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Introduction: The State of the Art of a Non-State-Oriented Political Theory

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Introduction

The European Union (EU) is a polity that is subject to an ongoing process of reorientation. We can compare its difficulties and successes to those of a group of skippers and crew, who notice that they lack certificates for the conduct of the vessel and cannot find the map to take them through the uncharted waters they have chosen to cross. These curious conditions for the EU's 'ship of state'¹ to have set sail in are made worse when, already on the high seas, they also note that their ship is still under construction. Unfortunately, the sailors have neither a master plan of what the completed ship should look like nor a captain with the authority to propose a plan and to guarantee its implementation. Although the crew are well aware that it will be difficult to complete the pending construction, especially as the weather may get rough (which, as experienced sailors, they know will eventually happen), they cherish their individual autonomy too much to agree on a broad delegation of the competence to issue commands and to control compliance. The difficulty of constructing the ship stems from the additional problem that a preliminary debate on the construction plan has led to two camps, which oppose each other fiercely. While the first camp prefers turning the boat into a fully equipped vessel able to compete with all other vessels on the ocean, the second camp prefers the more modest plan of a boat that will simply make it to the next shore—even though the choice of shore is another disputed question (for more on this choice, see the concluding chapter in this volume). Furthermore, the sailors speak different languages. They do not understand each other

and—if from time to time they grasp the meaning of what the others say—they are often not inclined to be persuaded by the others' arguments even if they sound reasonable. All have their local clubs at home that have issued specific suggestions regarding the construction plan.

The story of the sailors on the boat under construction neatly captures many of the difficulties of the integration process: it points to the difficulties of deciding on the direction and degree of integration and of finding adequate strategies for the EU's foreign and security policy while illuminating this ship of state's astonishing success. Indeed, the puzzling finding is that the ship has not sunk yet. Despite much frustration with Europe, and some sailors' preference for boarding a smaller vessel in order to implement their preferred construction plan, the EU has continued to develop as the international organization that is arguably best equipped to deal with the challenge of globalization. This book's contributions take on that puzzle.

We maintain that the image of the ship is helpful for understanding many of the recent debates in the EU, too. Examples of such ongoing debates concern the *telos* of European integration, the balance of power between the member states and the European institutions, and the range of policies covered by the EU. They touch on the issues of the EU's quality as a polity, as an actor, as a system of governance, and as a society with shared cultural roots. Can one meaningfully describe the EU as a political system in its own right (Hix 1999), even if it has no agreed centre of authority but twenty-seven (or even twenty-eight, if we count Brussels twice) such centres? Can it govern effectively and efficiently if there is no shared concept of the *telos* of European integration (see Everson in this volume)? The lacking societal foundation of the EU, or, to keep with the seafaring metaphor, the lack of connectivity between the sailors and their clubs as well as among the clubs, is likewise a pressing issue. Although some argue that the EU is best understood as a technocratic problem-solving entity, it is hard to see how problems and opportunities can be identified if the units of the system do not share a common rationality for identifying them or the experience of spotting them, and, if they do not have a common regulatory philosophy for solving problems. Under conditions of societal and cultural heterogeneity, it may happen rather easily that a policy which offers a solution for some states and indeed non-state actors constitutes problems for others.

In addition, much of the recent normative debate reflects the scepticism entailed in the image of the vessel under construction. The EU is hardly ever described as a full-blown parliamentary democracy in the making. More common are contributions describing the EU as a mixture of technocracy

and intergovernmentalism, with its deliberative elements limited to the interaction of bureaucrats (Eriksen and Neyer in this volume). Transnational deliberation among the European people (i.e. the clubs at home in our seafaring image) remains a rare phenomenon and the European Parliament (EP) has never quite become the institutionalized centre that can provide input and/or reflect a lively European public debate. The hopes that the EP would follow the track of national parliaments in fostering political discourse among the different social groups in Europe have been seriously dampened. In fact, even today's post-Lisbon EP resembles more a meeting point of lobbyists and special interest groups battling about minor changes with regard to highly specialized directives than the robust roots of the healthy political system of modern nation-states. One key reason for the comparatively underdeveloped role of the EP in shaping European democracy is the fact that the member states still reserve the prerogative to discuss the important issues and to set the agenda of the EU among themselves. The clubs are not only remote from the sailors but are intentionally prevented from wielding a stronger influence on the actions taking place on board. After five decades of European integration, there is still no agreement among observers whether it is the intergovernmental European Council or the supranational political organs such as the Commission, the European Parliament, or the European Court of Justice, which are most powerful in setting and/or shaping the EU's agenda (Princen and Rhinard 2006).

The plethora of academic analyses as well as major speeches by key political figures have done little to change that situation profoundly. Even though discursive interventions triggered cross-cutting debates among academics, politicians, and policymakers,² and despite a quasi-constitutional commitment to the core principles of a Republican constitution that are familiar in modern democracies (Bellamy 2007) as well as the establishment of the four freedoms of movement, European citizens still remain sceptical towards the integration process. This is well demonstrated by the no-votes in France, the Netherlands, and Ireland on the project of a Constitutional Treaty. The lingering lack of public enthusiasm for the project of European integration and, especially, the Greek financial crisis have substantiated fears about the potential and momentum of the integration process, as citizens suspect that integration might make their lives faster, more difficult, and less secure. In addition, many fear that the implications of the integration process for member state democracies are not only benign. A growing number of policy-areas—such as monetary, justice, and home affairs—have been moved out of the democratic national arena and into the supranational or intergovernmental European arena of low

transparency and mixed competences (Gilardi, Jordana, and Levi-Faur 2006). Serious doubts regarding the underlying motivation for the expansion of EU competences were raised. Thus, Klaus-Dieter Wolf asked whether the integration process reflects a 'new *raison d'état*' of executive self-empowerment and the bypassing of national parliaments (Wolf 1999).

Not all normative reflections on the EU are pessimistic, however. The rejected referenda are sometimes interpreted as introducing a new period of *contestation* in which citizens engage in dialogue about the norms and rules that are to govern them (Tully 2004; Hix 2008). An ongoing and open-ended process of European *reorientation* can thus be conceptualized as constructive with a potential for fostering rather than undermining democracy. Understood in this way, the negative referenda signify an important—and somewhat overdue—public reaction to the potential for turning Euroscepticism on its head eventually.

Furthermore, it is impossible to ignore that the integration process moves on despite all critical voices and despite the lack of a political centre capable of determining the course of the ship. The EU's most important policy initiatives of the last ten years have underlined its commitment to liberal market principles: the growth and stability pact has limited the macro-economic policy scope of the member states and imposed a financial straitjacket on additional social expenditure (Puetter 2006). Diversity in leadership does not necessarily undermine coherence in policy-making. The enlargement process has integrated ten plus two Central and Eastern European countries and sought to push for the relatively speedy establishment of stable democratic institutions in these countries. The ongoing process of market integration has added momentum to the domestic reforms in many member states by increasing competition, adding pressure on salaries and wages, and constitutionalizing a liberal market ideology (Dauderstädt 2004). The integration process has also started to spill over into justice and home affairs, and—though not uncontested—into the area of foreign and security policy. Following the attacks on the twin towers in New York in 2001, the now twenty-seven member states have started to pool domestic prosecution and enforcement competences and institutionalized a number of new bodies for sharing information and coordinating migration and asylum policy (Bendiek 2006). Likewise, in foreign and security policy, new efforts to move beyond intergovernmental policy coordination by integrating some of its content into the European Neighbourhood Policy, which is administered by the Commission, have been made (Zielonka 2006).

The EU has managed to transform its political landscape from one divided by national borders and political nationalisms into one in which cross-border cooperation and inter-institutional deliberation have become widely accepted. The expansion of its territorial scope over the last fifty years and its rise from six to twenty-seven member states prove that the EU's attraction to outsiders remains high. When compared with other organizations in beyond-the-state contexts, the following assessment prevails: EU decision-making procedures are by far the most democratic; the competences of the European Parliament are broader than those of any other regional or international representative assembly; and the degree of legal integration is more sophisticated and robust than in any other regional organization. The revised Constitutional Treaty stands to improve the legitimacy of European politics further, for example, by placing greater emphasis on transparency, increasing the competences of the European Parliament and by making the EU more capable of meeting the challenges of globalization than any other treaty-based international organization.

The Agenda for a Political Theory of the EU

The considerable gap between assessments ranging from scepticism to expectations of enhanced democratic quality of the Euro polity poses a challenge. With this book, we argue that this challenge not only awaits actual day-to-day EU politics but also raises questions about a *Political Theory of the European Union*. In the best-case scenario, a Political Theory of the European Union (PToEU) will be able to address the questions that have been touched upon so far. It will submit a genuine idea of what kind of polity the EU is and provide the rationale for why, when, and how which institutions are dominant or ought to become so. It answers the question of who governs in the EU as well as whether and under what conditions governance can be efficient, effective, and live up to democratic standards. The driving forces and most powerful actors of the integration process are identified and related to conceptual debates about governance, dominance, and authority. The theory is not only strong in terms of explanation but also has a normative component. It builds on various traditions of theorizing legitimacy, discusses them against the background of the empirical reality, and explains their institutional implications. The theory is well integrated in the social science literature and seeks to engage approaches to integration theory, political theory, and international political theory in a constructive way. The concepts of democracy, justice and fairness, individual rights, and the public sphere all have their place in this theory and

provide starting points and relevant research questions for a great number of PhD and other pertinent research activities. Thus, it is our hope that PToEU provides both broad empirical and normative guidance. It describes, explains, and justifies actual social processes without losing the capacity to inspire critical reflections.

The sceptical reader (and the contributors to this volume) might be forgiven for thinking this a rather tall order. We would hold that while such scepticism is surely warranted, it is also to be challenged, and this book engages the latter perspective. It is probably true that no single work will ever be able to answer all of these questions conclusively. Social science and political theory are far too pluralistic for any such harmonizing efforts. In addition, we support an approach to the social sciences that encourages public and critical discussion of that range of pluralist approaches (Tully 2008a, 2008b). We understand a political theory of the EU as referring to an ongoing and ever inconclusive pluralistic project. It involves a large group of scholars bringing together viewpoints from different disciplines, which share an interest in addressing the issues of governance, authority, domination, and legitimacy. They develop individual perspectives on a common point of concern and discuss the relative strengths and weaknesses of their respective approaches. We suggest that this pluralistic endeavour should be undertaken with a view to both empirical and normative questions. A political theory of the EU should be aware that understanding a complex political reality is always not only about its procedures, its degree of inclusiveness, or its policies. The challenge is much more comprehensive as it includes identifying the basic analytical and normative criteria that we should use when dealing with the EU.

The contributions to this volume have been selected to offer a critical overview of some of the most recent, well-elaborated, and cutting-edge contributions to the project of theorizing the EU. The aim is to stimulate the debate about appropriate *ways of describing* the EU as a system of political order, on the one hand, and adequate *normative justifications* of its development, on the other. While the necessity of theorizing the political system of the EU has been taken for granted (Puntscher Riekmann, Mokre, and Latzer 2004), linking diagnostic to explicitly normative studies has not been attempted in any systematic fashion. From a normative perspective, the distinction between, for example, a description of the EU as an intergovernmental regime or as a supranational political order is significant. It is expected that the former be controlled by the member states. It finds some of its most important problems in the fact that the pooling of governmental resources has strengthened executive powers and

in the fear that this might lead to a bypassing of parliamentary powers (Moravcsik 1994). However, if we approach the EU as a supranational order, we might focus on a very different set of issues. The delegation of competences from the national to supranational levels and from domestic to transnational arenas inevitably involves limiting the influence of individual citizens on politics. At the same time, many observers point out that the discursive practices of domestic politics are non-replicable at the supranational level because there we have neither the necessary media infrastructure nor a comparable set of mediating interest groups.

The Structure of the Book

In light of this background, we aim to stimulate progress towards an emerging political theory of the EU. The innovative potential of this book lies in its interdisciplinary character, and its combination of positive and normative approaches to theory. The contributors come from a broad range of disciplines such as international relations, comparative government, constitutionalism, legal studies, and political theory. The book seeks to address the analytical potential and normative reach such a political theory of the EU might have. It is divided into three parts, which correspond to the three major theoretical challenges in the contemporary process of integration. The *first part* deals with matters of political authority and the role of the EU in a changing world order. The *second part* discusses the process of legalization and constitutionalization in and of the EU and its implications for the legitimacy of the EU. And the *third part* addresses the prospects of democracy and justice in the EU. In the following, we introduce each of the three parts and present abstracts of the respective selected contributions.

Political Authority in a Changing World Order

According to recent observers, analytically it would make little sense to describe the 'nature of the beast' according to the traditional categories of integration theory, including, for example, terms such as 'purpose-built functional integration' (Ipsen 1972),³ an 'intergovernmental regime' (Moravcsik 1998), or a supranational bureaucracy (Wessels 1997). Although all of these notions catch some important elements of the European reality, none of them is broad enough to account for the diversity of the Union. In its market-making activities, the EU is highly technical in practice, yet

community-based by definition; in the area of Common Foreign and Security Policy it is largely diplomatic yet intergovernmental by definition; and, finally, the EU's many agencies are notable cases of bureaucratic governance (Wallace, Wallace, and Pollack 2008; Wiener and Diez 2009; Bomberg and Peterson 2008). A more encompassing concept that seems to fit better with the variety of European politics and decision-making procedures is the notion of a multilevel governance system (Jachtenfuchs and Kohler-Koch 2003; Hooghe and Marks 2001*a*; Peters and Pierre 2009). The notion excludes hardly any area of European politics. Even in supranational areas such as monetary policy, the member states still have important competences and the EU's actions therefore need to be understood against the background of their preferences. Although helpful as a starting point, the multilevel governance notion leaves open a number of important questions. Who has the power over whom in the EU? What are the most important modes of interaction? Under what conditions can we observe more than strategic bargaining, witness even deliberative interaction? The analysis of the EU's internal performance is an important aspect for understanding its external policies. Does the EU's internal structure have an observable effect on how it conducts its policies towards third parties, or is EU foreign policy just like any other big power politics? In *Chapter 2* Edgar Grande and Ulrich Beck approach these questions from the perspective of 'Empire Europe'. They argue that all attempts to conceptualize the product of the process of European integration—first, the European Communities, then the EU—by using the prevalent categories of constitutional and international law and to classify this product either as 'federal state' or 'federation' have hitherto failed. Accordingly, this chapter argues that the major theoretical challenge for studies on Europe is to dismiss these concepts, which are still focused on the (nation-) state and to keep away from the conception of the state in this context. Instead, they suggest a modernized concept of 'Empire' for referring to the new forms of political governance that have been emerging in Europe. Their main argument is that the product of Europe's political integration can—and must—be conceived as a novel, post-imperialistic empire. This European Empire is not based on national confinement and conquest (as in the case of nineteenth-century empires) but on abolishing national boundaries, voluntariness, consensus, law, transnational integration and the political added-value accruing from these changes. In order to grasp the specificities of Europe as a (cosmopolitan) empire, the concept is defined as a new typological concept in the context of a broader historical and comparative sociology of political power and authority.

In *Chapter 3* Ian Manners addresses the issue of ‘un-national’ normative justification for EU foreign policy, observing that the EU’s foreign policy has traditionally been positively described in terms of national, supra-national, or transnational interests rather than being justified in terms of normative political theory. As European Commissioner Emma Bonino declared over a decade ago, such differentiation between descriptive interests and normative ethics is unsustainable in EU foreign policy (Bonino 1998). What are needed are normative justifications that can help inform political choices about foreign policy in the EU’s democratic political order. In other words, what are the un-national normative justifications for EU foreign policy? The chapter sets out three strands of political theory that are used for un-national normative justification for EU foreign policy. The first strand includes ‘classical’ justifications that emphasize state, supranational, or transnational politics. The second strand comprises those ‘critical’ justifications that focus on deliberative, difference, or gender politics. The third strand consists of ‘contemporary’ theories of reconciliatory, identity, or ethical politics. Each of these strands of political theory will be examined using a tripartite analytical approach developed for the study of the EU’s normative power in world politics. Hence each strand is considered at the nexus of positive description of, and normative justification for, EU foreign policy principles, actions and impact. Here a distinction is made between normative power in EU foreign policy, contrasted with more coercive or utilitarian foreign policy activities. This analysis includes the use of concrete examples to illustrate how normative justifications can and do inform EU foreign policy. Finally, the chapter considers whether differing strands of political theory lead to different characterizations of the EU as an entity in world politics. The chapter argues that un-national political theory of the EU allows us to understand the nexus of positive description and normative justification at the frontier of polity formation—EU foreign policy.

In *Chapter 4* Erik O. Eriksen asks whether the EU is a cosmopolitan vanguard. He argues that the European member states have domesticated international relations among themselves by establishing powerful institutions. Intrinsic to this has been the entrenchment of human rights in European law. This development however brings up a tension between democracy and human rights. While democracy is delimited to particular communities of legal consociates who come together to make binding collective decisions, human rights are universal; they refer to humanity as such. Hence, how are we to institutionalize human rights correctly under conditions of globalization, complex interdependence, and multilevel governance? A solution to this tension can be found in

cosmopolitan democracy, where actors see themselves as citizens of the world and not merely of their state. Eriksen claims that the EU, because it has developed beyond an international organization and a derivative democratic construct, can be a vanguard of such an endeavour. The EU is a polity in its own right with an organized capacity to act and with an independent source of legitimacy directly derived from a European citizenry. It has adopted a Charter of Fundamental Rights: the most explicit commitment yet to a full-blown political union founded on democracy, rule of law, and human rights. The EU is neither a state, nor a nation. A collective identity in a thick sense is lacking and the EU does not possess the coercive elements of a state. Herein lies the possibility for the EU to develop into a vanguard of cosmopolitan order, rather than a classic nation-state: to become a regional cosmopolitan entity based on a stateless government. The multilevel constellation that makes up the EU would then have the potential of being a governmental structure in which supranational authorities monitor the conduct of lower levels against a set of normative principles. The ensuing order would encompass regional associations in the rest of the world within the framework of a democratized, rights-enforcing UN. It would not aspire to become a world organization, but would be cosmopolitan in the sense that its actions would be subject to the constraints of a higher ranking law.

Sovereignty and Constitutional Change

The second part of this volume tackles the issues of sovereignty and constitutional change. Both concepts are central for the debate about the description and justification of the EU (Craig 2001; Weiler 1999a; Walker 2002; Weiler and Wind 2003; Stone Sweet 2000; Peters 2005; Rittberger and Schimmelfennig 2006). Both terms draw their attraction from being empirically strong and normatively thick. From a descriptive point of view, there can be little doubt that the EU is legally a highly formalized entity, that the rule of law is a crucial element of European governance, and that European law today is closely linked with the fundamental rights of individuals. Independently of whether we label the Lisbon Treaty a constitutional document or not, it has often been pointed out that, de facto, the EU does have a constitution (Weiler and Wind 2003; Peters 2001). This statement carries important normative implications. The constitutionalization of politics not only refers to a higher degree of formalism but it also implies a number of issues directly concerned with democratic governance both within the EU and beyond.

First, conferring judicially enforceable rights upon individuals limits intergovernmental discretion and ensures that individual freedom and governmental problem-solving capacity do not collide. The law is a very specific type of rule with an intrinsically normative content. For it to be accepted as valid law, legal rules must be generated in accordance with consented political procedures and be understood within specific social environments. In addition, they must be compatible with prevailing notions of justice and the general sense of social recognition that is required to interpret the law (Curtin and Dekker 1999; Finnemore and Toope 2001). Thus, the constitutionalization of European politics imports elements of procedural legitimacy and of substantial justice into the EU.

Political scientists were slow to discover the dual character of the law as both an element of political authority and as a means for its control. In recent years, however, they have caught up with a formerly predominantly legal discourse and added a number of important elements. It has been underlined that the EU's constitutional project must focus on issues of citizenship and foster the emergence of a European public space if it is to become more than an elitist project. Both notions, however, are difficult to use in the European context. If the EU is not a state but only an intergovernmental problem-solving entity, how can it have citizens? What does it mean to be a citizen of the EU, apart from the rather abstract right to sue your government and to drink French wine without having to pay tariffs? Additional concepts that have resonated in the constitutional debate are the concepts of sovereignty and polyarchy. The member states have pooled some of their sovereign rights whilst they have jealously guarded others. In terms of sovereignty, the EU today looks very much like a marble cake where one finds EU competences in one area that go beyond the competences of many states, while at the same time the EU is without any meaningful competences in other areas. In addition, even in those areas where it has well-developed competences it is hardly ever the case that a single European institution has the right to exercise them. Polyarchy prevails most often and it is the Commission, the Council, the Parliament, and the member states who must join forces in order to exercise delegated competences.

This debate is addressed and taken further by Neil Walker in *Chapter 5*. This chapter argues that in response to and in reaction against some worrying trends to the contrary, the ratification failure of the EU documentary constitution should be seen neither as a vindication of the non-constitutional or 'small-c' constitutional way, nor as a process bound to be repeated until it

or the EU (at least in its present expansive form) terminally fails. That is to say, we must avoid a continuation of the very polarization and issue-avoidance that helped undermine the initial documentary project. This is one where, on the one hand, the in-principle lack of viability and inappropriateness of a written supranational constitution performing much the same normative and integration-generative tasks as a state constitution was taken for granted. On the other hand, the in-principle viability and appropriateness of such a statist template was equally categorically endorsed (a polarization and avoidance which, incidentally, allowed a third set of positions to thrive which were quite indifferent to the vexed question of the deep generative meaning of a constitutional settlement and simply treated it as a label to attach to and dignify their favourite political programme). Rather, we should appreciate that the EU is now in a position of constitutional limbo. It is not evident that a mature constitutional state at the supranational level is accessible or desirable. Equally, especially in light of the rejection of what was largely a conservative text, there seems to be no obvious course for a return route to a pre-constitutional comfort zone. Rather a period and context of 'meta-constitutional' contemplation is required—one in which the in-principle question is no longer avoided but faced head-on under conditions which exhibit no prior bias for or against a constitutional settlement and, equally, do not predispose the form and generative ambition of any such settlement that might be produced.

In *Chapter 6* Mattias Kumm addresses the EU as a cosmopolitan project from the background of constitutionalism, political theory, and international law. The chapter notes that European law has not only forced constitutions of traditional nation-states to open themselves up in an unprecedented way to authority of law beyond the state. EU law itself is generally described as deferential to international law and supportive of multilateral institutions. Yet the recent *Kadi* decision by the European Court of Justice (ECJ) which struck down the EU Council regulation implementing a United Nations (UN) Security Council Resolution, along with a series of earlier decisions refusing to enforce WTO law in the EU has provoked sharp criticism that the EU might be in the process of embracing a new dualism akin to the relationship between domestic and international law. The chapter argues that that criticism is mostly mistaken. Instead, the ECJ, throughout its engagement with international law, has adopted a relatively coherent approach, both when it applies international law and when it refuses to do so. That approach is cosmopolitan, but it rejects the

idea that European law is an integral part of a hierarchically structured international legal system, in which UN Law is the supreme constitutional law. The chapter argues that the EU's embrace of cosmopolitanism does not translate into an embrace of statist constitutional ideas either on the regional or global level, nor does it fall back into some version of classical dualism (or pluralism). In legal terms European cosmopolitanism translates into an embrace of constitutional pluralism, not just in the relationship between national and EU Law, but also in the relationship between EU Law and international law. Drawing on some of the central decisions of the ECJ addressing the authority of international law in the EU, the chapter will provide an analysis of the idea of constitutional pluralism as well as its implications for the resolution of conflicts between EU Law and international law.

In *Chapter 7* Michelle Everson discusses the interrelation between law and politics. She raises the question of law without politics—constituting Europe beyond political community. The chapter argues that ‘juridification’ can be defined highly pejoratively as the establishment of governance structures in the absence of politics. Political prerogatives are usurped by courts and by lawyers as traditional notions of constituted polity and political community necessarily cede to the management imperatives of regional and global (economic) integration. The result is a normative vacuum: law without politics and governance without political voice. At the same time however, ‘juridification’ might also be cast in a more positive light. Where in the pluralist analysis the traditional act of constituting the polity is no longer seen as a means of securing political voice, but is rather viewed as its exact opposite (the repression of authentic political identity by the norms and strictures of the imagined *res publica*), immediate acts of legal governance may also be argued to entail their own politically-liberating potential, furnishing voice upon the ‘real’ politics that are negated within the constitutional state. This contribution accordingly investigates whether juridification within Europe is to be viewed in a positive or negative light. Certainly, the EU is not founded within any positive commitment to normative legal or political pluralism; yet, where the practice of legal governance within Europe is examined, it might be argued that European law already has the potential to give expression to a pluralist vision of political and legal organization, where law is no longer constrained by abstract notions of political community, but might respond immediately to the emergent and integral political interests of a developing European polity.

Democracy and Justice

The third part of the volume discusses dynamics and further potentials for democracy and justice in the EU. The chapters assess the normative quality of the EU and ask for ways and means of improving it. A major reason for using this starting point is that the dominant discourse on the legitimacy of the EU still focuses on its so-called democratic deficits. And indeed, if compared with an ideal-typical national democracy, it is obvious that the EU lacks many of its attributes. The EP's competences are weak, the separation of the executive and the legislative branch of governance is incomplete at best, the European public is still more a vision than a reality, and an organized opposition which is capable of exerting constructive opposition is hard to find (Follesdal and Hix 2006; Hix 2008). It has often been said but it is nevertheless true: if the EU would apply for membership, it could hardly be accepted due to its lack of compliance with democratic standards. It is also true, however, that the same statement would apply to almost any non-state institution, be it the United Nations or a university. Thus, many argue that it is a categorical mistake to criticize the EU for not replicating the national model. As a multilevel governance system, its normative yardstick should not be taken from a categorically different type of political entity, but more pragmatically be focused on what we expect the EU to deliver. Would it not be more appropriate to ask for efficient, effective, and legitimate governance than for democracy (Scharpf 1999)? Why not use the normative yardstick of a well-functioning regulatory agency (Majone 1998)?

In addition, some point out that focusing on the difference between the EU and a democratic nation-state overlooks the innovative character of European decision-making (Neyer 2006). The EU facilitates governance by discourse, aims at integrating transnational concerns, and thus opens completely new avenues for thinking about democratic governance (Keohane, Macedo, and Moravcsik 2009). Under conditions of interdependence, individual state actions always have external effects. If the EU did not systematically integrate these effects into the process of decision-making, the strong states would almost automatically dominate the weaker ones. Monetary policy in Europe before the introduction of the European Central Bank was dominated by Germany. The Deutsche Bundesbank imposed de facto German policies on the rest of Europe. It is true that the ECB is less controlled by democratic politics than any central bank before. However, it would be daring to argue that monetary policy in Europe before the ECB was fairly controlled by those who were affected by its decisions.⁴ While the democracy deficit appears, in the first instance, often as a hurdle and a

down side, the reverse may be argued to make the case of democratization beyond state boundaries more generally. That is, examination of EU governance in practice may reveal opportunities for democratic constitutionalism more appropriate to present day multilateralism and transnational politics.

In *Chapter 8* Jürgen Neyer introduces a revised version of deliberative supranationalism. The theory of deliberative supranationalism aims at reconstructing the normative qualities of the European Union without neglecting its defects. It is a reconstructive theory with critical implications. It reconstructs the normative strengths of the EU in order to develop a standard against which the practice of the EU can be assessed. Deliberative supranationalism thus is neither purely descriptive nor purely normative but an integrative theory. The chapter's starting point is to argue that the EU neither has the capacity for democratic governance, nor will it acquire that capacity in the foreseeable future. The EU is not an illegitimate institution, however. A justification of the EU can be formulated by making use of a procedural conception of justice. Justice, as opposed to democracy, does not presuppose statehood but can be applied to all social and political contexts. Deliberative supranationalism explains the notion of justice by reference to the concept of an individual right to justification. An important strength of the concept is that it builds on the idea of normative realism. It not only specifies something theoretically desirable but also combines this specification with the claim that its underlying normative principles are already well institutionalized. Although this argument seems to put primary emphasis on justice and to downplay democracy, it is ultimately oriented at explaining the relationship between national democracy and transnational justice.

In *Chapter 9* Jan-Werner Müller asks whether 'demoi-cracy' might be a new justification for the EU. In theorizing the EU the notion of 'demoi-cracy' has gained increasing currency in recent years—both as a description of what is supposedly sui generis about the EU as a political entity and as a novel way of normatively justifying the EU to citizens. The latter has been advanced in two distinct contexts: on the one hand, cosmopolitan republicanism can be seen as a particularly advanced instantiation of 'democracy across borders' in the form of a transnational federalism with differentiated and dispersed powers. On the other hand, there are what one might call postmodern theories of the EU, where the Union appears as a novel form of polity characterized by a persistent plurality of peoples who seek to retain and normatively recognize their differences. The chapter asks three questions: is 'demoi-racy' actually a distinctive theory or simply a more or less

ugly neologism for something we already know—federalism in particular? Second, is ‘demoi-cracy’ normatively dependent on a larger theory of justice? What else has to be normatively acceptable—and, we might add, empirically true—for ‘demoi-cracy’ to work? Third, is there sufficient empirical evidence on which to hang such a theory? It concludes that ‘demoi-cracy’ is indeed a distinctive theory (and not simply federalism by another name), but that it is normatively dependent on large and highly contestable background assumptions (about deliberation in particular), and that the empirical evidence often advanced in its favour is as yet insufficient to claim that the actually existing EU instantiates a ‘demoi-cracy’ in the way that its advocates wish it to.

In *Chapter 10* Andreas Follesdal undertakes a critical assessment of the contributions to the volume and discusses whether the high expectations of this introduction have been met. It addresses five issues which are of special interest to all of the contributions:

1. Normative Legitimacy. What sorts of standards of normative legitimacy are required to assess whether a non-state political order is just and legitimate—so that its citizens have a moral obligation to obey the authorities and institutions, and so that non-members have a moral obligation to recognize it as deserving of standing and immunity as a member of the international and global order?
2. Federalism. The ‘F’word is bandied about both by politicians and academics, sometimes to dismiss opponents, sometimes to buttress their own views; indeed, the authors in this volume seem to disagree about the relevance and appropriateness of this label. We should ask whether their disagreements are of interest for the normative issue of legitimacy. And what is the value added, if any, of seeking answers to the questions of normative legitimacy by drawing on the federal tradition in political theory, when addressing some of the central issues of political theory as they emerge for such non-state political orders?
3. Distributive Justice. What standards of distributive justice are appropriate for such political orders with dispersed authority? What, in particular, might solidarity and respect for fellow citizens as political equals require, among those who live their lives in separate sub-units with substantial local political autonomy?
4. Democracy. What are we to make of the democratic principle of ‘one person-one vote’ in a political order with sub-units with populations drastically different in number? Do deliberative opportunities and

spaces count in favour of the democratic quality of such a political order, even in the absence of institutionalized mechanisms of electoral accountability?—Or must a cluster of features be in place, for a political order to be recognizably more democratic than another?

5. The rule of Law—Human Rights in particular. Within unitary states, human rights constraints have traditionally been regarded as constraints on central authorities to protect individuals' vital interests against standard social risks. Within a multilevel political order, other risks emerge, such as abuse of power by sub-unit authorities and non-state actors such as corporations, or by the centre against local authorities. What new roles should human rights play—and what reasons might there be to hold that all of these regulations merit the label 'human rights'?

Picking up on the seafaring theme Antje Wiener's concluding reflections in *Chapter 11* point out that the EU's 'ship of state' may have taken so long to navigate through the dire straits of contemporary non-state polities that stretch between the safe shores of statehood and treaty organization that a good portion of seamanship has evolved in the process. The assumption is that, through practice and over time, the erstwhile incomplete vessel and its management under the constraints and opportunities of changing weather, tide, and winds may have become so accomplished that upon reaching its current position, the crew has a story to tell (Della Sala 2010) and advice to offer on how to navigate these dire straits. Such a perspective on the journey, which started with signing a treaty in Rome in 1957, suggests that while *formally*, on paper, the EU seems to be finally slowing down into a relatively settled existence as a treaty-based international organization with the signing of the Lisbon Treaty in 2009, *in practice*, it is now so highly advanced in its ways that it stands out among the group of international organizations as a value-based regional order. The chapters in this book share this view (see most explicitly, the contributions by Kumm and by Manners, respectively). Wiener suggests analysing the EU's journey through the uncharted waters of constitutionalism beyond the state required finding its position according to both, well-known landmarks and newly acquired experience through practice. To that end, the crew uses the signposts provided by constitutionalism. In the process, the EU's journey is helped along by familiar landmarks, for example, fundamental norms, organizing principles, and standardized procedures of constitutionalism which enable the crew to take 'cross bearings', i.e. using the handheld compass to check the vessel's position. Alternatively, in the absence of

such familiar landmarks, the practice of 'dead reckoning' allows the sailors to estimate a position based on detailed information with regard to speed, current, wind, and weather that are conducive to the EU's progress. These estimated positions have to be checked against the real position according to fixed timing. They are constitutive checkpoints for the EU's own journey and for that of other vessels making way through these uncharted waters as well such as, for example, the United Nations. Thus, the book's argument goes, the EU's 'ship of state' offers crucial information not only for understanding its own progress and delay, over time, but, as it marks the heretofore uncharted waters of constitutional quality beyond the state, its journey also matters for other international organizations in decades to come. This concluding chapter summarizes the theoretical perspectives developed by the other contributions, arguing that they not only stand in their own right as foundational elements of a PToEU but that they also matter to other theories that are struggling to conceptualize non-state features of international politics.

Notes

1. Compare the title picture on Moravcsik's monograph 'The Choice for Europe' (1998) as a metaphor for a single ship that transports the member states.
2. Such as, for example, the now famous *Humboldt Speech* by then German Foreign Minister Joschka Fischer in 2001 and the ensuing constitutional debate. See 'From Confederacy to Federation-Thoughts on the finality of European integration', Speech by Foreign Minister Fischer at the Humboldt University, Berlin, 2001. For the ensuing constitutional debate, see among others: Meny, Joerges, and Weiler 2000; Weiler and Eisgruber 2004; Bogdandy and Bast 2004; Weiler and Wind 2003.
3. Literally: 'Zweckverband funktionaler Integration'.
4. See e.g. Puetter 2006, 2009; Donnelly 2010.