

“We, the Peoples of Europe ...”

Kalypso Nicolaidis

A MORE PERFECT UNION

POLITICAL TREMORS are shaking the old continent. As the European Union's enlargement brings most of the continent under the same banner, Europeans, like their American cousins two centuries ago, are on the verge of treating themselves to a full-blown constitution. In June, after more than two years of heated debate, EU heads of state settled on the text of the Treaty Establishing a Constitution for Europe. The treaty will not enter into force, however, until it is ratified by all 25 member states, through their national parliaments or popular referendums. And a single defection could spell the end of the entire exercise.

Was the June meeting Europe's Philadelphia? The text's drafters claim that it was. They argue that the constitution will give the EU a more effective government, better adapted to its greater size and ambitions, and make it a more democratic polity. The document's detractors, meanwhile, make one of two critiques. Some say the document is not bold enough, especially on the social front; others claim that it is a watershed but warn that it will blur the precious differences among the members' unique histories and identities, turning the EU into a monolithic “United States of Europe.”

The EU's original sin may be that it was not built on a democratic foundation; its citizens were not asked to vet the union's creation. But

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that may also be the union's saving grace, as it allowed the war-torn continent to tackle integration more pragmatically. Eschewing grand visions of a regional democracy, the EU was founded on judicious power sharing. It put member states in the driver's seat by conducting most of its business through intense day-to-day diplomacy, while giving the European Commission, its law-initiating body, the task of balancing the interests of big states with a vision of the common good. An elected parliament was added only later for a bit of democratic flavor. As Jean Monnet, one of the EU's founders, rightly predicted, states then engaged in creative bargains and built ad hoc solidarities among cross-border constituencies.

By and large, this so-called community method has served Europeans well. It has enabled them to accommodate both social-democratic and conservative postwar ideologies and to balance the divergent interests of political parties, industries, trade unions, and nongovernmental organizations (NGOs) on issues ranging from food safety and banking regulation to immigration and global trade. But it is not a democratic model that Europeans can readily recognize. Who is accountable for what in the EU's bureaucratic maze? The EU does not have separate legislative and executive branches to speak of. The European Commission comprises nationals from every member state, but it is unelected and holds more power than any national administration. Ministers on the council must answer to their national constituencies, but they can easily claim to have been outvoted in Brussels. And the parliament, which is directly elected, can neither initiate laws nor control significant resources. Although some scholars have rightly argued that the EU does not exhibit nearly as many flaws as populist critics charge (and offers more safeguards against abuses of power than do many member states), the fact remains that Europeans cannot hold their politicians directly accountable for what the EU does.

By the turn of the millennium, the EU's powers had stretched to include prerogatives long associated with the nineteenth-century sovereign state: police, external boundaries, foreign policy, and regulating money. But, critics charged, this expansion came without any increase in accountability to European citizens. When over the course of the past decade the EU doubled in size, critics warned that, without reform, enlargement would spell the union's demise. So a constitutional convention

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was launched in early 2002, and for the first time in EU history, delegates other than diplomats were invited to debate the EU's foundation, goals, and methods. Central and eastern European states were invited to participate even before they had acceded. Discussions lasted more than a year, and after government representatives spent another one haggling over sensitive issues, a final blueprint was approved in June.

Despite the hopes of some delegates, this was no democratic baptism. And despite the full paraphernalia of Web casts and electronic forums, the constitutional process has not (yet) instilled in the hearts of Europeans a newfound faith in the European democracy. Still, given the wide spectrum of European political families and national sensitivities, it is remarkable that an agreement was reached at all.

The document offers much to advance the EU's core objectives. Member states have reached a sensible settlement about the division of powers between the union and themselves. The constitution incorporates the Charter of Human Rights, the most modern and ambitious document of its kind. It creates for the EU a post of foreign minister and gives the union a single legal personality. Decision-making will be simpler and more transparent. And Europeans will have a single statement of what their union is about. Thus, despite many imperfections, the constitution does manage to balance and so to celebrate the plurality of the EU's very diverse peoples.

THE DEMON IN THE DEMOS

DEBATES ABOUT THE EU have often been perverted by the tyranny of oppositions: European superstate vs. union of states; superpower Europe vs. Europe of peace; European democracy vs. national democracies. At the start of the convention, two main camps emerged: intergovernmentalists and supranationalists—representing the ideological poles between which the EU has always swung. The intergovernmentalists, who included representatives of the French and British governments, wanted to make up the EU's democratic deficit by strengthening the council of state representatives, using unanimous voting on issues that pertain to state sovereignty, and strictly delineating power-sharing arrangements between the union and its members. The supranationalists, mostly smaller member states and European parliamentarians,

wanted to protect the commission (the traditional advocate of weaker parties), strengthen democratic control by the European Parliament, extend majority voting, and generally expand EU powers. Although the issue seemed largely institutional, the two camps were really asking a fundamental philosophical question: if democracy requires a *demos*—a group of individuals who have enough in common to manage their affairs collectively—is there, or can there be, a single European *demos*?

Intergovernmentalists often subscribe to a form of sovereigntism, holding that nations, which are bound by a common language, culture, history, and often ethnicity, are the only credible foundations of polities. Being part of a nation is a precondition, they argue, for the basic compromise of representative democracy: agreeing to be in the minority one day with the expectation of being in the majority another. Intergovernmentalists defend national sovereignty not as a reactionary reflex but as the ultimate guarantee of democracy. Because Europe is the realm of agreements between states, its democracy must operate indirectly, through politicians in Brussels who are accountable to their electorate at home, rather than through direct links between citizens and European institutions.

Supranationalists, on the other hand, ultimately believe that it is both possible and desirable to aspire to a single European *demos*—and a European democracy—because the connection between the nation and democracy is a historical accident, not a necessity. They argue that a uniquely European identity can be forged and layered on top of older but equally artificial national ones. If civic education in the 1800s could turn peasants into Frenchmen, why could it not now turn them into Europeans or at least into Europeans of French origin? Having successfully reinvented themselves as a postnational, or anti-nationalist, community, the Germans tend to champion this view, as do the Italians and the Belgians. Visions of the European *demos* come in different shades, with some believing it was born on February 15, 2003—when Europe's population took to the streets to protest the U.S.-led war in Iraq—and others conceding that it is still in the making. But supranationalists agree that the EU must be perfected along traditional lines of representative democracy, by creating state-like institutions, such as legislative chambers and a prime minister position, at the European level.

THE THIRD WAY

FOR ALL THEIR DIFFERENCES, traditional supranationalists and intergovernmentalists are really only two sides of the same coin: both owe allegiance to some version of the nation-state model. With their calls for a common flag, passport, and anthem, supranationalists are trying to recreate a national mystique on the European level. But in so doing, they are relying on the sovereigntist notion that a single *demos*—albeit one, in this case, that transcends the state—is necessary for a genuine political community of identity.

There is a third way to understand Europe. In the half-century since its creation, the EU has established itself as a new kind of political community: one that is defined not by a uniform identity—a *demos*—but by the persistent plurality of its peoples—its *demosi*. Intergovernmentalists must accept that the EU is a community of citizens, not only of states, and supranationalists must accept that democracy can exist among EU members without their merging into a single polity that expresses its will through traditional state-like institutions.

Yet the EU is not simply a halfway house between intergovernmentalism and supranationalism. It is more than a confederation of sovereign states; its peoples are also connected through the European Parliament and a regional civil society. But since these peoples are also organized into states, states remain at the core of the union. The EU is neither a union of democracies nor a union as democracy; it is a union of states and of peoples—a "*demoicracy*"—in the making. It appeals to a political philosophy of its own—transnational pluralism—rather than to some extended notion of the nation-state. And however paradoxical, recognizing that its different needs require a different model is in fact a way to honor the nation-state's role as a cornerstone of national democracy.

American constitutionalists might argue that this definition is just a fancy way of referring to a federal vision much like the one that dominated in the United States in the decades before the Civil War and before Franklin Roosevelt's presidency. Indeed, federalism stands in opposition to the notion of a homogeneous state. But the history of federalism is about the gradual subjugation of constituent units to a central power. That is the reason why sovereigntists in Europe

(especially in the United Kingdom) saw the exclusion of the “f-word” from the EU draft constitution as a victory against superstate drift. Given the history of the United States and other federations, it would be difficult to persuade them that federalism does not ultimately mean “more” Europe and “less” nation-state, or that it is a mode of organization more compatible with *demosi* than with a single *demos*, or that it protects local differences from being erased. They would be right, because the EU should not become a federal state. (What sort of state would it be, with its tiny budget and administration, its rules

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negotiated and enforced by national authorities, and its role limited to tasks other than critical welfare functions?) On the other hand, they would be wrong not to understand the EU as a federal union.

To really celebrate the EU as a *demoicracy*, one must depart from mainstream constitutional thinking. And to do that requires making three conceptual shifts: seeking the mutual recognition of all of the members’ identities rather than a common identity; promoting a community of projects, not a community of identity; and sharing governance horizontally, among states, rather than only vertically, between states and the union.

The first shift consists in recognizing that Europeans are part of “a community of others,” who are somewhat at home anywhere in Europe. The European *demoicracy* is predicated on the mutual recognition of the many European identities—not on their merger. Not only does it promote respect for their differences, in a classic communitarian sense, it also urges engaging with each other and sharing cultural and political identities. In an apt metaphor, existing European treaties allow nationals of EU member states to use each other’s consular services outside of the union. (A Spaniard’s belonging to the EU allows her to be a bit Italian or a bit British when traveling outside the union.) In the same spirit, today’s constitution does not call for a homogeneous community or for laws grounded on the will of a single European *demos*. Rather, it makes mutual respect for national identities and institutions one of its foremost principles.



If the European *democracy* is not predicated on a European identity, then it does not require that its citizens develop a singularly European public space; it asks only that they have an informed curiosity about the opinions and political lives of their neighbors. In time, multinational politics and citizenship will emerge from the confrontation, accommodation, and inclusion of Europe's varied political cultures. For that to happen, however, Europe's peoples must continue their critical reflection on their intertwined national pasts, as the constitution's preamble invites them to do with its opening nod to their bloody histories. They must also respect the importance of regional groups, such as the Basques or the Corsicans, in the European mosaic.

Thus, the glue that binds the EU together is not a shared identity; it is, rather, shared projects and objectives. This distinction is enshrined in the constitution's very first article, in which member states give the EU the power "to attain objectives they have in common." The members' sense of belonging and commitment to the union is based on what they accomplish together, not what they are together. Witness, for example, the EU's defining projects to date—the single market, the euro, and

expansion—and the ambitious to-do list it sets out in the constitution—the promotion of peace, social justice, gender equality, and children’s rights; sustainable development; a “highly competitive social market economy”; and full employment. Forging common projects is no less demanding than forging a common identity, but it is voluntary and differentiated rather than essentialist and holistic. Likewise, the constitution’s proclamation of common European values, including the respect for human dignity and for the rule of law, should be read as a guide for action, not a definition of “Europeanness.”

Finally, the European *demoicracy* should not be based on a hierarchical understanding of governance, with supranational institutions towering over national bureaucracies and European constitutional norms trumping national values. It ought to be premised on the horizontal sharing of sovereignty, and it ought to encourage dialogue between different authorities at different levels, such as national and European constitutional courts, national and European parliaments, and national and European executives. It must remain multicentered, with decisions made not by Brussels, but in Brussels and other European capitals. The EU is neither national nor supranational; it is transnational. It must strive to empower, not dominate, local actors; favor mutual recognition, not harmonization, of national laws and regulations; and ensure fair competition among them.

IN LETTER AND IN SPIRIT

SOME MIGHT ARGUE that the very idea of a constitution is anathema to the spirit of non-hierarchical governance and a dangerous departure from the EU’s history of pragmatism. After all, until now, the EU has been a model of what Joseph Weiler, a New York University law professor, calls “constitutional tolerance”: its members’ national constitutions have coexisted without an overarching umbrella, forcing Europeans to choose repeatedly to renew their commitment to common rules. Formally ratifying a constitution could indeed threaten this ethos, but it is too late to argue against ratification. Resistance would also be ill advised, because in significant ways the constitution succeeds in translating the spirit of *demoicracy* into the letter of the law.

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One of the constitution’s most spectacular innovations is to grant member states the right to withdraw from the EU. In so doing, it firmly establishes the EU as a federal union, rather than a federal state, which—as American schoolchildren know well from studying the birth of their own nation—is defined by the very denial of that right. Unlike its U.S. counterpart, the EU’s constitution celebrates the fact that its peoples are bound by choice but by a choice repeatedly made. This novel feature must be defended, not as a concession to national sovereignty, but as a sign that the EU has become mature enough to formalize what is the ultimate mark of a *democracy*.

Another significant innovation is the constitution’s provisions on the division of powers between the states and the union, which square a difficult circle by alleviating fears that the EU’s power is quietly expanding while enabling the union to take action in areas in which common action is needed, such as economic integration, asylum law, and foreign policy. In addition to listing the EU’s exclusive powers and those it shares with members, the constitution provides EU members with a critical new safeguard: it subjects the adoption of any new EU law to an “early warning system.” This feature allows a bloc of one-third of national parliaments to send a bill back to the commission for review on the grounds that it may violate the principle of subsidiarity (the presumption that, whenever possible, governance in the EU should rest with the lowest, most local, authority). This control mechanism does not, as many supranationalists fear, make for a “lesser” Europe or risk leading to paralysis. Rather, it respects the spirit of *democracy* by having directly elected national representatives police the boundary of union powers in the name of national majorities.

The constitution also does much to strengthen horizontal cooperation among EU members by making mutual recognition of judgments and penal practices the linchpin of cooperation among Europe’s police forces and judges. To safeguard the EU against the risks associated with the free movement of peoples and goods across its borders, the union relies on common strategies and mutual trust rather than on a European FBI. In the same spirit, the constitution formalizes the use of the “open method of coordination” (the European version of the “states as laboratories” method explored in the United States after World War II) in the areas of health, social, and industrial policies.

Critics on the left say they would have liked a more “social” constitution. They are right that setting common minimum standards and giving a central role to trade unions are paramount. But, provided it can be made more democratic, the open method of coordination, which spreads best practices by inviting states to experiment at home and emulate each other, is an appropriate way to set common goals. Is it not, in fact, an innovative way for the EU to advance a social agenda without trampling the legitimate notion that most decisions of the welfare state should be the result of domestic bargains?

At a deeper level still, the constitution recognizes that the EU cannot rely solely on features of representative democracy for its legitimacy.

The text’s biggest flaw is that it upsets the balance of power among member states.

The EU has, of late, promoted new forms of participatory and deliberative democracy—including through the Internet—that are sometimes more ambitious than many of the member states’ own methods. In this spirit, the constitution empowers citizens to ask the commission to initiate European laws if they can gather one million signatures from different

member states. Time will tell, however, if this novel feature was only a bone thrown to NGO lobbyists at the last minute.

In other respects, the constitution is less consistent with the spirit of *demoicracy*. It says nothing new, for example, about EU citizenship. Early on at the convention, intergovernmentalists killed a proposal that would have expanded the right of EU citizens to vote in local and European elections in the country in which they reside, giving them the right also to vote in national elections. Furthermore, although the constitution does strengthen the civil rights of EU citizens (by incorporating the Charter of Fundamental Rights, which protects people against abuses by their national governments when they implement EU law), it does not give non-EU citizens living inside or outside the EU a greater voice in European affairs. This was a mistake, because *demoicracy* calls for the consistent treatment of both other Europeans and non-European “others.” The constitution remains terribly introverted.

But the constitution’s greatest failing is to have upset the horizontal balance among member states in spite of its formal provision asserting their equality. Throughout the negotiations, the bigger states apparently

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forgot that the EU was founded on a rejection of the hegemonic power politics that had plagued the continent for much of the previous four centuries. The 19 smaller member states desperately sought to protect their access to the upper echelons of union leadership against the big players’ attempts to marginalize them. They did accept the introduction of the so-called double-majority system, which supplements the one country—one vote rule by weighting the relative voting power of states in the council according to the size of their populations. They had always conceded that some proportionality granting greater power to bigger states (which also applies to representation in the European Parliament) was fair and realistic. But they warned that the principle should not be pushed too far, for without a single European *demos*, a “European majority” could be undemocratic if it overrode the will of a large number of national majorities.

Most spectacularly, small and medium-sized states fought hard—but in vain—against the creation of a permanent chair for the European Council (which has wrongly been called the “EU presidency”), fearing that the new job could enshrine the preeminence of the Council of European heads of state, an intergovernmental institution dominated by big states, which is often pitted against the small state-friendly commission. Most important, the position will abolish the rotating presidency of the European Council, the most visible symbol of the EU’s shared leadership and a feature dear to the Irish, the Finns, and the Portuguese, among others. Rotation gives European citizens a sense that EU policy is not made only in Brussels, but also in Madrid, Athens, and Vienna. But with an indirectly elected president also heading the commission, the EU system will move closer to leadership *à la française*, torn between a head of state and a prime minister. In some respects, the constitution has fallen prey to the nation-state model after all.

A LIVING, BREATHING DOCUMENT

LIKE ITS U.S. COUNTERPART—but without its elegance—the European constitution is a vessel for continued deliberation and negotiation over competing policies and ideologies; it is a means rather than an end. Unlike the American covenant, however, it is not designed

to inspire the kind of loyalty that would make revisions all but impossible: the EU is still an open-ended process, and this new constitution should be revisited within a decade. Meanwhile, it must be taken as it is, however imperfect, and its meaning must be teased out through debate and interpretation. The challenge now is either to reinforce or to mitigate various features of the text depending on whether they serve the ethos of *demoicracy*.

During the ratification campaigns now underway, the constitution's proponents will need to demonstrate to both intergovernmentalists and supranationalists that there is enough in the text for each side. The two camps must be persuaded to endorse the basic premises of a European *demoicracy* as reflected in the draft: the protection of national powers alongside consolidated EU powers, provisions for direct democracy, a role for national parliaments, and the new right of withdrawal. More fundamentally, these campaigns should be an opportunity to reflect collectively on the meaning of European citizenship. If Europeans are "united in diversity," as the union's new motto claims, how can they ensure the inclusion of all those who, over the years, have fallen by the margins of economic growth, of non-European nationals living within the union's walls, and of new EU citizens from Poland to Lithuania?

European lawmakers would help the constitution's cause if they remembered to take subsidiarity seriously. EU citizens should never cease to bargain over which powers they are ready to share and which they want to keep at the national level, and their leaders must not betray their wishes simply in order to keep busy. No "European majority" should be able to tell the majority of citizens in a given state what to do about matters, such as military action, that require the kind of reciprocal sacrifices appropriate only within a single *demos*. And it should be made clear to Europeans that, in the areas of shared powers, the principles of preemption and of the primacy of EU law (now enshrined in the constitution) do not allow undue EU interference in national affairs.

In institutional matters, practice is (almost) everything. Yet the current constitutional settlement may not reconcile the need for stability at the helm with that for shared leadership. This tension is an argument for promoting the creation of a rotating presidency for the EU as a whole (compatible with separate long-term presidencies for the European Council, Commission, and Parliament) and reinstating summits

outside of Brussels. Such a move would bring the EU leadership closer to its citizens and send a clear signal that the union is not, in fact, on the verge of turning into a superstate.

Perhaps most important, the EU will have to continue to relate to the rest of the world by upholding in outside relations the kind of pluralism, solidarity, and tolerance it strives to promote inside its own democracies.

Its new foreign minister is more likely to succeed by focusing not on systematically giving the EU a "single voice" but on avoiding cacophony among its members' contrapuntual notes. By encouraging flexible cooperation, the constitution suggests that it may be possible to devise a foreign policy adapted to the diverse wants of individual members.

Agreeing to disagree and learning to live with differences are assets not only in transatlantic relations but also within the EU itself. Why deny that Greece is a better mediator with Arab countries, France with the French-speaking world, and the United Kingdom with the United States?

In the spirit of *demoicracy*, Europeans must not look for some "other" against which to bond, but extend their logic of mutual recognition and inclusion to outside partners. Incorporating the Balkans and recentering the partnership between the EU and Mediterranean states—a region where the constitution calls for "good neighborliness"—away from Brussels and on the region itself would be fitting projects for the decade to come. And what better proof of the EU's capacity to become a global mediator than the incorporation of Turkey as a full member? The universal relevance of Europe's *demoicracy*, its capacity to serve as a normative signpost beyond its borders, cannot simply be proclaimed. It must come from leading by example and resisting Eurocentrism.

Ratifying the constitution is a great chance for Europeans to renew the contract that binds them.

BY THE PEOPLES, FOR THE PEOPLES

MANY OBSERVERS are now betting that the constitution will not be unanimously ratified over the next two years. One after another, EU governments have pledged to replace parliamentary ratification with national referendums, which are notoriously vulnerable to demagoguery.

Old-fashioned one-upmanship could soon inflate that number: when, after the text was settled in June, Prime Minister Tony Blair decided to go for a referendum in the United Kingdom, the pressure on President Jacques Chirac to do the same in France became irresistible. The fact that these referendums are not being held simultaneously could make their outcomes even more unpredictable. Pundits speculate that Blair is hoping that an early “no” vote in France—or one in rebellious Denmark or dispirited Poland—will spare him from having to stage the plebiscite himself. Others fear that people will use the referendums on the constitution as a surrogate for voting on unrelated issues, such as the performance of their national governments or Turkey’s possible membership in the union.

Still, the constitution’s chances may not be so bad. If four-fifths of EU members ratify it, outlier states would face serious peer pressure to do the same. One hopes they would then realize that the advent of constitutional politics in the EU is an unprecedented opportunity for Europeans to forge anew the contract binding them together. Even though many rightly criticize its lack of democratic credentials, the constitution is a good place from which to start. It negates the trope that underpins most constitutions—that such documents are the ultimate expression of the will of a unified *demos*—and lays solid foundations for a genuine European *demoicracy*. It can help Europeans move beyond the dichotomies that have long limited them. Obsessed by the mirage of unity, many forget that the EU’s *raison d’être*—to allow states with starkly unique identities to share in some of them for the sake of peace—is a project radical enough. As the EU continues to grow, in size and in ambition, protecting the spirit of its *demoicracy* is more important than ever. 🌐