Can there be Demoi-cracy without Demos-cracy in the European Union?

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Since its emergence in 1992, when the Maastricht Treaty came into force, the debate about the democratization of the European Union has been framed by two key notions. On the one hand, few believe that the democratic nation-state should or could serve as a model for the EU; on the other, the idea of winding the EU back down to no more than a system of intergovernmental cooperation seems a non-starter. The ongoing transfer of powers to the EU is not least an expression—and a driver—of ever-closer interdependence; reversal of it appears an impossibly costly proposition. One recent suggestion for moving us beyond this ‘Bundesstaat versus Staatenbund’ predicament is that of a European demoi-cracy (Bellamy 2013; Besson 2006; Bohman 2007; Cheneval and Schimmelfennig 2013; Cheneval et al. 2014; Nicolaidis 2012, 2013). Broadly speaking, this rests on three assumptions: firstly, that member-states are the main carriers of democracy in Europe and should remain so; secondly, that there is no EU demos but that this presents no problem since EU democracy works without it; and thirdly—and crucially—that we therefore need to rethink the concept of democracy. Rather than conceiving of EU democracy in terms of a unified European demos engaged in creating a shared federal state, we should, it is argued, recognize that the EU is essentially already a ‘democracy of democracies’ (Cheneval 2013) and should remain so, leaving the status of the national demoi as equal democratic subjects untouched. What a demoi-cratic, ‘non-statist’ EU democracy (Nicolaidis 2012: 259) aims at is not to merge national demoi into a single European demos but to foster mutual opening-up and recognition between them.

The question posed here is whether the concept of demoi-cracy offers a robust normative ideal on which to model democratization of the EU. This in turn raises the crucial issue of whether transnational EU democracy is possible in the absence of a state. Some view democracy in terms of a horizontal network of deliberative decision-making between dispersed sites of equal political standing (see, for example, Cohen/Sabel 2005). Others claim
it depends on organized hierarchical self-intervention—in other words a form of reflexive statehood—including at the transnational level (Schmalz-Bruns 2010). The contention here is that in order for the concept of EU demoicracy to satisfy the two basic principles it espouses—mutual recognition and non-domination—it must presuppose the reflexive statehood of the EU and thus go against its own claim to non-statism. The aim is to demonstrate that demoicracy and reflexive statehood are not contradictory but can, and should, be combined into a functional model of the EU as a multi-level democracy.

Although the argument starts from the premise that the transposition of democracy to the European level entails rethinking the relationship between democracy, statehood, the demos, and solidarity (Habermas 2012: 20–8), its main focus is the link between the first two.\(^1\) Democratic theory tends to conceptualize statehood (and the demos) through the lens of the nation-state (Chernillo 2011). The state is automatically understood in Max Weber’s sense of ‘a human community which (successfully) lays claim to the monopoly of the legitimate physical violence within a certain territory’ (Weber 1919/1994: 310–11). But this is only one—albeit historically influential—notion of how statehood should be construed. We can also, as I shall do here, conceive of it more broadly, in terms of an ‘everyday political theory’ that allows us ‘[to judge] the legitimacy of the actions that governments undertake’ (Skinner 2009: 348). The answer to the question of whether a democratic EU depends on an EU statehood is then both yes and no: no, because EU democratization cannot be tied either to an EU demos in the sense of a ‘thick’ national community or to an EU state in the Weberian sense; but yes, insofar as the concepts of the demos and statehood as they are known in the modern tradition of the democratic constitutional state are preconditions for the EU as a transnational multi-level democracy and cannot therefore be entirely dismissed.

The argument in support of this view is presented in four stages. Section 1 considers the arguments advanced in favour of demoicracy as a normative ideal for a democratic EU. Section 2 suggests a differentiated concept of statehood based on Quentin Skinner’s ‘fictional state’ (2009) and Rainer Schmalz-Bruns ‘morally reflexive statehood’ (2009, 2010). Based on this, aspects of demoicracy and reflexive statehood are combined into a single view that acknowledges the demoicrats’ objections to ‘the idea of a European superstate’ (Morgan 2007) but at the same time addresses a major flaw in the concept of demoicracy—namely, its neglect of the fact that democracy depends crucially on what are determined to be elements of statehood in certain strands of modern political thought. As Section 3 argues, this is important because today’s EU is still driven by an intergovernmental rationale that fails to meet the prerequisite of morally reflexive statehood inherent to democracy. In conclusion, I argue that the demoicratic defence of the EU status quo, on the basis that it maintains institutional balance between the national demoi, actually undermines the ‘demoicratic ethos of transnational engagement and mutual recognition’ (Nicolaïdis 2012: 269).’ Paradoxically, to make demoicratic values a reality in the EU we have to strengthen

\(^1\) The relationship between democracy and solidarity is not discussed here. On this, see Brunkhorst (2005).
the latter’s *demos*-cratic character by strengthening its parliament—no EU *demos*-cracy without equal *demos*-cracy.

1. *Demoi*-cracy as a normative ideal

Proponents of *demoi*-cracy see it as a way out of a dilemma that has stymied the debate on EU democratization. Analytically, they argue, *demoi*-cracy captures the *sui generis* character of the EU and thus enables empirical EU research to redirect its attention to the generic aspects of EU integration (Cheneval and Schimmelfennig 2013). The notion of EU *demoi*-cracy also has normative pretensions, the claim being that an integrating Europe is a *demoi*-cracy in the making and that any further integration should strive to fully realize this ideal. Nicolaïdis (2013: 351–2) defines the ideal of an EU *demoi*-cracy as a ‘union of peoples who govern together, but not as one’ and she goes on to explain that: ‘However much shared kratos or power to govern, we must contend with the plurality of demoi; but also crucially, however many demoi, we need a common a common kratos to define and deliver, through mutually agreed disciplines, the responsibilities we owe to one another.’

This view claims to offer a third way—one which, despite some parallels, is distinct from the two major approaches framing the debate on EU democratization: on the one hand the notion that democracy depends on the nation-state and that the EU can derive only indirect legitimacy from strengthening its intergovernmental nature (Moravcsik 2002; Scharpf 1999); on the other the view that the EU should evolve into a federal democratic state (Duff 2011; Verhofstadt 2006). According to the *demoi*-crats, we see *Staatenbund* and *Bundesstaat* as the only two options for the EU because our political imaginations are constrained by a false assumption—namely, that democracy entails the existence of a unified demos which uses the state as a framework for organizing self-determination. What is needed instead, they say, is a ‘non-statist understanding’ of the EU’s democratic quality (Nicolaïdis 2012: 259) which would enable us to relinquish entrenched views about: the degree of reform needed for EU democratization (1.1.); the ideal European democracy (1.2.); and the measures required to achieve democratization (1.3.).

1.1 How much reform does the EU need?

Proponents of an intergovernmental EU and of a supra-national European democracy concur in attributing the EU’s democratic deficit to its current institutional structure. Accordingly, both propose transforming the EU polity—the former into an international organization and the latter into a federal state. By contrast, *demoi*-crats defend the current EU architecture. For them, European integration was never tied to the *finalité* of a European federal state: rather they see it in terms of the development of a new type of democratic order—a
‘democracy of democracies’ (Cheneval 2013). On this view, it is wrong-headed to believe that democratization necessitates changing the EU’s institutional structure: ‘[T]he EU’s legitimacy deficit will not be addressed by tinkering with its institutions. Instead, the name of the democratic game in Europe today is democratic interdependence’ (Nicolaïdis 2013: 351).

1.2 Ideal European democracy = EU demoï-cracy

In what sense do demoï-crats hold the EU to be a new type of democracy? And what form does an ideal EU demoï-cracy take? The way in which the EU as a democracy of democracies differs from a national democracy is first and foremost in the type of community that has come together to regulate its relations democratically. Given the already established national demoï of which it is composed, the community in an EU demoï-cracy is seen not as a demos that unites individuals in a single body but as something more pluralistic. In this sense, demoï-crats subscribe to the view that there is no demos at the EU level (the ‘no demos’ thesis). However, they decline to conclude from this that the EU therefore cannot be democratic. As a community of democratic states, they argue, the EU does not, and should not, be aiming for common self-determination: this value is already realized within the member-states. The democratic rationale of the EU, say the demoï-crats, is rather to strengthen mutual recognition between the national demoï and to transfer ‘to a transnational context the goal of non-domination as democratic freedom by which men are free from one another’s arbitrary power’ (Nicolaïdis 2013: 358). EU politics thus aims on the one hand to strengthen the autonomy of the national demoï—by coping with the negative externalities of national decisions at EU level and by preventing the exercise of national power-politics, and on the other to dissolve remaining barriers to citizens’ autonomy both in their own and in other EU states. In this sense, EU politics is, as it were, an antidote to the politics of exclusion exercised in the name of national identity (Weiler 1999).

On this view, a demoï-cratic community builds on a shared feeling of mutual responsibility springing from the democratic consciousness of each national demos (Cheneval 2011). As a collective of European ‘statespeoples’, the community that makes up the EU demoï-cracy thus remains a ‘people of others’ (Weiler 2001: 68). Hence—as the thesis elaborated most fully by Cheneval, Lavenex, and Schimmelfennig (2014) maintains—it is crucial that the current shape of the EU polity be preserved, in order not to damage the latter’s horizontal structure of democratic authority.

Cheneval et al. distinguish between the constitutional and policy-making levels. The EU’s demoï-cratic character, they say, is shaped at the constitutional level, via the EU polity’s
highest legislative authority, the European Council. Here, national demos, represented by their heads of state and government, decide consensually which issues should be addressed at the policy-making level and how this should be done (inter-governmentally or via ordinary legislative procedure). The right of the national demos to assign policy-areas to EU procedures constitutes ‘the first and fundamental principle of demoicracy: sovereignty of the statespeople’s pouvoir constituant regarding entry, exit, and basic rules of the political order of multilateral democracy’ (Cheneval et al. 2014: 4). Democratic authority is thus horizontal in two senses: there is no authority above the equal national demos to decide on the distribution of competencies; and although the common will of each national demos is formed hierarchically by national majority-decisions, the common will of the national demos in the European Council is arrived at consensually. This means political authority cannot be transferred to the EU against the will of a national demos, and, where transferred, can be reclaimed upon withdrawal from the EU. According to demoicrats, this horizontal democratic structure within the only constitutional organ—the European Council—ensures mutual recognition and transnational non-domination within the EU.

By contrast, claim Chevenal et al., policy-making conducted at governance-level involves both hierarchical and horizontal modes of decision-making. Whereas the various modes of horizontal co-ordination that go on between member-state institutions are unproblematic from a demoicratic perspective, the hierarchical dimension of EU governance requires particular legitimation, and this is viewed as springing from two sources. Firstly, governance procedures ultimately derive from European Council decisions, and thus also from the will of the national demos. Both the rulings of the European Court of Justice and the policy-making generated by ordinary legislative procedure are thus justifiable on the grounds of their demoicratic legitimation. The supra-nationality of EU governance thus represents ‘a deep commitment mechanism, an instrumental rather than ontological fact’ (Nicolaïdis 2013: 355). Secondly, in policy-areas where decisions are taken by majority-vote as part of ordinary legislative procedure, the principle of political equality between the national demos and individual citizens is more or less assured (Cheneval 2011: 144–8) via the interplay of the Council of the EU and the European Parliament (EP) (Cheneval et al. 2014: 6).

1.3 How to democratize the EU

Given these assumptions, it is natural that demoicrats should oppose changes to the EU’s institutional architecture: anything that undermines horizontal democratic authority will damage the EU’s democratic rationale—that is, the management of interdependency between national demos. However, there is a need for further democratization, say the

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2 It might be objected that the European Council is not a legislative body as such. When I speak of it as ‘the highest legislative authority’, I mean this in the sense of the body with the constitutional power to decide who takes what decisions and how in the EU.
demoi-crats, in order for a true EU demoi-cracy to be realized. Two aspects in particular are mentioned here.

The first is the need to improve equality of representation of demoi and individual citizens in the ordinary legislative procedure (Cheneval et al. 2014: 6–7). The dearth of European parties and candidates renders citizen representation in the EP deficient and demotes European elections to ‘second order’ events. In addition, the hybrid function of governments as both executive and legislative actors in the European Council and the Council of the EU results in a predominance of executive power that precludes adequate representation of national statespeople. This indicates a need for national parliaments to play a more forceful role in EU politics.

Secondly, it is argued that if cross-border issues and the views of concerned citizens are to feed into the EU process, there must be greater deliberation between decentralized, dispersed ‘mini-publics’ (Bohman 2007: 163). To achieve this, the number of directly deliberative approaches—such as the open co-ordination practised by the Commission—must be increased. However, the difficulty here—as Bohman stresses (2007: 159)—is that such forms of deliberation are mostly expert-driven and their representativeness therefore needs to be strengthened by linking them up with the deliberations of the general public and concerned non-participants (Besson 2006: 204–5).

2. Morally reflexive statehood as a condition of democracy

Two crucial assumptions thus underlie the concept of a European demoi-cracy—firstly, that democratization can be enhanced without undermining the autonomy of the national demoi and merging them into a single body; and second that this is only possible if the concept of democracy is not seen as inherently linked to the concept of statehood and the ideal EU democracy is thus conceived of without a concomitant European state. The problem here is that overcoming the obstacles that demoi-crats see as standing between the EU and a true demoi-cracy—namely, lack of equal representation of demoi and citizens and poor connection between the deliberations of experts and those of the general public—necessitates the EU acquiring certain features of statehood. In other words: further democratizing the EU, and thereby upholding its demoi-cratic character, implies giving it a more demos-cratic shape. The apparent paradox here disappears if we acknowledge that the two undesirable features which demoi-crats associate with a European state—centralized administrative power and a unitary demos—are intrinsic features not of statehood per se but of a particular historical manifestation of it, namely the nation-state. As Quentin Skinner argues (2009), the dominant views of the state as a synonym for either the supreme power or the body of the people, originate in two competing outlooks in political history, the absolutist and the populist, and it is easy to forget that beyond this warring pair there lies a
third notion—that of the state as a societal fiction (2.1). This differentiation is a significant one as regards democratizing the EU, since it enables us to identify those elements of statehood on which democratic politics depends without having to envisage the democratic community as a homogenous body of people or conceive of organized public power in the form of an unconstrained sovereign ruler (2.2) Morally reflexive statehood can then be demonstrated to be a precondition for the democratization of the EU (3).

2.1 The fictional person of the state

According to Quentin Skinner (2009), theories of the state have a political function. By describing the conditions under which the exercise of public power is justified, they set standards of legitimacy for government actions. Skinner thus sees the evolution of the concept of the state as a mirror of the modern struggle for a just political order—essentially the struggle between absolutism and populism. The absolutist view identifies the state with the supreme executive power and has its origins in the pre-modern connotation of the state as the status or standing of the monarch. Skinner argues that the semantic shift crucial to the development of the modern understanding of the state is traceable to the princely manuals of the Renaissance, in which the state acquires an added, impersonal dimension. To maintain their state (meaning their status), so counselled the manuals, rulers must also maintain the well-being of their political body—the body politic. This new conception of the state as a community of people subject to a sovereign ruler spread quickly and became the butt of attack by opponents of absolute monarchy during the first half of the seventeenth century. However, rather than rejecting the view of the state as the body of the people united under one government, populist opposition supported it. What it objected to was the absolutist claim that without the sovereign rule of a monarch, this body was ‘headless’. Its own view was that ‘under all lawful forms of government —monarchies as well as republics—the rights of sovereignty must remain lodged at all times with the universitas of the people or (as some begin to say) with the body of the state’ (Skinner 2009: 337).

Although these two ‘bodily’ concepts still dominate our view, there is, says Skinner, a third, often neglected, notion of the state—one that is important to our purpose here. In the political wrangle as to whether sovereignty is located in the body of the ruler or the body of the people, Thomas Hobbes sides with the royalists and in doing so generates a third concept of the state, one located neither in the ruler nor in the people but in a fictional place. Whilst Hobbes’s account of the ‘state of nature’ undermines the idea of a definable body of people, and thus also of the populist notion of a sovereign body politic, Hobbes also dismisses the concept of god-given monarchic rule and argues that the status of a sovereign ruler is no higher than that of an authorized representative. But if there is no body of people, whom does the sovereign ruler represent? In Skinner’s view, the answer to this question can be found in Hobbes’s reflections on representation and the political contract. As Hobbes
sees it, the sovereign ruler, like any other representative, is an artificial person created by an act of authorization in order to speak and act in the name of another. However, this ‘other’ is not a ‘natural’ body of people living under one rule; it is itself an artificial person, a purely conceptual community formed by the shared willingness of people to live under one law and speak and act with one voice. According to Hobbes, this second fictional person is the Commonwealth or State. Thus a political contract generates two fictional persons: that of the sovereign ruler, authorized to act in the name of, and thus represent, the state; and the state itself, as the highest legislative authority representing the common will of those living under a single government. On this view, the state is a person without a body, distinct from both ruler and ruled. It is a societal fiction in which neither the nature of the participating community nor the identity of the bearer of executive power are predetermined: ‘While sovereigns come and go, and while the unity of the multitude continually alters as its members are born and die, the person of the state endures, incurring obligations and enforcing rights far beyond the lifetime of any of its subjects’ (Skinner 2009: 346).

### 2.2. Reflexive statehood and democracy

In what sense can the societal fiction of a state be a precondition of democracy—even in the case of a European demoi-cracy or democracy of democracies? It may be objected that the EU’s legitimacy does not depend on the existence of a European state because the EU itself consists of democratic states and because the integrative function of the state is performed by ‘a demoicratic ethos of transnational engagement and mutual recognition’ (Nicolaïdis 2012: 269)⁴ But if the proposition of EU demoicracy targets not only the notion of an EU nation-state but also, more fundamentally, the EU as a _fictional state_, the following problem arises. As Martti Koskenniemi (1994) argues, all ideal notions of a state-free form of legitimate politics suffer from a common flaw: they conjure an impression of authenticity by positing some ostensibly self-evident principle, beyond statehood, for the ordering of human affairs. The various principles so posited, however, are not self-evident. They leave us with two unknowns: how to choose between them when they conflict, and what political action they dictate in concrete situations. In the case of the EU: does its legitimacy derive from the fact that it strengthens its members’ global economic competitiveness or from the fact that it embodies certain cosmopolitan values? In order to be able to decide between the often contradictory views that spring from allegedly self-evident ideals, we need a common point from which their desirability and impact in a particular context can be assessed:

To call for the replacement of state structures by economic markets or bundles of human rights takes these latter as given and fails to see their historical, context-dependent character and the need to decide what, in today’s circumstances, is required to attain them. ... There must be a critical point—

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⁴ Cf. the view that European politics is guided by a shared ethos of ‘constitutional tolerance’ (Weiler 2001).
We are now in a better position to identify the link between the fictional state and democracy. What Hobbes sees as the outcome of a political contract (namely, the creation of two artificial persons, with the fictional state as the highest legislative authority and the sovereign ruler as the state’s authorized representative) might also be described as the product of the shared willingness of a group of people to regulate their affairs as free and equal individuals. Although Hobbes’s argument was designed to champion monarchy, we can already see in it the outlines of a defence of the democratic principle as the core of legitimate political order. Seen from this perspective, there are two senses in which democracy can be said to depend on the fictional state.

Firstly, the fictional state fulfils a cognitive function for democracy. As a representation of the common will of those who commit to a single government as a way of regulating their affairs equitably, it establishes the democratic principle as the meta-norm for the regulation of conflict. It generates the common cognitive frame from which arises the obligation to take account of others’ views and interests in order to ensure affairs are regulated in a way that has equal legitimacy for all. In other words, it establishes a particular ‘sense of appropriateness’ (Schmalz-Bruns 2010: 100), according to which all societal views are of equal weight—meaning that for conflicts to be regulated legitimately, a common perspective must be generated on the matter in question.

Secondly, in motivational terms, democracy depends on there being an institutional representation of the fictional state that empowers the latter to act. If the fiction of a community of free and equal individuals is to transcend its status as a normatively valid ideal and become a socially valid ideal in the Weberian sense (that is, an ideal that actually and routinely guides political behaviour (Weber 1978: 31–3), it has to be visibly embodied in the institutionalized political process. In this connection Rainer Schmalz-Bruns (2010) argues that the self-perception of citizens as equals depends on three factors that entail corresponding institutional arrangements:

- The first is the visibility of the democratic community (that is, of the fictional person of the state) as the highest legislative authority. This imposes two requirements: the generation of all laws and regulations must be traceable to the common will of the citizens; and all individual views and interests must be taken equally into account in the generation of democratic decisions. The legislative process must therefore allow for a
‘right to justification’ (Forst 2011) which enables individuals to assert their views against a common decision in cases where these views have been neglected. The institutionalized legislative process must thus be equally responsive to two somewhat contradictory perspectives: the collective-general perspective of the common will and the distributive-general perspective that acknowledges all individual concerns.

- Secondly, this tension imposes a specific epistemic requirement on the institutionalized political process: citizens must be able to view policy-making not only as a process which, largely speaking, takes all relevant aspects into account, but also as a process that mediates both between differing individual interests and between individual and common interests.

- Finally, only a legally institutionalized order that draws on the sanctioning power of positive law can endow the democratic community with the capacity to act and guarantee the members of that community equal rights.

Viewed thus, the state is neither a unitary body of people based on a collective identity nor a supreme, all-embracing political power. In a democracy, the state is a bodiless idea and institution (Dyson 2009). It is a societal fiction that maps out a common cognitive space for those who want to ‘legitimately regulate [their] common life by means of positive law’ (Habermas 2001: 772) and therefore empower a law-giving and law-dispensing organization to speak and act on their behalf. It is an institutional order that gives organizational form to democratic will-formation (Schmalz-Bruns 2009: 89–90). The moral purpose of the democratic state is to make visible and effective the basic values of a democratic community.

That said, democracy and the state are in a relationship of tension. Although the former depends on the latter in the sense described above, from another point of view the two are in contradiction with one another, leading to what Étienne Balibar (2010) describes as ‘antinomies of citizenship’. Whilst the democratic values of freedom and equality depend on an actual organization to become effective for a particular political community, they also have a normative thrust that transcends historical borders, and this tension between the particular and the universal results in democracy engaging in a ‘self-correcting historical process’ (Habermas 2001: 768) that has both external and internal repercussions. Externally, it leads to a steady extension of democratic claims beyond national borders (Fraser 2008); internally, it induces self-reflection in democratic society, notably in regard to the two aspects not determined by the purely conceptual link between democracy and the state: who is to be a member of the democratic community and how collective action is to be organized. From the external point of view, the universal reach of democratic values necessarily makes the legal boundaries of the democratic community appear historically contingent, resulting, inter alia, in ever more calls for the group of people regarded as entitled to equal citizenship-rights to be extended (Besson and Utzinger 2008). In this sense,
the antinomies of citizenship foster ‘cosmopolitanism in one country’ (Niesen 2012). From the internal point of view, any concrete organizational manifestation of political power cannot but appear deficient compared with the democratic ideal. The normative yardstick that determines which form of political organization best represents the self-legislating community of free and equal individuals, and thus counts as democratically authorized, shifts with societal circumstances—and not least with the view as to who is, or should be, part of the democratic community. For this reason—and because these questions themselves demand democratic solutions—the institutional organization of the state must encompass the democratic community’s constitutional authority to revise its own boundaries and organizational structure (Bohman 2007). Thus, the concept of the state does not just have moral meaning: it is also reflexive, in that it entails the possibility of democracy’s self-correction.

European integration is seemingly approaching the point where the dynamics of internal and external transcendence in member-states overlap to such an extent that integration into a democratic EU appears a real possibility. However, even if we stick to the goal of the EU as a demo-cratic ‘democracy of democracies’, the democratization of the Union still depends on the relation between democracy and ‘morally reflexive statehood’ (Schmalz-Bruns 2009).

3. Morally-reflexive statehood as a condition of EU democracy

The demo-crats’ concern to preserve, as far as possible, the autonomy of member-states’ democracies is undoubtedly well-founded. Habermas (2012: 39–41) argues that democratic nation-states have a value, over and above cultural identity, which ought to be maintained in any further European integration. Their ‘historical path towards civilizing the violence at the core of political power’ (ibid. 41) makes them reliable guarantors of a (sometimes more, sometimes less) just and democratic society. But does this mean, as demo-crats argue, that the democratic rationale for the EU is management of ‘democratic interdependence’ (Nicolaïdis 2013: 351) rather than joint self-legislation?

Even if democratic politics in the EU is not about the self-realization of a European demos, the ideal of mutual recognition and non-domination between statespeoples requires that participating subjects equip themselves with shared rules and laws for managing democratic interdependence. Neither of these values—mutual recognition and non-domination—is self-evident; and both call for an institutionalized process of joint will-formation and decision-making as to how they can best be actualized in practice. Where do the boundaries of mutual recognition lie? When can it be said that one statespeople is dominating others? In what way does it do this and what is the best response? In what circumstances do EU regulations between member-states—for example, intergovernmentally imposed policies of austerity—affect the autonomy of particular groups of people across national borders? As
this last question implies, managing democratic interdependence in the EU is not simply about securing agreement between equal statespeoples; it is about the epistemic challenge of mediating between the wills of national demois and between the resultant demoi-cratic will and the will of the entirety of EU citizens.

Demoi-crats defend the EU’s horizontal structure of democratic authority on the basis that citizens of member-states consider democratically formed national wills to have an intrinsic value which should be preserved at the EU level. Crucially, however, this same democratic consciousness amongst European citizens has established the inviolability of equal individual freedoms as a moral benchmark in politics. The need for a genuinely transnational democracy in the EU is rooted in this ambivalence in democratic consciousness: at some point, the value of mutual recognition between national demois will come into conflict with the value of mutual recognition between individual EU citizens, resulting in a need for mediation. Does membership of a national democracy justify representing citizens’ concerns in the EU along national lines? If so, there is no need for EU democracy; intergovernmental co-operation is enough. If not, a democratic federal European state is required in which the will of the national demois must make way for the will of an EU demos. Supposing, however, one sought to preserve the autonomy of both the national demois and the citizens of the EU. In that case, there could be no predetermined hierarchy. Instead, a balance between the demoi-cratic perspective, representing the joint will of the national demois, and a demos-cratic perspective, representing the joint will of EU citizens, would have to be mediated on a case-by-case basis. But this would mean the EU would have to have a democratic process in which both these wills were given equal institutional representation, in which neither perspective is given pre-emptive precedence and both are allowed to clash on a regular basis as EU will is formed.

The EU’s current process of democratic will-formation fails to meet this last requirement. Whereas in ordinary legislative procedure the common will of the national demois and of EU citizens are equally represented (in the Council of the EU and the EP respectively), representation of citizens at the key, constitutional, level is poor. Here, in the EU’s highest-ranking body—the European Council (or, for treaty revisions, the Intergovernmental Conference)—the citizen concerns that are to be deliberated are pre-selected and presented in national terms. There is a built-in preference for the perspective of the national demoi and any consideration of transnational citizen concerns is left to the goodwill of the national governments. Preserving this horizontal structure thus means allowing the will of European statespeoples to prevail over the will of European citizens in determining what EU politics should decide and how. It means, in other words, violating the basic demoi-cratic principle of non-domination.

What is needed in order to rectify this is a type of EU will-formation that is rooted in democratic representation of a simultaneously national (territorial) and transnational
(ideological or social) kind and operates across all levels of politics, including the constitutional domain. The most significant step that could be taken in this direction would be to transform the EP from a body that fulfils an oversight function within a system of executive federalism (Dann 2003) into one which (together with the European Council) constitutes the highest legislative authority in the EU. The EP must be on a par with national governments not only in regard to ordinary legislative procedure but also in regard to constitutional matters.

There is no doubt that the Treaty of Lisbon extended the EP’s powers in regard to treaty revision. The EP now has the same right as member states and the Commission to submit proposed amendments to the European Council, which decides by simple majority whether or not to examine them. In addition, if examination via the so-called ordinary revision-procedure is agreed, a Convention is convened in which representatives of the EP, together with representatives of the national parliaments, of the European Commission, and of the heads of state and government, arrive at a consensus-based recommendation on a proposed revision. In the end, however, it is a governmental body, the Intergovernmental Conference, that decides whether such recommendations are accepted and how they are implemented. The views of EU citizens, represented institutionally by the EP, thus play an advisory role only and have no co-decisional force.

This intergovernmental bias at the very source of the EU’s democratic authority, makes the European Union a ‘demoi-cracy without demos-cracy’ (van Parijs 2011). If the EP were put on an equal footing with member-governments in regard to constitutional matters—by giving it the same right of veto over treaty revisions as that enjoyed by the governments of member-states, for example—this imbalance would be rectified. The result would be a restructuring of the highest legislative authority that would endow the EU with features of a morally reflexive state (3.1). The new structure would not, however, imply any greater centralization than obtains today, nor any ‘pull of “oneness”’ (Nicolaïdis 2012: 270): the autonomy of national demoi would be preserved to whatever degree was consonant with transnational mutual recognition and non-domination (3.2).

3.1 From international bargaining to transnational will-formation

The international structure of the EU’s highest legislative authority—represented by the European Council—establishes in-camera bargaining by national executives as the normative standard for EU political will-formation. Projecting as it does an image of the EU as a community composed (solely) of democratic states, it establishes a particular sense of appropriateness that makes itself felt across all the EU’s political procedures. Not only does this foster the public perception of the EP as a ‘second order’ parliament (despite its role in ordinary legislative procedure); it also helps make government depictions of EU decisions as
nationally advantageous extremely successful and hard to contest. This situation creates two obstacles to the legitimate transnational management of democratic interdependency. Firstly, EU decision-making becomes a process in which the discretion enjoyed by national executives in the pursuit of international compromise takes precedence over the democratic control of those executives by their national parliaments. This is the deep-rooted cause of the executive dominance that precludes appropriate citizen representation in the EU. To overcome this dominance we therefore need not just to strengthen the powers of control of national parliaments but to overcome the international sense of appropriateness. Secondly, because the intergovernmental sense of appropriateness suggests that the well-being of individual national communities is the ultimate goal of EU decision-making, the impression is created that transnational parties and cross-border political will-formation are secondary to, or indeed undermine, EU legitimacy.

Putting the EP on an equal footing with national governments in constitutional as well as in other matters would mean transforming the cognitive frame through which the EU is perceived from one of bargaining among national governments to one of common will-formation in a transnational democratic community. The new institutional organization would embody the EU as a community of statespeoples and EU citizens. Giving the EU citizenry and the national demoi equal status in the EU’s highest legislative authority would create a fruitful tension in the process of EU will-formation: EU decisions could no longer be justified merely by reference to the ‘horizontal’ interests of national demoi; they would also have to be shown to be good from the perspective of all individual citizens, for a common set of reasons. This tension in the EU’s democratic authority would mirror that set up by the fictional state in a democracy when it lets loose the emancipatory dynamics of democratic self-correction. The crucial change would be the altered sense of appropriateness that would go along with this: the resultant ‘bi-cameral’ embodiment of the highest legislative authority—in the European Council and the European Parliament—would offer an institutionalized standpoint from which national EU policy could be judged to be in line with, or contrary to, not only national but also citizen interest. This, in turn, would bring a two-fold change in the way EU workings are justified in the public arena.

Firstly, once governments had lost the prerogative in interpreting the relationship between national interest and the European common good, national discourse on the EU might acquire a new dynamic: when accounting for their stance on European decisions, national governments could no longer refer solely to the national interest; they would have to have regard for the democratically sanctioned interpretation of the common good of EU citizens, as established by the EP. One consequence of this would be that national (parliamentary) publics would gain more effective control over their governments.

Secondly, once the EP had acquired its expanded decisional powers, encompassing all areas of EU politics, including constitutional matters, it would cease to be a second-order
parliament and would ensure ordered progression from transnational public opinion to egalitarian decision-making (Brunkhorst 2002). The centre of gravity for the transnational concerns of EU citizens would then most likely shift from the Commission to the EP, making the latter the institutional core of a ‘public of transnational publics’. The EP could then act ‘as a kind of Ministry of Minipublics and Minidemoi’, as James Bohman (2012: 91) aptly puts it. Like national parliaments, the EP would become an institutional ‘sluice-gate’, drawing dispersed public communications together and feeding them into the EU’s political process.

3.2 EU multi-level democracy: Centralizing and homogenizing?

As proponents of an EU demoï-cracy see it, any strengthening of the EP will result in centralization and this will ultimately translate into the ‘pull of “oneness”’ of the European demos (Nicolaïdis 2012: 274) and the absorption of member-state democracies into the whole. Two factors militate against this view. For one thing, the view itself is based on a questionable premise. Demoï-crats argue that the horizontal structure of the EU’s democratic authority—in which member-states, as the EU’s constituent subjects, are accorded primacy—fosters mutual recognition and staves off homogenization. However, the current economic crisis in the EU tells a different story. Premature unification of the markets and currencies of widely diverging national economies under the aegis of the Economic and Monetary Union is considered to be one of the main causes of this crisis (Streeck 2014). Thus, intergovernmental will-formation itself has triggered a push towards homogenization which EU decision-making structures in their current configuration are ill-equipped to counter (Scharpf 2012). In addition, the EU’s horizontal mode of authority does not appear to be conducive to the cultivation of tolerance and understanding between the national demoi. On the contrary: it seems to result in nationally configured crisis-management that encourages mutual naming-and-shaming among the demoi. As reactions in, for example, Greece and Germany demonstrate, rather than opening themselves up to the needs of others, the national demoi are more and more inclined to turn away from one another.

Secondly, the demoï-crat expectation that further integration will bring a centralizing ‘pull of oneness’ is based on the notion of statehood as seen through the lens of the historical nation-state. However if, as has been suggested here, one views the state from a broader perspective, the existence of a multi-level EU democracy based on morally reflexive statehood does not imply the existence of a unitary demos or of a centralized political power through which European law is implemented. In order to bring the EU polity into accord with its two-fold constituency, its legislative power-structure must be overhauled. The views of the EU citizenry (as individuals, represented by the European Parliament), must be put on an equal footing with those of the national citizenries (as national demoi, represented by the European Council). Far from implying a unitary conception of the EU polity, such a rearrangement would render the EU constituency even more pluralistic than it is today, with
the entirety of the EU citizenry being added to the present 28-strong force of national demoi. The balance of power struck between the European Council and a European Parliament strengthened in the way described here—with the different constituents sharing the power to shape EU politics and at the same time having a right of veto—would be the institutional embodiment of the EU’s ‘pouvoir constituant mixte’ (Habermas 2012: 36) and would preclude any ‘precedent in favour of ascribing final decision-making authority’ (ibid.) The ‘first and fundamental principle’ of demoi-cracy—namely, the negative sovereignty of national demoi to decide on ‘entry, exit and basic rules’ (Cheneval et al. 2014: 4)—would thus remain untouched. Nor would these changes imply any further EU centralization of judiciary and executive powers beyond that which obtains now: the supremacy of EU law over national law is already more or less effectively institutionalized in the interplay of a multi-level judiciary with national administrations.

**Conclusion**

The postulate of EU demoi-cracy is an important stepping-stone on the way to rethinking the legitimacy of the EU as a multi-level democracy. It provides us with a powerful conceptual tool with which to identify the fundamentally flawed nature of attempts to transpose nation-state models of democracy to the EU level. At the same time—as I have argued here—to view EU demoi-cracy from a ‘non-statist’ perspective and seek to sever all conceptual links between democracy and the state is to throw the democratic baby out with the state bathwater. Democracy depends on the state as both an idea and an institution (Dyson 2009). On the one hand, it carries with it a sense of appropriateness which dictates that political decisions must be equally responsive to two contradictory points of view in the democratic constituency: the collective-general (meaning the common will of the subjects of the democracy) and the distributive-general (meaning the individual concerns of those subjects). The idea or ‘fictional person’ of the state (Skinner 2009: 347) functions as a stand-in for a community based on this sense of appropriateness. On the other hand, democracy requires a visible organizational embodiment of the fictional person of the state in order to actualize this sense of appropriateness, and make the conditions of its legitimacy effective in practical politics. The most important step in achieving this is to ensure that the tension between the two standpoints in the constituency are mirrored in the polity’s highest legislative authority.

All this applies to the EU, with its pluralistic constituency of national demoi and individual citizens. Maintaining the EU’s institutional status quo, as proponents of an EU demoi-cracy suggest, will therefore undermine rather than foster mutual recognition and non-domination in the EU. This is because the current structure of democratic authority in the EU dictates that the prevailing sense of appropriateness be an international one. The highest constitutional body, the European Council, does not represent the two sections of its
constituency equally, favouring the standpoint of the national demoi over that of the individual citizens of the EU. To rectify this, the European Parliament should be promoted to the status of constitutional power on a par with member-state governments in the European Council. Such a change would bolster the development of a genuinely transnational ‘fictional’ EU state without implying any need for a unitary demos or further centralization of administrative competence. If mutual recognition and non-domination are to prevail in EU affairs, the European Union needs to become a multi-level ‘democracy of democracies’ in which the demoi-cracy of statespeoples and the demos-cracy of EU citizens meet on equal terms.

References


