMMUNITY AND AUTONOMY: INSTITUTIONS, POLICIES AND LEGITIMACY IN MULTILEVEL EUROPE 91 (Fritz W. Scharpf ed., 2010).

The Parliament is elected by universal suffrage and plays a role that many national parliaments could envy. The checks and balances are more developed than in many places, the rule of law is better applied than in many Member States, there is little room for clientelism or corruption, transparency is not only a slogan but a well-entrenched practice, etc. And yet there is an overwhelming feeling among the peoples of Europe that democracy is more a desirable target than an achieved reality. As put forward by dedicated federalist Andrew Duff, a British MEP, "The European Union is known more for its law and bureaucracy than for its justice and democracy."¹³

Few deny that there is no real problem with the present setting. Andrew Moravcsik, for instance, insists that one should not be bothered by the existing state of play since European institutions work under strict rules of delegation by the Member States whose democratic legitimacy is beyond any doubt.¹⁴ Giandomenico Majone shares the same conclusions but from a different angle, arguing that delegating regulation to ad hoc bodies in order to maximize efficiency does not require democratic legitimization as would be the case for redistributive policies.¹⁵ Since the European competences do not foresee such power (or do so only at the margins), the so-called democratic deficit is a false problem.

Apart from these two major exceptions, there is quasi-unanimity insisting that Europe should be democratic or arguing against the intrusion of Europe in matters to be decided by the democratic and legitimate national authorities. For the latter, democracy is a necessity but only the national level can fulfill the democratic requirements, while for the former, given that many decisions cannot be taken any longer at the national level, the only way out is democratization at the supranational level. Personally, this author subscribes to this last view. If one agrees that powers that cannot be properly exercised at the national level have to be delegated to a supranational body, then

13. ANDREW DUFF, *NOTRE EUROPE, POST-NATIONAL DEMOCRACY AND THE REFORM OF THE EUROPEAN PARLIAMENT* 4–5 (Oct. 2010), available at http://www.notre-europe.eu/uploads/tx_publication/PolicyPaper_01.pdf.

14. See generally Andrew Moravcsik, *In Defence of the 'Democratic Deficit': Reassessing Legitimacy in the European Union*, 40 *J. OF COMMON MKT. STUD.* 603 (2002).

15. GIANDOMENICO MAJONE, *DILEMMAS OF EUROPEAN INTEGRATION: THE AMBIGUITIES AND PITFALLS OF INTEGRATION BY STEALTH* ch. 7 (2005).

democracy needs to be transplanted at this level as well, in particular when transfers of competences are of such a magnitude. During the 1980s, there was a lot of talk about the hollowing of the state, but in that case it would rather mean the hollowing of democracy because the areas left to the national level would be only of secondary importance. The transfers of powers have been considerable and have more and more impact on the daily life of citizens, while there is not yet a proper mechanism of political accountability. Voters are increasingly frustrated and feel powerless as the national political class insists that decisions are taken by a faceless bureaucracy over which nobody can exert pressure or influence. One can observe a growing disenchantment or hostility vis-à-vis Europe, even in countries that have greatly benefited from the European integration process. For a long time, the dominant view has considered that economic policies were too important to be left to political bodies or parties and that one would be better off if managed by a right combination of market and independent experts (authorities, central banks, agencies). The recent global crisis has both shown the limits of that ideological choice as well as the re-emergence of states as ultimate payers and warrants of the economic system.

Insisting that democracy is a necessity at the supranational level when so many powers have been transferred by national authorities does not solve the problem. Democracy is not just a tool box as so many propagandists have tended to pretend. Creating or exporting democracy needs much more than elections and a few institutions. People have to be convinced that democratic rules are the best and legitimate instruments to rule their community. This faith and belief is not easy to build: each polity is constructed through a set of narratives, myths, and collective images created by political groups and leaders with the contribution of historians, thinkers, and the active role of the education system. But quite often it is not enough; in the course of the two past centuries where the process of nation-building has preceded the democratization process, very few political systems have avoided the trauma of a civil war whatever was the name given to the fights ("revolutions," for instance). In order for a political system to be perceived as democratic by the people(s), the citizens must feel to be members of a community, of a polity.

Europe is still far from this prerequisite. There are historical and cultural reasons for that. But the peculiarities of European development accentuate the difficulty. Europe is a moving reality, which, over a few years, has shifted from six to nine, twelve, fifteen, twenty-five, and finally twenty-seven members. And the game is not over. A polity needs borders and neighbors in order to define itself internally and externally. Being in a state of permanent flux does not help. As Jean Leca has put it bluntly, "The vicious circle of success is complete: no European polity without a leadership, no leadership without a global project, towards either the outside . . . or the inside or both, no project without a polity."¹⁶ This rather desperate conclusion underlines the difficulty of the democratization process as each precondition is itself subordinated to another precondition, making the starting point of change impossible or difficult to find. Paradoxically, the preconditions for establishing a European democracy system were more favorable thirty or forty years ago than today: in the 1960s, the national systems were more fragile and less assertive, particularly in countries like Italy or Germany, the dominant political parties supported the European construction, the welfare state systems were still underdeveloped, and the federalist dream was a powerful drive. The main obstacles to such a favorable evolution were France (within) and Britain (outside), but the need to build up a democratic system was not so pressing since Europe was still a dwarf with limited impact on policy-making and national sovereignty.

Europe today is in a paradoxical and quasi-inextricable situation. Never as in the present circumstances has a democratic European system been so much needed as today, when the contradictions between effective policy-making and political responsibility are growing. The attempt to put in place a Constitution for Europe was both felt as a necessity and feared as a further weakening of the protective national democracies. Its failure is symbolic and its resurrection as a treaty shows altogether the limits of democratic ambition. The constitution would have gone one step further but not far enough to properly address the democratic deficit. The mechanics were improved but there was little "political energy" in terms of parties,

16. Leca, *supra* note 11, at 296.

leadership, purposes, and narratives. The “efficient parts” (to use the Bagehot wording in the English Constitution¹⁷) were there. The “dignified parts” (“[T]hose which excite and preserve the reverence of the population”¹⁸) were absent and the few elements that were attempting to play this role in the preamble have been erased. The devil is in the details.

III. *THE INCOMPLETE DEMOCRATIC CONTRACT: IS IT SUSTAINABLE?*

Europe was not born as a democracy, a fate which, by all means, is not exceptional and has been shared by most if not all the nation-states at the time of their emergence. Within nations, the establishment of democratic institutions and practices has been incremental most of the time, in particular in the nineteenth century. Only in a few cases has it accompanied the creation of the state. Quite often elements, which by themselves do not belong to the initial democratic creed, such as the protection of rights, have emerged in aristocratic or monarchic regimes before being considered as part and parcel of democracies. The *Rechtsstaat* anticipated by many years the setting up of democracy in Germany to take just one example. In most cases suffrage was restricted to a few, power was in the hands of the executive, and judicial control was limited. Checks and balances were an American concept with little impact in Europe. On both sides of the Atlantic it took more than 150 years to reach a satisfactory democratic development (women were not entitled to vote until 1947 in France and, in the United States, fundamental rights were not properly guaranteed in half of the country). History sheds some light about the ways democracy could unfold in Europe at the supranational level but simultaneously underlines the differences between the national and the supranational experiences. The first lesson is the unstoppable course of democracy over time. The evolution has not been linear and is sometimes bumpy, but the direction is univocal. The second feature is that democracy triggers persistent dissatisfaction and calls for constant improvement. It is an unfinished business calling for a never-ending commitment.

17. WALTER BAGEHOT, *THE ENGLISH CONSTITUTION* 44 (2d ed. 1873).

18. *Id.*

Adjustments, reforms, and adaptations are in the genes of democracy.

These fundamental characteristics fit quite well in the European experience, which has been a building site since its inception. Step by step, treaty after treaty, some kind of democratic rules and institutions have emerged from a predominantly international institutional model. And like in the national models, every improvement has activated disappointment and further demands to go deeper. This process has been made possible by incremental changes in both the policy areas and processes. But the breaking point has been reached when small adjustments are unable to cope with the quality change implied by core transfers and democratic requirements. The stillborn constitution and the Lisbon Treaty have attempted in part to cut the Gordian knot, but they are still insufficient to solve the problem. The fundamentals of democracy are still lacking. In spite of all efforts, European citizenship is still a void concept for most Europeans; solidarity, which is a crucial ingredient of any community, sounds too often as an empty word when it does not disguise pure self-interests. The recent saga of the rescue of indebted Member States is telling. Europe is not yet a polity; there are very little European politics, and citizens are not yet fully convinced that their foreign fellows are members of the same family. Leadership is lacking not so much because of the personality of the European leaders, but because the present set of institutions, rules, and conventions do not allow for such a role. In a world where democracies are more and more organized around the leadership of a prime minister or president (only Switzerland is resisting the trend) the headless¹⁹ (or multi-headed) Europe is a liability for the democratic development of a supranational political system. Nearly 150 years ago Bagehot observed that personalization was a fundamental feature of political regimes and his observations are still appropriate today. He wrote:

The nature of a constitution, the action of an assembly, the play of parties, the unseen formation of a guiding opinion, are complex facts, difficult to know, and easy to mistake. But the action of a single will, the fiat of a single mind, are easy ideas: anybody can make them out, and no one can ever

19. See generally LEADERLESS EUROPE (Jack Hayward ed., 2008).

forget them. When you put before the mass of mankind the question, 'Will you governed by a king, or will you be governed by a Constitution?' the inquiry comes out thus—'Will you be governed in a way you understand, or will you be governed in a way you do not understand?'²⁰

Obviously it will be ridiculous to make a plea for a European Napoleonic regime but Bagehot had a point. There is no identity, community, or polity without some kind of emotions, narratives, symbols, and embodiment of values in political parties and leaders. Unfortunately, like the Kantian universal peace, the Habermassian concept of constitutional patriotism is too dry and abstract a proposal to deal with the European problem (and it presupposes that there is a *patrie*, a homeland, precisely what is still missing).

National democracies have gone through several steps in their process of consolidation: enfranchising the people, the building up of institutions and rules of the game involving the political parties, and, later on, the development of the welfare state systems. Nations have become democratic by striking compromises between social classes and between the state and the market. The fundamental flaw in the European construction is that the European institutions have absorbed the market regulation functions of the state, but are unable and unwilling to take over the other elements of the contemporary social contract, i.e., the redistributive functions. A crucial dimension of today's politics is out of hand and the division of labor between Member States and Brussels is not sustainable in the long run. Either Europe finds ways to make European citizenship meaningful, creating a new and still unknown form of democratic allegiance, or the ambitions of Europe will have to be drastically revisited. But even in that case, the European construction is at risk as the intergovernmental dimension would have taken over. One should remember the Vienna Congress. After the Napoleonic wars and disasters—the functional equivalent of the Second World War catastrophe—the European powers (united by monarchic and social conservatism) agreed on a vision of Europe dominated by large empires and small states under control. Today, the European states, united in principle by the common values of democracy and market, meet in Brussels and strike

20. BAGEHOT, *supra* note 17, at 61.

deals in a way that recalls 1815 rather than Jean Monnet ideals. This way of proceeding might last for some time but not forever. Substantial changes will have to take place in order to evolve little by little toward a European democratic system worthy of the name. Again, such an enterprise will need a lot of time. But what matters is the sense of direction. The least of which can be said is that, for the time being, Europe is not on the right track.