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**Chapter 11**  
**The Values of Citizenship: Belonging, Rights and Participation**

Richard Bellamy

**Introduction**

Though library shelves have been devoted to lamenting the EU's democratic deficit, scholars have only recently explored the all important question of how far democracy is appropriate or even possible for the EU.<sup>1</sup> This essay seeks to examine one dimension of this issue – namely, the degree to which citizenship can be instituted within the EU. Ever since the early 1970s, the possibility of a distinct status of European citizenship has been seen as a way of connecting the EU to the peoples of Europe and legitimising it in their eyes.<sup>2</sup> As a result, the assumption has arisen whereby a deepening of European integration is believed to require, or bring with it, a development of the citizenship provisions and the institutions, such as the European Parliament, that secure them. For example, both the EU Charter of Fundamental Rights and the Constitutional Treaty have been partly defended in these terms. These documents are supposed not only to showcase and to some degree extend the entitlements of citizens under the EU, but also to make the decision-making process more transparent and responsive to citizen concerns. Yet, this argument assumes in its turn that citizenship at the European level is plausible for, and desired by, the citizens of member states. If neither turns out to be true, or only to a restricted degree, then far from European citizenship offering the basis for further extensions of the EU, it may suggest limits to the process.

I shall begin by briefly outlining the three core values of citizenship: belonging, rights and participation. I then explore the way each of these is currently configured within the EU. To anticipate my analysis, I will argue that neither belonging nor rights at the EU level are currently attributes of citizenship because they have yet to be linked to participation. However, I rebut the suggestions of Moravcsik and others that no such step is necessary. Nevertheless, democracy at the EU level cannot be achieved by assuming an EU demos that does not actually exist. If the reality is that the EU consists of numerous demoi, then mechanisms need to be found whereby the EU's decision making can connect with the multiple, and especially national, attachments of citizens. Instead of floating

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<sup>1</sup> Most notably Moravcsik, A. (2002), 'In Defence of the Democratic Deficit: Reassessing Legitimacy in the EU', *Journal of Common Market Studies*, Vol. 40 (4), pp. 603-24

<sup>2</sup> Van den Berghe, G. (1982) *Political Rights for European Citizens*, Aldershot: Gower, p. 22.

above or beside national democracy, both the EU democratic process and EU citizenship must interact with and be an aspect of it.

### **The Values of Citizenship**

Citizenship is generally regarded as being grounded in, and a means of generating, three key values: belonging, rights and participation.<sup>3</sup> A sense of belonging means citizens feel solidarity with each other and with their polity. The sources of these civic bonds are many and varied. In modern states they are standardly linked in some form or other with a shared national identity. Nationalism contains numerous elements, not all of which are always present. These range from a common history and language to ethnicity and religion. Whatever its roots, though, all states have undertaken a degree of nation building. The aim has been to create a special political bond among citizens and the state that in certain circumstances supersedes both their more local or particularist attachments, such as to family and region, and more universalist, humanitarian feelings and allegiances, such as to religion, class or ideology.

Citizenship also brings certain rights that go beyond those we might claim simply as human beings. A citizen is an insider, a member of a particular political club. Citizenship rights are the privileges of membership. They give citizens an entitlement to more care and protection from their fellow citizens and state than would be accorded to them simply as members of the human race. However, these additional rights generate correspondingly heavier duties.

Participation comes in here. Unlike subjects, citizens are equal before the law because they possess an equal influence over the making of the laws. A subject could belong to a given kingdom - even feel a special attachment to Queen and country - and possess the privileges that go with being one of her majesty's loyal servants. However, subjects are always subordinate to their rulers. By contrast, a citizen is both ruler and ruled. As a result, citizens not only enjoy equal rights, they also have equal duties. Their privileges come with obligations of mutual aid and a willingness to contribute to the common goods from which we benefit. The right to trial by one's peers gives rise to an obligation to undertake jury service, the right to welfare and other social benefits is usually linked to a preparedness to contribute to the economy, pay tax and so on.

Though these three citizenship values are present in some form within all advanced industrial democratic states, their historical phasing and various configurations have differed considerably.<sup>4</sup> Much depended on the presence or absence of religious and other cultural divisions and of the related tensions between centre and periphery, which had a profound influence on the character of

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<sup>3</sup> For details, see Bellamy, R (2004), 'Introduction: The Making of Modern Citizenship' in R Bellamy, D Castiglione and E Santoro (eds), *Lineages of European Citizenship: Rights, Belonging and Participation in Eleven Nation States*, Basingstoke: Palgrave, especially pp. 1-14.

<sup>4</sup> Bellamy, R., *ibid*, at pp. 15-20.

'belonging' the state could command; the pace of industrial development and the type of class conflicts that accompanied it, that effected the introduction of social rights in particular; the process of democratisation, which was obviously shaped by the first two factors as well as prevailing political traditions; and the impact of contingent events, notably war. Though, as I noted above, elements of the first and second of these values can be independent of, and frequently preceded, the third, this last has always had the other two as its foundation, though it has profoundly modified them as well. However, once established, the three tend to reinforce each other. A sense of belonging may help a people cohere as a demos and support feelings of reciprocity between them, but that feeling will become stronger through the experience of making and abiding by collective decisions. Likewise, certain civil rights, such as freedom of speech and of assembly, and even some social rights, such as the right to education, may be intrinsic to democratic citizenship, but democratic pressures usually serve to extend the range of rights and deepen existing ones, even if that often brings with it a sharper division between citizens, who have access to these privileges, and other residents or visitors, who do not.

Thus, for citizenship to exist all three values have to be present and interact. The first two alone can only generate subjecthood, yet the third cannot operate in their absence. In the rest of this essay, I want to examine the present character and configuration of these three values within the EU and see how far they are or could become the basis for a genuine democratic citizenship at the European level.

### **Citizenship as Belonging: A European Community?**

When the policy of European citizenship was first mooted, it was conceived as providing a symbol of identification with the EU. As such, it went along with such other symbolic measures as the introduction of a European passport, anthem and flag. The hope was that as the member states pooled certain sovereign powers, so citizens would in some appropriate sense also pool their national identities. Access to EU citizenship rights would stem from and help promote identification with the Union.

This policy arose out of the belief that the pattern of legitimacy within the EU must mirror that of the nation state and stem from a citizenship of belonging based on a certain symmetry between sovereignty and identity. According to this model, sovereignty operates at both the 'polity' and the 'regime' level.<sup>5</sup> A sovereign 'polity' holds exclusive sway over a defined people (the polity's 'subjects') residing within a particular territory and with regard to particular public goods or functions (the polity's 'sphere'). Power is regulated within this polity according to a given 'regime' that designates the rules whereby sovereign power is recognised and exercised (the regime's 'style' of politics) and the realm of the

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<sup>5</sup> The following analysis draws on Bellamy, R. and Castiglione, D. (2003), 'Legitimizing the Euro-'Polity' and its 'Regime': The Normative Turn in EU Studies', *European Journal of Political Theory* Vol 2 (1), pp. 7-34.

political (the regime's 'scope'). According to the ideology, if not always the reality, of the nation state, nationality defined the 'subjects' and territorial 'sphere' of the 'polity'. In democratic versions of the argument, a people or nation could only exercise self-government through being sovereign according to the criteria of the prevailing 'regime' within their own 'polity'. Where other political identities and units existed, these were deemed to be embedded within, and so subordinate to, the larger political identity and unit. Thus, Britishness was supposed to accommodate English, Welsh, Scottish and Northern Irish identities. Each region formed a part of the United Kingdom, with their local governments feeding into the Westminster system. As this example indicates, this hierarchical and unitary organisation of sovereignty and identity was never wholly uncontentious and today it clearly is not. Both the polity and the regime aspects of sovereignty have been challenged, with identity being similarly affected.

With regard to the polity aspect, greater interconnectedness at the international level and greater heterogeneity at the local and regional levels have undermined not only the functional efficacy of states to frame independent socio-economic and security policies, but also their ability to draw on or forge a national identity capable of sustaining an allegiance to either the public good or the collective institutions and decisions that define and uphold it. Externally, states have become increasingly involved in and subject to international bodies, with a concomitant loss of power. Internally, minority nations have argued in consequence that they can be as viable as the larger political units to which they currently belong, and have demanded greater autonomy and even independence. Likewise, immigrant groups look for recognition of their ethnic identities in special rights and group representation. Meanwhile, a more diffuse and fragmented set of attachments that are both sub national and transnational in character have developed amongst people generally. For example, the ties of family, work, ideology, religion and sport increasingly operate either below or beyond the nation state, competing with and diluting any sense of a purely national identity.

The regime aspect of sovereignty and identity is also affected. We must now confront a situation of multiple and interacting *demoi*. This circumstance has profound consequences for where and when democratic decision-making can take place, among whom and about what. Increasingly, different policies will generate very different answers to each of these elements. This fact also poses challenges to how we apply democratic norms, potentially questioning the suitability of simple majority rule, formal conceptions of the rule of law and notions of equal citizenship should these fail to protect minority interests or respond to important differences of context. As a consequence, multinational states such as Britain, Belgium and Canada - but also more unitary ones such as France, Italy and Spain - are evolving new styles and scopes of politics to cope with this situation, introducing a hitherto unprecedented degree of constitutional and democratic complexity.<sup>6</sup>

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<sup>6</sup> See Austin, D. and O'Neill M. (2000), *Democracy and Cultural Diversity*, Oxford: Oxford University Press and Gagnon, Alain-G. and Tully, J. (2001), *Multinational Democracies*, Cambridge: Cambridge University Press.

The EU emerges from these self-same forces, being both a mechanism whereby nation states have responded to these changes and a challenge to their current polity and regime sovereignty and the identification their citizens have with them.<sup>7</sup> Compared to the member states, though, the EU's nascent polity and regime are even more complex. Within the EU, function and territory are pulling apart, producing growing disjunctures between its territorial and its functional membership in core policy areas. As a result, it is developing into a poly-centric polity with a multileveled regime. This process involves the redistribution of sovereignty and the creation of multiple political identities.<sup>8</sup> For example, in monetary policy Britain, Denmark and Sweden stand aloof. Indeed, different polities tend to involve different types of territorial actors operating in different sorts of institutional settings. In many cases, the actors are sub- or trans-national rather than national, with the comitology process involving private as well as public agents and agencies. Moreover, representatives in even the same body are often selected in different ways by their respective constituencies, as in elections to the EP. The jurisdictions - the spheres and subjects - of these various bodies are not clearly demarcated, they often have different powers in different parts of the EU, and they employ different styles and possess different scopes of politics. Nor is there any overarching authority to decide disputes between them. Except in very restricted domains, such as certain aspects of competition policy, the EU has few exclusive competences and has not asserted its hierarchical control over the member states. Meanwhile, European citizens increasingly view their political engagement less, or not solely, as a general commitment to a particular party and system, and more as a concern with various causes and issues.<sup>9</sup> Though voting is in decline, non-electoral political participation is in the ascendant. As a result, people have become members of a range of new alliances, some national, others sub-national and many of a transnational nature, and (as we noted) now operate as members of multiple *demoi*.

A citizenship of belonging on the nation state model will not work for the EU, therefore. We belong to too many polities – our member states, our issue and interest groups, our ideological and cultural communities, and so on. Nor are these neatly ordered in a hierarchical way. We cannot either treat belonging to the EU as an all-encompassing form of identity, enabling us to be European-British, European-Christians, European-socialists and so on. Nor can we regard these as discrete identities, so that I am British for certain purposes and a European citizen for others. Thus, identification with the EU arises for the most part in combination

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<sup>7</sup> Milward, A. (1993) *The European Rescue of the Nation State*, London: Routledge; Scharpf, F. (1999) *Governing in Europe: Effective and Democratic?* Oxford: Oxford University Press.

<sup>8</sup> Ruggie, J. G. (1993), 'Territoriality and Beyond: Problematizing Modernity in International Relations', *International Organisation*, Vol. 47 (1), pp. 139-74, at p. 172.

<sup>9</sup> Klingemann, H-D. and D. Fuchs (eds.) (1995), *Citizens and the State: Beliefs in Government Vol. 1*, Oxford: Oxford University Press.

with other identities, interacting and occasionally conflicting with them.<sup>10</sup> The task is to find an account of citizenship that can make normative sense of these multiple forms of belonging.

### **Citizenship as Rights: a European Constitutional Patriotism?**

The weakening of national sovereign power has led some commentators to believe the answer must lie in a post-national citizenship grounded in rights. Rights have long offered the dominant approach to citizenship within the liberal tradition and inform its interpretation of the constitutional practices of liberal democracies. This liberal model conceives rights, the rule of law and constitutional democracy in largely juridical terms.<sup>11</sup> Although there are different variants of this juridical paradigm (British, American and broadly European), they all concentrate on the importance of legal mechanisms for controlling the abuse of power and protecting individuals. Their aim is to secure a just framework of rights within which citizens and the government can legitimately act. The resulting liberal constitution lays out the entitlements and obligations of citizens vis-à-vis both the state and each other. It constrains what individuals may do to or expect of others and what the state may do to or expect of them. As a consequence, rights define not only the subjects of the polity but also its sphere and the scope and styles of its regime.

Developing this liberal thesis, John Rawls has argued that citizens of a liberal democracy share an overlapping consensus on political rights.<sup>12</sup> The citizens of a state that upholds these principles of political justice not only should be obliged to obey it, but also, because they share these rights, will actually feel an allegiance to it. Thus, a polity possessing a just regime will be stable over time. In a similar spirit, Habermas maintains that it is the just political culture of a state that binds us to it, rather than nationality or some other social, religious or ethnic cultural force.<sup>13</sup> We identify with a polity because of a constitutional patriotism stemming from the justice of its regime. In the Rawlsean scenario, if EU institutions embody standard liberal democratic rights to which all adult members have access through being citizens, they should give substantial and permanent support to them. Habermas concurs, but suggests, at least on some occasions, a

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<sup>10</sup> Eurobarometer 60 (the latest at the time of writing – published February 2004 and based on fieldwork October-November 2003, though the figures reported below have remained fairly constant) reveals only 3% of EU citizens see themselves as European solely and 7% as European first and a national second. By contrast 40% view themselves as national only and 47% by nationality first and a European second (p. 27). Moreover, identification with the EU is lower than feelings of being European (58% express an attachment to Europe, only 40% to the EU) pp. 29-30.

<sup>11</sup> See Bellamy, R. and Castiglione, D. (1997), 'Constitutionalism and Democracy - Political Theory and The American Constitution', *British Journal of Political Science*, Vol. 27 (4), pp. 595-618.

<sup>12</sup> Rawls, J. (1993), *Political Liberalism*, New York: Columbia University Press.

<sup>13</sup> Habermas, J. (1996), *Between Facts and Norms*, Cambridge: Polity Press, Appendix II: 'Citizenship and National Identity'.

partial thickening of the Rawlsean consensus. He shares Rawls's belief that European citizens should identify with EU institutions if they are just, but adds they also do so because they reflect a distinctly European (as opposed to American, say) political tradition that results from a particular historical process. Nevertheless, this European political culture is fundamentally political rather than cultural. For instance, it is characterized by a commitment to a welfare state and the abolition of the death penalty (the main contrasts Habermas draws between Europe and the USA in this regard)<sup>14</sup>. Like Rawls's overlapping consensus, therefore, Habermas's constitutional patriotism ultimately issues from the rights presupposed by democracy.

There are two problems with the Rawlsean and Habermasian arguments. First, as we noted in the last section, rights may provide a source of objective legitimation for an organisation, but they are at best a necessary rather than a sufficient condition for subjective legitimation. In part, this arises because Rawls and Habermas elide the legitimacy of a regime with that of its polity. However, a regime may be objectively legitimate yet fail to attract the subjective allegiance of all its citizens because they question the legitimacy of the polity within which it operates. By contrast, citizens of an objectively illegitimate regime often offer it tacit support because they subjectively identify with the polity – presumably many Iraqis felt like this under Saddam. Likewise, a polity may be objectively legitimate, in the sense of not being the result of recent conquest or colonization, but still lack subjective polity legitimacy among a cultural minority. Moreover, this absence of subjective polity legitimacy may lead citizens to question the legitimacy of the regime, even if it meets fairly abstract democratic criteria. For example, few, if any, Quebec nationalists would deny that Canada is democratic *per se*. Their own view of rights and democracy are more or less the same as Canadian federalists in abstract terms. But they do feel that in the context of the existing Canadian polity its political regime lacks democratic legitimacy because, in their view, the French territories cannot deploy these rights in ways that reflect their cultural interests.

The second problem kicks in here. As I noted, in the liberal tradition rights supposedly define politics. Consequently, they cannot themselves be matters of normal political debate. In fact, the rationale behind constitutional bills of rights is to allow their judicial protectors to overturn or constrain political decisions that offer supposedly illegitimate interpretations of rights or appear to neglect them altogether. In Rawls's theory, the potential tension between democracy and rights is resolved by arguing that liberal democracy assumes a consensus on certain political, civil and social rights. Habermas approaches the same issue from the opposite direction, as it were. In his view, a consensus on rights is both the end point and the presupposition or rationale of democratic deliberation. We discuss with others in order to (and because we can) agree on rights. The difficulty with both theories is that beyond the most abstract level, and sometimes even here, there is considerable disagreement about the foundations and character of rights, and how they apply to particular issues. Moreover, debates about rights not only

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<sup>14</sup> Habermas, J.(2001), 'Why Europe Needs a Constitution', *New Left Review*, 11, Sept/October, pp. 20-21.

provide the substance of many political debates, they also produce different accounts of the nature of the political.<sup>15</sup>

Take the main ideological divide within liberal democracies between libertarians and social democrats. As figure one shows, these two positions generate contrasting views of rights. These different conceptions lie behind the main contemporary political divisions, animating debates about the welfare state, the regulation of the market economy and so on. Moreover, there can be no overarching theory of rights that encompasses both positions. For these views conflict in often incompatible ways.

	<i>Libertarian</i>	<i>Social Democrat</i>
<i>Legal Rights (liberties and immunities)</i>	Formally equal -ve liberties	Formally equal -ve liberties though certain immunities for reasons of substantive equality and linked to social rights to defend their equal worth
<i>Political Rights (powers)</i>	Protective, limited	Protective and informative, limited
<i>Social Rights (claims)</i>	Few (mainly insurance and compensatory) or none	Broad range: including enabling and distributive as well as insurance and compensatory
<i>Civic Rights (powers)</i>	Few (consumer) or none  Strict divide between state/civil society, public/private	Workers and consumer  Need for state to regulate and balance civil society
<i>Duties</i>	Of respect, with duties subordinate to rights	Of concern and respect, with duties being corollary of rights

Fig 1

<sup>15</sup> I have explored these disagreements in the EU context in Bellamy, R. and Schönlau J. (2004), 'The Normality of Constitutional Politics: An Analysis of the Drafting of the EU Charter of Fundamental Rights', *Constellations: An International Journal of Critical and Democratic Theory*, 11.3, pp. 412-33.

Part of the reason for the intractable character of their conflict arises from the fact that, as figure two reveals, each offers a different view of all four of the dimensions of politics.

	<i>Libertarian</i>	<i>Social Democrat</i>
<i>Subjects</i>	All autonomous agents capable of entering legally recognised contracts, particularly in the economic sphere	All autonomous agents capable of entering legally recognised contracts, including social and political sphere
<i>Spheres</i>	Political a narrowly defined public framework for social interaction. Political discussion and intervention, if not regulation, inappropriate within a broad private sector.	Political a more broadly defined public framework for social interaction. Political discussion and intervention, if not regulation, inappropriate within a narrower private sector.
<i>Scope</i>	To protect the natural -ve freedom and formal equality of individuals	To foster autonomy by preserving the broader -ve freedom and more substantive equality of individuals and classes
<i>Styles</i>	Constrained maximisation to achieve mutual advantage via market trading	Constrained maximisation to achieve mutual benefit via pluralist bargaining

Fig 2

Thus, debates between libertarians and social democrats are not within a political framework of rights, they are about that framework.

Therefore, rights do not constitute citizenship. Rather, citizenship constitutes rights, shaping the constitution of the political realm in the process.<sup>16</sup>

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<sup>16</sup> The points that follow are developed more fully in Bellamy, R. (2001), 'The "Right to have Rights": Citizenship Practice and the Political Constitution of the EU', in R. Bellamy

Thus, workers in the nineteenth century did not just seek to become subjects (by obtaining the vote) in an otherwise unchanged political system. They sought to extend the sphere of politics through the introduction of industrial democracy, to change its scope by allowing greater regulation of the economy, including public ownership of certain industries, and to alter its styles, through such measures as recognizing the right to strike. Women campaigners made similarly broad demands when claiming the franchise and likewise aspired to change both polity and regime. In the late twentieth and early twenty-first centuries, the political demands of cultural minorities have been if anything even more dramatic. For example, Britain has introduced new devolutionary structures to accommodate the demands of Scottish, Welsh and Northern Irish communities, with potentially new regional assemblies for parts of England as well. It might be argued that these various struggles reflect an ever-expanding set of compossible rights, as Habermas appears to suggest. However, the resulting rights often clash with each other and set up tensions that give rise to fresh demands as part of an on-going process through which citizens continuously reconstitute both polity and regime.

There has been a tendency to view EU citizenship as simply a grant of rights by the member states that legitimates, but does not change, the existing EU structures. In other words, rights offer an objective form of legitimacy that citizens should embrace and identify with. Yet citizens are clearly ambivalent about the EU. Most may welcome it, but their identification with it is qualified in numerous ways. In particular, there are endless debates over both its polity dimensions – does it do too much or too little – and the character of its regime – too intergovernmental and insufficiently federal, or vice versa. For EU rights to be rights of citizenship, citizens need to have a say in defining their sphere, subjects, styles and scope and resolving the many differences they have about all of these. It remains to be seen how far this is possible at the European level.

### **Citizenship as Participation: The Role of Civic Engagement**

I noted above how ‘belonging’ and ‘rights’ could be attributes of subjects. They only become aspects of citizenship when they form the basis for, and are modifiable through, political participation. At present, ‘belonging’ and ‘rights’ in the EU are some way from being part of citizenship proper. Instead, they resemble the ways these were configured in a liberal Empire, such as the Hapsburg Empire before the First World War. A multinational polity, the Hapsburg Empire allowed a substantial degree of self-determination for its member states. ‘Belonging’ was largely a matter of allegiance to the Emperor and the acceptance of some central administrative and legal regulation. With regard to rights, the Empire permitted citizens a fair degree of personal liberty, at least in its final stages. Moreover, the need to maintain a significant amount of diversity within its borders produced a comparatively high level of cultural tolerance for the time. In similar manner, the

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and A. Warleigh (eds), *Citizenship and Governance in the European Union*, London and New York: Continuum, pp. 41-70.

EU commands a 'thin' degree of identification of a quite different kind to the thicker bonds linking co-nationals within the member states. Rather like the Royal alliances that linked and sometimes united monarchies, a great deal of integration has hitherto resulted from elite bargaining. For the most part, the sense of Europeanness at the level of political leaders and bureaucrats is far in advance of that felt by the majority of ordinary people. The average EU citizen's attachment to the EU is largely interest driven. They do not feel 'European' – merely that the EU is beneficial for them.<sup>17</sup> There is no European public sphere to speak of – no popular Europe wide newspapers, radio stations or TV channels, for example. Meanwhile, rights at the EU level have by and large followed from the establishment of the internal market and the desire to mitigate certain of its potential unfortunate consequences. Indeed, many of these rights extend to third country nationals as well as EU citizens.

Is this a problem? After all, the imperial model is not without its attractions – it can bring peace to previously warring nations and, provided it avoids becoming too exploitative, offer opportunities for enhanced prosperity as well. A powerful case has been made for seeing democracy at the EU level as simply inappropriate.<sup>18</sup> Most of the functions it performs, notably economic regulation, monetary policy, and the maintenance of the rule of law within its sphere of competence, are undertaken by non-democratic delegated authorities within the member states. These areas are seen either as too complex for effective democratic control, or as liable to be undermined by myopic or prejudiced democratic pressures. So, decisions over interest rates, say, have been gradually handed over to central banks because of the supposed temptations they pose to politicians to manipulate them to engineer short-term, election boosting, economic booms that may be to the long-term detriment of the economy. Moreover, the policy goals in many of these sectors are not seen as particularly politically controversial – that is, as subject to ideological differences. People want sound money, to be secure against fraud and so on, regardless of their party affiliations. Just as local government, being largely about the efficient delivery of an agreed set of services, rarely inflames political passions, so much of EU policy is mainly a technocratic matter of efficient, transnational administration. No body disputes that dustbins need collecting regularly and roads gritted in cold weather. Indeed, in many respects, a tendering mechanism between commercial firms offers a better mechanism for ensuring value for money than democratic control. Likewise, the EU is said to respond to commercial needs to manage certain cross border positive and negative externalities, such as those resulting from the presence or absence of environmental controls. These too are areas that arguably are best met by the setting of appropriate standards by expert regulators.<sup>19</sup> Given that such matters

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<sup>17</sup> See figures from Eurobarometer 60 cited *supra* n. 10. Whereas 89% of EU citizens declare themselves attached to their country and 87% to their locality, only 58% feel attached to Europe (p. 30).

<sup>18</sup> Moravcsik, *supra* n. 1

<sup>19</sup> Majone, G. (1998), 'Europe's Democratic Deficit: the Question of Standards,' *European Law Journal*, Vol 4 (1), pp. 5-28

often have quite a remote or indirect impact on most people's everyday lives, it is perhaps small wonder that voter turnout at EU elections is even lower than in local ones.<sup>20</sup>

Though it contains elements of truth, there are a number of difficulties with this argument. For a start, the analogy with delegated power at the domestic level does not work, because here they are located within otherwise functioning democratic societies. As such, these powers are subject to the influence of public opinion and often come under considerable indirect political pressure. Courts notoriously follow the polls – to a degree regulators and banks do so too<sup>21</sup>. The absence of a 'European' public opinion, as opposed to the national publics of the member states – which often pull in different directions – greatly weakens this source of indirect democratic control and influence. Nor are the regulations as innocuous as is claimed. There is considerable ideological debate within member states over the extent and character of much economic and financial regulation. By and large, those favouring business interests wish it to simply promote market freedom, while workers and consumers generally see it in broader, more socially orientated terms. Moreover, even when there is agreement on the need and type of regulation, not all believe it should necessarily be undertaken at the EU level. A purely instrumental view of the EU, based on no deeper sense of attachment or responsibility, is also likely to be highly fickle. This is clearly a problem for the EU. As belief in the benefits of membership have declined, from a high of around 60% in the early 1990s to the current low of 46%, so has support for membership – from a corresponding early 1990s high of 72% to the current low of 48%. The view of the EU as a new kind of 'regulatory' polity has certain risks. Within nation states, governments often lose popularity when the economy falters. At times, this may even generate calls for changes to the 'regime'. But such dips in support rarely call into question the legitimacy of the 'polity'. In the absence of civic bonds, though, this is the danger run by the EU.

The concepts of 'subsidiarity' and 'proportionality' are supposed to overcome some of these problems by ensuring the EU only tackles what is absolutely necessary for it to undertake. However, these terms are notoriously, and probably inevitably, vague. Making the ECJ the main arbiter of their meaning more or less guarantees that they will be read in an expansive manner. Like all federal courts, it has a built in, and often necessary, bias towards favouring the centre. After all, its *raison d'être* is to lock in the member states to the full implications of their agreements. As a result, it will always tend to favour incremental moves towards greater integration if unchecked by countervailing influences that direct it otherwise. Hitherto, these checks have been supplied by the national constitutional courts of the member states, which, as I've noted, are responsive to domestic democratic pressures, but their position vis-à-vis the ECJ has been progressively eroded. Theoretically at least, citizens can also exercise a form of contestatory

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<sup>20</sup> Overall average turnout in the 1999 elections was 49.8%, but was generally lower since turnouts ranged from 91% in Belgium, where voting is compulsory, to 24% in the UK.

<sup>21</sup> Dahl, R. (1957), 'Decision-making in a Democracy: The Supreme Court as National Policymaker', *Journal of Public Law*, Vol 6, pp. 279-95

political power in those countries that require referenda to approve treaty changes. However, as the reaction to Ireland's initial rejection of the Nice Treaty graphically revealed, this power is viewed as a formality. There was no renegotiation or attempt to allay Irish voters' worries – they were merely instructed to vote again. Likewise, the European Parliament is largely a contestatory body. Yet its internal dynamics mean that the one issue it fails to contest is whether integration is appropriate or not. The dominant coalition is always going to be a moderately pro-EU centrist block. Moreover, as I observed above, electoral turnout is so low, and elections in any case dominated by national rather than European issues, that its democratic mandate is at best residual. Little wonder, perhaps, that while most EU citizens are satisfied with national democracy, most are dissatisfied with democracy in the EU.<sup>22</sup>

We seem faced with a dilemma. The degree of belonging necessary to create an EU wide demos is lacking, and rights provide an inadequate basis to fill this gap. That may suggest that there are democratic limits to the EU. However, despite claims that these limits are in practice respected, they appear to have already been breached. How then can democratic participation on EU matters be meaningfully created? The answer, I suggest, lies in grasping the nettle posed by the EU's increasingly poly-centric polity and multi-levelled regime. These developments mirror similar changes within multinational states. They provide the basis for shifting from demos-cracy to what Kalypso Nicolaides has felicitously termed demoi-cracy.<sup>23</sup>

The key features of these systems in multinational states are a mixture of new forms of self-government and group representation. The first involves new forms of federalism that entail democratic decision-making not simply at a territorial but also at a functional level. The second is a way of ensuring all relevant interests reach a threshold sufficient for all concerns to be treated with equal respect. Power sharing and coalitions become the norm. There are elements of both in current EU arrangements. For example, the euro-zone EU is different to the social policy EU and so on, with different memberships and decision-making rules. Likewise, small countries tend to be over-represented in EU decision-making so that they have sufficient votes to block measures but not so many that they can outvote the larger countries, which not only have the biggest populations but are also the largest contributors to the EU budget. However, the general tendency is always to streamline and centralise decision-making. For example, these were the dominant preoccupations leading to the EU Constitution. In fact, democratic accountability in the EU context requires we take the opposite tack.

For a demoi-cracy to work, far more European policies should be debated at the national and sub-national level and there should be mechanisms that give these bodies the ability to review the allocation of competences. In other words, we need European politics to be brought down to the levels that make sense for people – to where they belong. At the same time, though, there should be moves in a

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<sup>22</sup> Eurobarometer 60 *supra* n. 9, pp. 60-61.

<sup>23</sup> Nicolaides, K. (2003), 'The New Constitution as European Demoi-cracy?', *Critical Review of Social and Political Philosophy*, Vol 7 (1), pp. 76-93.

different direction that facilitate the formation of transnational groups. These measures should not be seen as promoting a common identity but rather a combination of identities in matters of common concern.

The Constitutional Treaty has suggestions in both these areas, but they are peripheral and weak rather than central and strong. For example, the protocol giving national parliaments the right to review Commission proposals for compliance with the principle of subsidiarity does not apply to areas that are the Commission's exclusive competence, gives the final say to the ECJ and does not allow reference to proportionality. Like referenda, it is a negative and largely formal rather than a real tool of democratic governance. To really give national parliaments and their citizens a voice we need them and not just the EP to discuss the Commission's annual programme and to force Ministers to defend their positions with regard to it. In such circumstances, the key role in EU decision-making of the European Council and the Council of Ministers would have greater legitimacy and a clear rationale exist for why they are in effect of far more importance for the democratic credentials of the EU than the European Parliament.

Article I-47(4) of the Constitutional Treaty also seeks to promote a more direct democratic engagement with the EU. The main innovation here is the possibility for a citizens' initiative whereby no less than one million citizens coming from a significant number of member states may invite the Commission to submit a proposal in an area they believe a legal act of the EU is needed to implement the Constitution. Though a positive measure for once, this too falls short. It does nothing either to advance knowledge of the EU or to support the civil society organisations that might promote the use of such initiatives. Instead, we need measures that do not assume the existence of a European demos or public but seek to foster an engagement with EU matters from the bottom up within the national and other contexts where people most relate to them. One possible move in this direction would be Philippe Schmitter's suggestion that referenda be inserted on specific policies in Euro-elections.<sup>24</sup> The aim here is to ensure that they are not simply referenda on national governments but obtain a genuine EU dimension, forcing parties to contest them on their EU agenda. Likewise, rather than assuming a European party system can be legislated into existence, we need proposals that would actually draw on the issues that genuinely mobilise citizens at the EU level. For example, one could have a system of rolling primaries whereby citizens could register via the web with any group that cares to stand. Those groups with the most registered supporters above a given threshold at a given cut-off date would then be eligible to contest the election and have access to the funds currently given to national parties for this purpose. A sufficiently high threshold of supporters could be set to ensure transnational support was necessary for most groups to succeed.

In sum, for democratic citizenship to work at the EU level it is necessary to move away from a national model of politics towards much more flexible and imaginative systems that allow the formation of new and often *ad hoc* transnational

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<sup>24</sup> Schmitter, P. C. (2000), *How to Democratise the European Union ... And Why Bother?*, Lanham: Rowman and Littlefield, pp. 36-7.

groupings around particular issues. We need a politics of European movements before we can expect the emergence of a politics of EU parties.<sup>25</sup>

### **Conclusion**

At present the peoples of the EU are more like the subjects of a benevolent Empire than citizens. For this to change, we need to find a way of making democratic participation on EU matters possible. This cannot be achieved by simply giving the right to vote in the EP. European citizenship is necessarily held in conjunction with national and our other, increasingly important, subnational citizenships. The decision-making structures of the EU need to reflect that fact by seeing the EU as a system of multiple but interacting 'polities' and 'regimes' – mainly different national political systems but also subnational and functional. These can offer mutual checks and balances, thereby answering the constitutional need for limits on power, but can also help secure mutual recognition and the promotion of common projects by forcing all parties to compromise and collaborate. By contrast, attempts to make decision making more centralised in the absence of any citizen engagement or identification simply serve to increase rather than reduce the EU's legitimacy problems.<sup>26</sup>

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<sup>25</sup> For a general argument to this effect, see Bellamy, R. (2003) 'The Advent of the Masses and the Making of the Modern Theory of Democracy' in T Ball and R Bellamy (eds) *The Cambridge History of Twentieth Century Political Thought*, Cambridge: CUP, especially pp. 100-03.

<sup>26</sup> Research for this paper was undertaken as part of the 'Democracy Task Force' FP6 NEWGOV project (FP6506392).