Europe in the Republican Imagination

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Abstract

This paper makes the case for democratising Europe's 'political constitution' from a republican perspective. Such a 'constitution' refers to the norms, principles and procedures of institutionalised governance that constitute the political foundation of the European Union (EU). Although the paper is not a philosophical exercise in the foundations of good governance *per se*, it links republican views of democracy and constitutionalism with the process of EU polity-building. It is also argues that a well thought out and at the same time consequential process of democratic reform should bring about a purposeful European *res publica*: a community of equal citizens, whose multiple interactions aim at sustaining a particular normative order based on free public deliberation and active citizenship. Key to the above republican conception of Europe is the notion of 'civic competence': the institutional capacity of citizens to be actively engaged in the governance of the polity to which they belong. But it is also a means of incorporating social norms of legitimacy in the EU's policy performance, as well as of equipping citizens to become agents of civic change - ie, a system-steering demos within a pluralist order composed of increasingly entangled arenas for action.

A Conceptual Conundrum

Given its profound novelty and complexity, it is hardly surprising that the European Union (EU), more than any pre-existing form of polity, has been attributed so many different neologisms, ranging from proto-federation, confederance and concordance system, to mixed commonwealth, confederal consociation, and so on (Chryssochoou, 2001). Whether or not such attributes emanate from novel conceptions of shared rule, they only capture part of a more complicated reality. Thus integration scholarship is still in search of a reliable theory for the future of what Schmitter classifies as 'the most complex polity that human agency has ever devised' (2000:75). Underlying the difficulties for the emergence of a conceptual consensus over the EU's elusive ontology, is that the process of conceptualising its distinctive properties and functions rests on competing normative orders, thus accounting for different 'structures of meaning' (Jachtenfuchs *et al*, 1998:411). But which interpretation ought we to utilise in order to develop a more profound understanding of the evolving European polity?

The answer offered in this paper lies in a republican conception of Europe's political constitution, defined as an ensemble *sui generis* of the constitutive norms, principles and procedures that compose the EU's *vie politique*. For all its affinity with a juridical conception

of constitutionalism, in that it shares certain elements and has been intertwined historically with it (Bellamy, 2000:50), political constitutionalism represents a hybrid system of rule that chimes particularly well with the evolutionary nature of EU polity-building – ie, its reliance on a dynamic system of treaty-based rules. The point to make here is that this particular configuration of political authority is central to understanding what the EU 'actually' is, towards what it is developing and which direction its polity should take. Political constitutionalism, as applied to the European polity, brings into focus various dimensions of politics and sources of legitimacy by focusing on the way in which a composite – and still fragmented – citizen body relates to a series of political practices and institutional processes within a constitutional order in *statu nascendi*. The crucial function performed by political constitutionalism is that it links the conditions of liberty *qua* civic freedom with the means by which collective arrangements are framed within an extended political space. In this context, republican theory is particularly relevant to the search of appropriate forms of legitimate governance in the EU political system, especially when linked with the prospects for a vibrant European 'civic space'. But let us turn to this central tenet of 'civic Europe': republicanism.

Imagining the European *res publica*

In its basic conception, a *res publica* aims at achieving three fundamental objectives: justice through the rule of law; the common good (or public interest) through a mixed and balanced constitution; and liberty (or civic freedom) through active citizenship. Overall, *omnia reliquit servare rempublicam* captures the republican imagination of a virtue-centred life. Even 2510 years since the founding of the Roman republic, an anniversary that passed largely unnoticed by present-day Europeans, the above features constituting the *raison d'être* of the *res publica* continue to mark their impact in the interminable search for 'the good polity'. Of recent, republican thought managed to infiltrate the disorderly universe of EU theorising, by yielding some valuable new insights into an already voluminous *aquis académique* on how best to conceptualise the emerging European polity. Such approaches, however, have become more than simply 'trendy'. *Pace* Engeman, in that 'the addition of "republicanism" to the title of any scholarly work makes the work appear both more relevant and respectable' (1993:331; quoted in Brugger, 1999:1), new republican perspectives sought not only to revive, but also to nurture a paradigm of social organisation for the EU, founded upon a new 'civic partnership' among distinct historically constituted, culturally defined and politically organised *demoi*.

Republican conceptions of Europe are part of a demanding intellectual current: the search for both a reliable as well as democratic theory of European integration able to capture the dominant character of the relationship between the component public spheres through the institutionalisation of a mixed sovereignty regime. Absent a formal (or material) European constitution, and given the inchoateness of a European civic *demos* and the corresponding

lack of an input-oriented European legitimacy, there is urgent need for a substantive restructuring of the EU's civic arenas to engage its citizens in its governance. This philosophy accords with a civic conception of the European polity that aims to assess the relationship between the EU and 'the civic'. Such explorations have been recently brought into focus, *inter alia*, by the likes of MacCormick, Craig, Bellamy, Castiglione, and Lavdas. Employing the language of a 'second-order discourse' (especially in terms of collective norm-orientation and the sociopsychological aspects of large-scale democracy-building), republican approaches to European integration have given rise to a 'normative turn' in contemporary EU studies, signalling a paradigm shift from 'policy to polity', or indeed from 'diplomacy to democracy' (Shaw, 1999; Bellamy and Castiglione, 2000; Chryssochoou, 2000).

The point being made in the relevant literature is that new polity dynamics have entered into play since the mid-1990s in the development of the EU political system, privileging questions of social legitimation and, by extension, the structural importance of a European public sphere to the constitutive functions of transnational democracy, over questions of collective policy regulation and the mechanics, if not logistics, of joint decision-making. Such a normative turn, which in many respects reflects on recent constructivist discourses in international relations theory (Checkel, 1998; Wendt, 1999; Christiansen *et al.*, 1999), has also opened the way for novel conceptualisations of the European polity, especially from a meta-theoretical, post-statist angle, whereby the larger political association becomes 'an entity of interlocking normative spheres with no particular one being privileged' (Bańkowski and Christodoulidis, 2000:17)). Or, a 'heterarchical political space' that combines unity and multiplicity, transcends pre-existing boundaries (as well as forms of allegiance and types of affiliation), and projects a multidimensional configuration of authority (Walker, 1998:357).

Pace Puchala's view that, for all the richness of recent normative investigations in the field, 'European integration will for the foreseeable future continue to be an ongoing social scientific puzzle' (1999:330), Bellamy and Castiglione have attempted to capture the complexity and pluralism of the EU political system through a theory 'democratic liberalism', founded upon 'a pre-liberal conception of constitutionalism that identified the constitution with the social composition and form of government of the polity' (2000:181). This amounts to 'a political system that disperses power within civil society [so that more people can have a say in its enactment] and encourages dialogue between the component parts of the body politic' (Ibid:172). The point they make is that, '[i]nstead of the constitution being a precondition for politics, political debate becomes the medium through which a polity constitutes itself' (Ibid:182). Being highly critical of territorial and/or hierarchical forms of power distribution, democratic liberalism brings the constituent groups of the larger polity into an equilibrium with one another, and aims 'to disperse power so as to encourage a process of controlled political conflict and deliberation [as a way of filtering and channeling

preferences] … moving them thereby to construct and pursue the public good rather than narrow sectional interests' (Ibid:181). Within this pluralist polity that is characterised by a differentiated social context, there can be different forms of representation for different purposes. Differentiation is crucial to the kind of political constitutionalism advocated by democratic liberals, for it links together justice, the rule of law and the democratic dispersal of political power, whilst providing a balanced mix of social forces and levels of governance.

From a similar prism, by reviving the usage of an eighteenth-century term, MacCormick (1997) conceptualises the fledging 'EU order' as a 'mixed commonwealth', within which the subjects of the 'constitution' are not homogeneous: they represent a mixture of agents that share in the sovereignty of the larger unit. Bellamy and Castiglione explain: 'The polycentric polity … is a definite departure from the nation state, mainly because it implies a dissociation of the traditional elements that come with state sovereignty: a unified system of authority and representation controlling all functions of governance over a given territory' (1997:443). MacCormick's notion of a lawfully constituted European commonwealth of post-sovereign states, whose normative validity stems mainly from a well-established legal order (supported by such constitutive features as foundational norms, basic doctrines, and general principles), allows the EU to conduct itself as a *Rechtsgemeinschaft*, but not as a *Rechtsstaat*. Within it, and in the absence of 'a single power-structure with a single normative frame' (MacCormick, 1997:338), political authority is neither proportionately nor symmetrically vested in a single decision-making centre. Rather, it is distributed through a series of overlapping arrangements, with the polity in question being characterised by various degrees of decentralisation and sources of multiple loyalty-holding. Informed by an associative understanding of governance, this pluralist depiction of the European polity as a legally constituted but heterarchical order, within which sovereignty is dispersed across and between a variety of actors and public spaces, and where a 'balanced constitution' emerges as the ultimate protective mechanism against the danger of domination, is fully in line with Tarrow's depiction of the EU as a 'composite polity': 'a system of shared sovereignty, partial and uncertain policy autonomy between levels of governance, and patterns of contention combining territorial with substantive issues' (1998:1). Tarrow's conceptual category draws largely from the work of historian te Brake on the formation of composite states in early modern Europe, where people 'acted in the context of overlapping, intersecting, and changing political spaces' (1998:278).

Republican theory embodies a strong normative commitment to civic deliberation for the promotion of the public interest (as opposed to factional demands) and to the setting up of a particular kind of constitutional ordering founded on the notion (and praxis) of 'balanced government'. Such ordering, in the form of a strong constitutional state, is committed to offering citizens 'undominanted' (or quality) choice. But it is not the latter that causes liberty *per se*. Instead, liberty is being constituted by the legal institutions (and assorted normative

underpinnings) of the republican state (Pettit, 1997:106-9). Bruggens explains: 'whereas the liberal sees liberty as essentially pre-social, the republican sees liberty as constituted by the law which transforms customs and creates citizens' (1999:7). Active citizen participation in the political cosmos of the *res publica* is not taken as a democratic end-in-itself, but a means of ensuring a dispensation of non-domination by others (or non-arbitrary rule). Yet another republican variation on the theme of *vita activa* (Barber, 1984) takes civic participation 'as a process of constructing politics, not merely one means among others to secure something else. Non-domination, as a procedural norm, might be a condition of effective [public] political discourse, not its object' (Bruggens, 1999:12-13). Hence, the rule of law, opposition of arbitrariness, and the republican constitution are constitutive of civic freedom, itself.

As noted above, central to republicanism is the notion of 'balanced government'. This is forged, according to Craig, in two related ways: negatively, by associating the constitution of 'a proper institutional balance' with the prevention of tyranny (among other expressions of authoritarian rule); and positively, by ensuring a deliberative form of democratic public engagement, 'within which the different "constituencies" which made up civil society would be encouraged to treat their preferences not simply as givens, but rather as choices which were open to debate and alteration' (1997:114). But more than that, liberty was expected to be best preserved under a mixed form of republican governance through certain constitutional practices or provisions, with no single branch of government being privileged over the others. To open a small parenthesis here, such normative issues are of relevance to the distribution of political authority within the EU (Ibid:115). Here, republicanism claims to strike a balance between participation in the EU legislative process and the attainment of the public good, by allowing for 'a stable form of political ordering for a society within which there are different interests or constituencies' (Ibid:116). The idea of a 'balanced constitution' is reflected in the European Commission's exclusive right to initiate legislation and its interaction with civil society representatives, the codecision rights of the European Parliament (EP) in fostering more democratic deliberative outcomes, and the relationship between the indirect democratic mandate of the Council of Ministers, as the EU's *de facto* legislative branch, and the fact that Europe's political constitution rests on a dynamic system of international treaty-based rules.

But there also exist other facets of republican thinking relevant to a civic conception of Europe. Lavdas (2001), for instance, draws from Pettit's (1997) seminal study on freedom as non-domination – as opposed to a negative conception of liberty as non-interference, or to a positive conception of it as self-mastery – to argue that the EU may develop the democratic functions of public deliberation and a corresponding concern with active citizenship, taken as necessary, but not sufficient, conditions for a more 'democentric' process of union. Given the absence of a European civic *demos* – assuming that a functionalist/economic and legal *demos* already exist – republican governance emanates as an appropriate means of disentangling 'the

issue of participation in an emerging polity from the cultural and emotional dimensions of citizenship as pre-existing affinity and a confirmation of belonging' (Lavdas, 2001:4). The point here is that 'some elements of the real and symbolic *res publica*, may sustain a degree of political motivation *vis-à-vis* the EU and its relevance for peoples' lives while also allowing for other and more intense forms of motivation and involvement at other levels of participation' (Ibid:5). But given the profound lack of organic unity among Europe's constituent *demoi*, the republican challenge, in line with the dictates of multiculturalism, or the principle of 'agonistic respect' (Connolly, 1999; quoted in Bruggens, 1999:124), is one of institutionalising respect for difference and group rights, whilst sustaining 'a shared sense of the public good' (Bellamy, 1999:190). This is more likely to be achieved through Pettit's third concept of freedom, as it 'enables a view which aims to combine the recognition of the significance of the pluralism of cultural possibilities for meaningful choice and a framework based on a minimal set of shared political values' (Lavdas, 2001:6). Thus, one could imagine a European *res publica*, within which a multitude of commitments may generate higher levels of civic engagement in EU affairs, whilst enhancing the possibilities of meaningful choices.

The State-Centric Alternative

Although republicanism captures the civic imagination of a composite European polity, from a state-centric perspective the EU still rests on the separate constitutional orders of states, despite the fact that the European Court of Justice (ECJ) has ruled that the EC Treaty represents a 'Constitutional Charter' (interestingly though, it has not repeated such language for subsequent Treaties). Moreover, consensual practices in the Council are employed more often than not, even when the treaties allow, increasingly over the last decade, for (qualified) majority rule. Similarly, the EP performs a range of functions that even the national legislatures would be jealous of, yet its lack of (constitutionally entrenched) controlling and legislative powers, especially over the EU's executive branches, suffice to support the philology of a 'democratic deficit'. In a similar vein, Union citizenship has been hailed by some as a step towards the formation of a transnational civic *demos* - itself product of a normative commitment to large-scale civic participation - whilst others have claimed it has more to do with the free movement of people within an extended economic space, rather than with the construction of a common civic identity based on a substantive corpus of democratic rights (and duties). Moreover, whereas an increasing array of competences and norms of governance are brought into the general system, their *locus decidendi* remains closer to the domain of state agents. Lastly, enshrined in the Treaty on European Union (TEU) as a mechanism for the vertical allocation of (shared) competences, subsidiarity has opened the way both for the protection of national democratic autonomy against the danger of excessive institutional centralisation, and the extension of transnational legislative authority itself.

Arguably, changes in the workings of the common system by the early 2000s have not affected its essential character as a 'polycracy': 'a many turned into one without ceasing to be many'. Although a hindrance to federation-building, such an approach managed to preserve a balance between the collectivity and the segments, by producing a sophisticated system of political co-determination. These concepts are key to understanding the changing conditions of state sovereignty, which may now be interpreted as the right to be involved in the joint exercise of competences: a form of participation in the larger entity (Taylor, 1999:560). Also, when disconnected from a Weberian understanding of political organisation, the EU appears to be, in the words of Areilza, 'too complex and too amorphous to be presented as emerging from a new abstract constituent power' (1995:9). Instead, final responsibility for EU polity-building and assorted constitutional reforms rests with the partners to the larger association. And so does the right of the central institutions to publicly binding decisions. In summary,

- the EU represents a 'treaty-constituted political body' and is not 'the unilateral act of *one* people ... considered as a homogeneous entity' (Forsyth, 1995:64);
- the EU does not derive its authority directly from the citizens, but rather from the governments of the component states, each representing a historically constituted *demos*;
- the EU has not resulted in a complete fusion, where the different segments of European political society lose their respective identities, but rather approximates most closely a fairly co-ordinated system of democracies;
- the component states continue to band together by way of 'mutual agreement' and are free to dissociate themselves from the larger association;
- both the constitutional identity and international legal personality of the EU are still dependent on the component polities in critical ways;
- the EU does not challenge the authority of the member state polities to determine their own fate, although it does represent a profound locking together of states regarding the joint exercise of fundamental powers (the member governments may lose a substantial share of their functional autonomy, but project their political domination over EU institution-building and, crucially, over EU constitutional choice and change).

Taken together, the above points confirm a largely state-centric conception of 'EU order' since the attributes of political sovereignty are confined to the segments, rather than to an overarching, federally constituted European political 'centre', as conventionally understood.

For state-centrists, the dominant model of EU politics is one in which states emanate as the major actors in European governance and, at the level of system-wide reform, collective constitutional engineering. This is reflected in the capacity of the member executives to shape integration outcomes. State power is safeguarded (and even strengthened) through negotiated

policy co-ordination within a management system that rests on the pooling of sovereignty (especially when there is strong functional reason for collective action). But it would be wrong to equate EU state-centrism (Milward, 1993; Moravcsik, 1993; Kirchner, 1996; Taylor, 1996; Wessels, 1997; Chryssochoou, 1998) with the realist 'billiard-ball' image of international politics composed of power-hungry states, for it perceives sovereignty as an integral part of contemporary statehood itself: it attributes a normative content to it, whilst distinguishing it from the logic of institutionalised shared rule (resulting from complex interdependence and the search for effective means of collective policy co-ordination). As Taylor defines this new quality in sovereignty-relations: 'Having the right to participate in the management of common arrangements with other states was a much more important consideration in sovereignty than the traditional right to exclusive management' (1999:564).

Not surprisingly, therefore, many of its students regard the EU as an essentially states-led project, albeit with an open *finalité politique*: a polity ensemble of distinct features that 'has displaced the potential to alter the relative congruence between territory, identity and function which characterised the nation state' (Laffan, 1998:238), but without posing a direct threat to state sovereignty, and particularly the capacity of the member polities to delegate authority. This refers to 'a system which is now "federative" in the old pre-American revolution sense or perhaps more than federative in the sense discussed by Rousseau in his "Summary" of Abbé Saint-Pierre's *Project for Perpetual Peace* or advocated by Kant in his "Perpetual Peace"' (Bruggens, 1999:124). Indeed, although the EU is viewed as something more than merely the sum of its parts, sovereignty as 'ultimate responsibility' has yet to become part of its systemic properties. Likewise, although it exceeds a Deutschian 'pluralistic security community' (1957), it has failed thus far to meet either the sociopsychological conditions of Mitrany's older functionalism (1943), or for that matter those accounting for any substantive transfer of public loyalties to a neofunctionalist-inspired 'political community' (Haas, 1958). But for all its validity in explaining the politics of European treaty reform and the continuing insistence of states to preserve their autonomy through a politics of consensus elite government, state-centrism has failed to account for a striking paradox: although traditional notions of democracy are losing their normative appeal when applied to the EU political system, the latter exhibits a notable potential for democratic self-development: a growing tendency to transcend issues of market integration and regulation, and 'to democratize politics above the level of the state' (Laffan, 1998:249). Hence, new normative investigations are imperative to addressing basic questions of democracy and legitimacy in the evolving EU.

Sources of European Civicness

To this date, European integration has not fostered the normative qualities needed for the nurturing of an independent European civicness capable of demanding and sustaining further

democratic transformations (de Areilza, 1995:9). Despite the contrary rhetoric, recent treaty reforms have not only failed to rectify this long-standing deficiency, but have also managed to consolidate a new regulatory aetiology of 'post-parliamentary governance' (Andersen and Burns, 1996) based on the practice of expertology, managerialism, and technocratic elitism. Underlying this empirical pragmatism rests the idea of 'committee governance' (Kirchner and Christiansen, 2000) evident in the highly technocratic operations of existing 'comitology' structures in EU decision-making. Like Maastricht's (top-down) polity-creation, Amsterdam and Nice failed to provide a sense of civic attachment to the EU with a view to creating an independent source of input-oriented (social) legitimacy based on a cluster of essential norms about the governance of the larger political unit through democratic practices of deliberation.

Before examining the qualitative impact of recent reforms on European democracy, let us sketch a normative perspective on Union citizenship. To start with, 'citizenship establishes an abstract, legally mediated solidarity between strangers', binding together a group of individuals with no pre-political ties into 'a highly artificial kind of civic solidarity' (Habermas, 2001:16). The latter translates into an 'internally-oriented relationship' between citizenship-holders (or *demos*) and the institutions of the polity to which they belong (Close, 1995:2-3). Despite its explicit treaty-based character, Union citizenship carries an undisputed political weight, a kind of 'deep symbolism', with crucial implications for the embodiment of a stronger *Gemeinschaft* element at the grassroots: a sense of self-awareness and even self-formation as bearers of rights and duties within an ordered political association. But the most celebrated property of citizenship both as a social construct and as 'substantive public engagement' is the range and depth of participatory opportunities it offers for fulfilling the democratic potential of the *demos* (deliberative or otherwise) in the exercise of political authority. Within this embracing civic space, a feature central to the democratic process is the idea of civic competence: the institutional capacity of citizens *qua* social equals to enter the realm of political influence with a view to sustaining a vital public sphere (Chryssochoou, 2002). The latter is defined as 'a network that gives citizens … an equal opportunity to take part in an encompassing process of focused political communication' (Habermas, 2001:17). Here, the pairing of 'civic' and 'competence' does not embody a category mistake, but acts in the interests of engaging the *demos* in the affairs of the polity, by empowering its members to direct their democratic claims to, and via, the central institutions. It aims at institutionalising a normative commitment to core democratic values, whilst offering a conceptual framework and giving an institutional face to a central task of legitimate rule: democratic participation. From this civic conception of the polity, whereby active citizenship becomes a legitimacy-conferring feature of a democratic regime, joint decisions become more transparent, political issues more visible, and power-holders more accountable for their public actions or inaction.

The democratic potential of Union citizenship is threefold. First, it sets up a transnational system of political rights giving access and voice to the constituent *demoi*; second, it further induces integrative popular sentiments by motivating greater civic participation; and third, it strengthens the democratic bonds of belonging to an 'active polity' by facilitating the process of positive European awareness-formation at the grassroots. The question here is whether Union citizenship attributes effective civic competence based on a new 'civic contract' between peoples, states and the central authorities, thus generating the necessary levels of civicness for the development of a transnational *demos ab intra*. From a meta-institutional perspective, the answer lies in the distribution of European civic competence itself. To the extent that the latter passes through the capacity of citizens to determine the political functions of the larger entity, then Union citizenship constitutes the democratic foundation of the envisaged civic contract, which is vital not only to the moral ontology of democratic governance, but also to the prevailing value spheres of civicness. Should a *demos*-oriented arrangement of this type fails to materialise, then a state of illegitimacy effectively prevails.

Union citizenship offers the opportunity to incorporate but not amalgamate the separate civic contracts of the component polities into a transnational civic space, where the consent of citizens for the larger-scale of decisions is being organised 'from below'. This requires in turn the evolution of the 'member-state citizen' from a 'functionalist' or 'fragmented citizen' to an 'indirect' or 'derived' one, and then to an 'interactive citizen' (Neunreither, 1995:10). But the transition from one stage to the other should come about as a conscious act of civic self-development - indeed, an exercise in 'political self-identification' (Ibid:13). Of such measures to build on the occurrence of a transnational civic identity are the detachment of Union citizenship from the 'nationality requirement' and its placing upon an independent sphere of civic entitlements; the institutionalisation at EU-level of effective civic competence, which should be added to the more conventional way of thinking about competences as statutory guarantees or the capacity for authoritative action; the extension of the right to vote and to stand as a candidate at national elections for citizens residing in a member state other than their own; the institutionalisation of the citizens' right to information on all EU issues; the setting up of protective legal mechanisms against any infringement of fundamental liberties, collective or individual; the introduction of the citizens' right to hold public office within the EU; the recognition of the right of citizens to be informed when EU decisions impinge upon specific interests; the enrichment of the citizens' rights relating to the four freedoms of movement, social welfare, working conditions and labour-management relations; the introduction of the citizens' right to education and of access to training programmes; and the recognition of political rights to legally resident third-country nationals (denizens), which in turn requires the transcendence of any liberal statist norms and practices of civic exclusion, and the rejection at EU-level of what Geddes (1995) calls 'dissociational-type democracy'.

Central to the above are the principles of additionality and non-regression, in that Union citizenship rights are established in addition to national ones, with Union citizenship thus being attached to a novel *status civitatis*, whilst ensuring that existing citizen rights will not be reduced (Duff, 2000:21). It is only then that these treaty-based entitlements, emanating from both top-down and bottom-up initiatives, may foster the bonds between the EU and its emerging civic body. All the above proposals are easier said than done, as they ultimately depend on the political will of the member governments, rather than on an overarching *volonté générale* of a European *demos*. Perhaps the most radical proposal of all, which would nevertheless bring the EU closer to a *res publica*, would be to introduce the principle of *jus soli* for the acquisition of Union citizenship: by granting citizenship rights to persons born within its territory, the EU is equipped to allocate authoritatively, and not just derivatively, rights (and values) within European civic society. The outcome would not be the creation of a 'community of fate' or *Schicksalsgemeinschaft* shaped by common descent, language, culture and history, but rather to 'democratise' the criteria for the distribution of the citizenship status and facilitate the horizontal integration of citizens in conformity to the norms and practices of civic inclusion – i.e., what Schmitter calls the process of 'citizenizing' Europe (2000:25).

In this way also, the larger polity acquires a distinctive political subject, whose collective civic identity exists independent of national public spheres, but whose 'politics' extends to both European and national civic arenas. Such a move would also signal a shift in the basis of legitimation from a largely functionalist-driven, if not segmentary-type of (mainly) economic European citizenry – ie, a kind of functional *demos* – to a political community of equals founded upon more active and inclusionary virtues of belonging like public deliberation and institutionalised participation. Although the time may not be ripe for such a proposal to materialise, as it would certainly spark a series of substantive (and for some, unpleasant) amendments to national constitutions, basic laws or parliamentary statutes, for any well-thought-out and at the same time consequential debate on European democracy to come full circle, such proposals should at least be part of the discursive agenda on the constitutional (or other) future(s) of Europe, the member states and, by implication, the candidate countries. Similar points can be made for the importance of a 'constitutional' document addressed to the citizen directly so as to clarify the range and depth of civic rights and duties. This brings us on to the debate on the Charter of Fundamental Rights signed in Nice on 7 December 2000.

The distinction between an extra-treaty arrangement – ie, a Charter that only provides for a standard for fundamental rights – and a legally binding instrument that provides for a set of basic rights guarrantees is crucial, for in the latter case, a Charter incorporated into the Treaty would also be made subject to the jurisdiction of the ECJ. It would also grant the latter a crucial interpretative function with regard to human rights respect and protection throughout the EU. Although by drawing such bright line distinction between a legally binding and a

declaratory Charter might do some injustice to the normative potential of its present status, in that ECJ Judges and Advocates General can invoke its interpretative force as a more or less definitive 'European' statement of rights, an internally justiciable Charter would make a positive and credible move towards 'a more human rights-based constitutionalism' at EU-level. Yet, a potential problem remains, succinctly put by Lord Russell-Johnston (2000) thus: were the ECJ to become the last instance of appeal in the EU for human rights issues, this might deprive European citizens of a final external appeal against violations of fundamental rights. The only sensible way to avoid this predicament and, by extension, the possibility of two competing jurisdictions and jurisprudence – ie, resulting in two parallel human rights regimes in Europe – is for the EU to accede to the European Convention on Human Rights (ECHR). In that way also, ECJ rulings related to the ECHR would be made subject to the supervision of the Strasbourg Court, thus making the ECJ itself accountable to that Court the same way as the superior courts of the ECHR states are today (Cooper and Pillay, 2000:17).

Although the prospects for strengthening European civic competence rest as much on formal legal requirements and judicial procedures, as they do on social and political sources of legitimacy, including public responses themselves, the inclusion of the Charter into the formal Treaty framework would undoubtedly herald a more *demos*-oriented process of union. Indeed, institutionalising fundamental rights within the EU legal and political order would

- strengthen the credibility of commitments taken by the member state polities to protect the fundamental rights of all persons residing within their territory;
- empower the ECJ to ensure that fundamental rights are indeed respected, whilst providing it with a firm textual guidance on the definition, nature and scope of such rights; lay the foundations for an EU-based human rights regime with which EU institutions and bodies are bound to comply;
- advance the fight against various forms of discrimination and protect the status of all civic associations within the EU;
- place the individual citizen at the heart of the EU's activities by further strengthening Union citizenship rights, including the right to good administration; make fundamental rights more visible to the citizen;
- codify so-called 'new rights' on bio-ethical, environmental and data protection issues; reinforce existing practices and institutions of European-wide civic inclusion;
- emphasise the importance of upholding the virtues of civility within an ever complex and politically diffuse transnational environment; and contribute to the preservation and development of shared values, whilst respecting and protecting the diversity embedded in constituent cultures, traditions and, crucially, identities.

Whether or not the incorporation of the Charter into the Treaty is seen as an exercise in regional constitution-making, its 'communitarisation' within a multilevel civic order aims at harnessing the democratic ethos of those who form the polity's *pouvoir constituant*. This brings us to a complex legal issue, but with crucial political implications for transnational *demos*-formation. Would a legally binding Charter have general application throughout the member states, or would it be restricted to fundamental rights protection only in the context of EU action? Put differently, would the Charter apply in cases of member state action that is not directly linked to the implementation of Union law, as Article 51(1) of the Charter currently provides for? Assuming that the prevalent interpretation is that the Charter is confined to EU action alone, and despite the drafters' *prima facie* intention to consolidate the current method of the ECJ to deal with questions of basic rights as 'general principles of Community law', given the nature and scope of the rights enshrined in the Charter, more positive action is needed. Such action could take the form of amending Article 51(1) to extend the Charter's applicability to state action that is not linked directly to EU activities. Bold as this step may be, its case becomes even stronger with reference to the free movement of people within an integrated economic space. Taking rights (more) seriously ascribes to the process of 'Chartering Europe' its proper meaning, whilst endowing the EU with a political constitution 'proper'. In line, finally, with a republican approach to European constitution-making, the Charter attempts to bridge the long-standing rights/duties divide, stating that '[e]njoyment of these rights entail responsibilities and duties [especially the provisions on solidarity] with regard to other persons, the human community and to future generations'.

Despite the absence of any formal selection criteria, the Charter's drafting process has opened the way to a more visible, deliberative and inclusive method of EU polity-building – i.e., a European public process. The symbolic importance attributed to the composition of the drafting panel is that it linked the principles of transparency and institutional pluralism with a process of constitutional engineering that goes beyond the state-controlled nature of treaty reform, allowing for the inclusion of civil society. Should its drafting formula prove too much for sovereignty-conscious states to allow for treaty change (and there is an abundance of realist state-centric reasons why it should), a more pragmatic scenario would be for the EP to be granted formal constitutional competence via the assent procedure. All in all, the challenge is to develop horizontal links among the member *demoi* to see themselves as part of a polity-building exercise that evolves from the lower level 'upwards', enhancing their capacity to act in an extended political space. The typology below helps to clarify some of these points.

Figure 1. Typology of Civic Governance

Civic competence

	Latent	Institutionalised
Nascent	**Civil Society** (functionalist *demos*)	**Civic Space** (interactive *demos*)
Formed	**Public Sphere** (deliberative *demos*)	**Res Publica** (civic *demos*)

Civic identity

The EU currently occupies the upper left box as there are clear signs for the development of a transnational civil society composed of a plethora of organised groups and associations pursuing their interests at a level beyond or alongside the nation-state. But what it has not yet reached is the stage where a nascent civic identity meets the institutionalisation of civic competence. This mix of variables is crucial for the emergence of a European civic space composed of an interactive *demos*. But the EU has not equally met the conditions for the institutionalisation of a composite public sphere based on the discursive qualities of free public deliberation on ways of improving the democratic quality of its governance. This is after all what civic governance is all about: the process whereby the *demos* turns relevant democratic problems into topics of public concern and debate. As the next section illustrates, both the Amsterdam and Nice reforms leave much to be desired regarding the transition of the EU's civic orientation 'from paternalism to citizenship' (Bellamy and Warleigh, 1998).

The normative content of the envisaged transnational democracy refers to discourse-centred processes of civic engagement. Whether or not formally instituted, such processes serve the goal of a polycentric public sphere, for they direct the democratic claims of citizens to those centres of authoritative decision-making that are entitled to commit the polity as a whole. Otherwise, a novel yet easily discernible form of political domination will determine the relationship between executive elites and the affected public. Indeed, absent a principled public discourse, it would be naïve to expect the structural transformation of a shadowy political space into a purposeful *res publica*: a community of free and equal citizens – i.e., a *populus liber* driven by a *charitas civicum* - within which civic competence and 'the right to have rights' (Bellamy, 2001) take precedence over territorially based interest aggregation, as do social over empirical sources of legitimacy. Such normative commitments at instituting a multilevel civic space within which the constituent publics are recognised as bearers of rights, freedoms and duties in relation to the larger polity can also act as an antidote to the growing

impoverishment of national public life, where a decline in the quality of public discourse is met by a shrinking (social) legitimacy of 'the political'. In short, a republican understanding of the European polity is one whereby properly constituted laws, constitutionally guaranteed rights and duties, and deliberative institutions of governance convey the values and virtues that support civic freedom and the citizens' right to good governance: they all are an integral part of the democratic viability of the EU, whilst helping to instil in the members of the composite *demos* a sense of active citizenship. The section below examines the extent to which the Amsterdam and Nice reforms failed to bring about the envisaged democratic ends.

The Limits of State-Controlled Reforms

In stark contrast to the TEU, the Treaty of Amsterdam came into force on 1 May 1999 after a rather uncontroversial ratification process, partly due to the moderate reforms embedded in it, and partly because it was based from the outset on a limited mandate with the view to consolidating state competences, as opposed to achieving a substantive constitutional redesign. Devuyst writes: 'the Amsterdam negotiation was characterized by a "maintaining national control trend"' (1998:615). Underlying this state-controlled process was a preference for a managerial type of reform to improve the effectiveness in policy-output: flexibility, pointing towards differentiated integration, was partially elevated to a *modus operandi* of the system, whereas the deepening of integration was largely referred *ad calendas Graecas*.

Particularly those who linked the Amsterdam process with the making of a constitutive polity based on symbiotic legitimation structures have no real grounds for celebration, for it failed to deliver a new democratic vision. Instead, it offered a series of partial offsets to the EU's democratic pathology, by focusing on its institutional, rather than sociopsychological aspects. The latter refer to the range of normative qualities embodying the construction of a European civic space, where citizens share among themselves a sense of public sphere (as a civic virtue element that is a valuable resource for the polity) and a regard for good governance (as a training ground for civic learning). Both elements are crucial for, as J. S. Mill asserts, '[p]olitical machinery does not act of itself' (see Spragens, 1999:214). It has to be worked and reworked by the citizens themselves. This civic conception of the polity contributes to the making of a political order steered by an active community of citizens, by granting them effective civic competence: the institutional capacity to engage themselves in the governance of the polity. The emphasis here is not so much on the crystallisation of liberal democratic norms in the political constitution of Europe, but rather on the search for a transnational civic space within which citizens mobilise their energies in the pursuit of a new democratic order. Underlying this normative assertion is the belief that democratic reform is not really the cause, but rather the consequence of popular aspirations to democratic rule: a desire by the civic body itself to participate in a socially legitimised political environment.

Treaty reform in the 1990s has made it clear that, preserving the 'constitutive autonomy' of states as *Herren der Verträge* and, therefore, as the central actors in EU constitutional engineering is part of the system's *modus operandi*. Thus, the joining together of diverse entities through an informal culture of consensus-building at the highest level, and the way in which competences are exercised within the EU, have not eroded sovereign statehood, let alone nationhood. Instead, sovereignty has acquired a new co-operative dynamic of its own: it no longer refers to 'a private world into which the outside world was not permitted to enter' (Taylor, 1999:538). Rather, it emerges, through the practice of political co-determination, as a crucial link between national and EU polity dynamics: a point, where two different incentives of governance are brought together. Even the phasing-in of questions of polity in the EU's public agenda has not transcended the anxiety of states to safeguard their own prerogatives, even when these questions became crucial to the viability of the regional process itself.

Instead of focusing on issues that constitute the essence of any well-thought-out process of democratic reform, the unimaginative quality of proposals submitted to the IGC 2000, originally meant to deal with the so-called 'Amsterdam leftovers', highlighted the absence of a clear democratic vision to take the EU dynamically into the next millennium. Much like Amsterdam, Nice focused on 'distributive compromises' (Bellamy and Hollis, 1998:63) with a view to embodying the particularistic attitudes of self-interested actors into yet another asymmetrically negotiated outcome, thus inviting a sacrifice in democratic input for greater efficiency in output. In a high-stakes endgame, which brought on a flash of *déjà vu*, the Treaty of Nice clearly lacked a 'departure of substance' for the creation of 'norms of polity' centred on the specific constructions of legitimate governance. As *The Guardian* categorically put it: 'At every stage of the prolonged negotiation, raw national interest has overshadowed the broader vision' (December 11, 2000). Similarly, *The Financial Times* described the Nice compromise as 'the result of the worst sort of inter-governmental horse-trading' (June 8, 2001:18). Despite some improvements like the simplification of codecision, the Treaty of Nice witnessed the institutionalisation of other practices such as flexibility, exceptions, reservations, safeguards, protocols, declarations and the rest, which arguably represent an exercise in 'cognitive difficulty' (Dahl, 1977:13-14). By and large, the Nice process failed to discover 'a sense of process' over the transformation of a plurality of *demoi* into a pluralistic *demos* as the ultimate legitimising referent of the polity (Weiler, 1997:250). This is linked to yet another transformation the EU has to undertake, 'from an ethics of integration to an ethics of participation': 'a deliberative process whereby citizens reach mutually acceptable agreements that balance their various communitarian commitments in ways that reflect a cosmopolitan regard for fairness' (Bellamy and Warleigh, 1998:448).

Overall, Amsterdam's and Nice's largest deficiency was their emphasis on policy rather than polity, efficiency rather than democracy, distributive compromise rather than integrative

accommodation, functionalist structures rather than shared normative commitments and, above all, the rationalist exercise of power rather than symbiotic legitimation. These reforms focused on the rationalisation and simplification of decision-making, voting adjustments and, in general, measures concerning the effectiveness of joint decision-making as a precondition for the future functioning, but not legitimation, of the EU. Ironically, this elaborate exercise in rationalised institutionalism originally aimed at rectifying an earlier criticism of the Community as a 'joint decision-system' conducive to producing sub-optimal policy outputs (Scharpf, 1988) and, at the level of negotiated package-deals, an inequitable *status quo*. The final section summarises the limits of democratic norm-orientation in the EU political system.

Concluding Notes

This paper has attempted to situate the present stage of EU development in the republican imagination. The argument advanced is that a republican conception of contemporary Europe requires, first and foremost, deliberative political decisions to promote certain public goods, whose relevance extends far beyond the traditional politics of democratic election or issues of policy co-ordination and responsiveness. Such goods exemplify the significance of civic virtue in the good life, the continuous search for active citizenship and dialogical political processes, as well as the need for institutionalised civic participation. Republicanism is also instructive to the conceptual ambiguity surrounding the ontology of the EU, by pointing at a mixed sovereignty regime based on a balanced and primarily political, rather than juridical, constitution and a reworking of the interplay between rights and duties within a 'sympolity' composed of states and *demoi*. The crux of the matter is that a republican view of citizenship, epitomised in the notion of European civic competence and the making of an interactive and politically self-conscious transnational *demos*, is compatible with the EU's multilevel system of rule, provided that the latter commits itself to a more 'democentric' process of governance. The ongoing Convention of the Future of Europe is a case in point, and so is, by extension, the systematic debate that currently takes place at both elite and civil society levels (especially after the ascent of the far-right, as disturbingly epitomised in the recent French Presidential election) on the extent to which the EU can be conceived as 'a community united in a common argument about the meaning, extent and scope of liberty' (Ignatieff, 2000:265).

Although for many the EU continues to retain its distinctive character as a *via media* between different forms of polity, one could argue that the normative agents of 'postnational constitutionalism' (Shaw, 1999) and the gradual Europeanisation of civil society have raised the expectations of further treaty reform to endow the EU with a clearer civic identity. Such aspirations, state-centrists would have it, may not prove too realistic after all, given that recent reform outcomes have managed to consolidate national autonomy, least of all by acknowledging the innate need of states to retain ultimate control over both system-wide

constitutional choice and change. In support of state-centrism also comes the view that, even the new dialectic between sovereignty and integration, carrying the implication of an explicit right to political co-determination, failed to produce any credible commitments towards a common strategy for democratising the EU with a view to strengthening European civic competence. Another important implication was the perception that because the recent IGCs carried a mandate for limited treaty change, the development of Union citizenship and corollary democratic concerns would be dealt with at a later stage. Judging, however, from their end-products, it is highly doubtful that the next IGC will be equipped with the mandate needed for 'deepening' European citizenship rights, granting the EP formal constitutional competence, and incorporating social norms of legitimacy into the EU's policy performance.

Amsterdam and Nice, far from representing a *cause célèbre* for a substantive re-ordering of civic spaces and public spheres, amount to a cautiously negotiated deal of 'partial offsets' to key democratic problems facing the EU. For what such reforms failed to produce was not only a common democratic vision *per se*, but also a belief that such a vision remains without reach, at least for the foreseeable future. This is justified further by perceiving the Treaty of Nice as the product of a predominantly cost-benefit calculus among divergent interests, along the lines of an overall rationalist settlement, where affective/identitive politics remains without reach. Its core principles rest not on the need for cementing the constitutive features of a European civic space patterned on the co-constitution of normative structures, but rather on a politics determined by sub-optimal exchanges within an overly complex negotiation system. In short, the exclusion of citizens from European governance is not only at the expense of popular fragmentation, but also against the interests of better equipping citizens to become agents of civic change within a pluralist order composed of increasingly entangled arenas for action. Like any other polity that aspires to becoming a democracy, the EU has to engage itself in a constitutive process based on a new framework of politics that embraces the virtues of civic freedom and free public deliberation, by means of inventing and, whenever necessary, re-inventing a sense of European *res publica*. After all, as Bellamy insightfully suggests, 'Europe long ceased to be Holy, but its future may be Roman' (2000:19).

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