Is European citizenship feasible?

Justine LACROIX

Europe is inventing a new form of citizenship founded not in government participation but in the achievement of specifically European rights and in a political debate increasingly geared to European issues, evidencing, Justine Lacroix asserts, if not the existence of a European people, at any rate that of a political Europe.

Our European political mindscape is dominated by the spectre of the Federal State. To be sure, since the failure of the Constitutional Project, nobody ventures to use such terminology any longer while many paths are being considered with a view to "democratise Europe": Electing a "European Government" thus transmogrifying the Commission into the expression of a political majority; reinforcing the European parties; "politicising" the European decision making modes by dint of a greater reliance on the alternating majority principle in hock to the right-left cleavage[1]… But, beyond the semantic precautions, most of them consistently fall back on some extension to a larger scale of the deliberative and representative models wrought in the framework of the nation-state.

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[1] See, in French : Stephan Collignon and Christian Paul, *Vers la République européenne [Towards a European Republic]*, Paris, Odile Jacob, 2008 or Florence Chaltiel, *Naissance du peuple européen[Birth of the European People]*, Paris, Odile Jacob, Paris, 2006 and in English: Simon Hix, *What's Wrong with the EU and How to Fix It,* Cambridge, Polity, 2008. Also supporting these views, see the proposals from the report "La démocratie au sein de l'Union européenne et le rôle du Parlement européen" [Democracy in the EU and the Role of the European Parliament" set forth by the *Centro Studi sul Federalismo, The Federal Trust, Institut für Europäische Politik, Istituto Affari Internazionali* et *Notre Europe*, mai 2009, www.notre-europe.eu

Not that this pro-active attitude has not shown its limitations: If we look at citizen involvement, "institutional mimesis" – the abstruse code for the many attempts at transferring national democratic formulae to the European level – has yielded mixed results. The reforms undertaken to "democratise" Europe, from the election of the European Parliament by universal suffrage since 1979 to its recent promotion to the position of quasi-legislator, have hardly advanced the emergence of a European political life.

The participation rates to European elections, which broadly hinge on national cleavages, went from 63% in 1979 to 45% in 2004. As for political parties at European level, the very existence of which frequently remains unknown to their local members, they have achieved little beyond a mere cooperation, to wit the Socialist parties' inability to agree on a name for the next President of the Commission. How is one to account for the dichotomy between European institutions technically become more and more democratic and a still vegetating European life?

Beyond the factors linked to the nature of the European political regime[2], a first contributing factor may lie with the supporters of a political Europe's continuing failure[3] to appreciate that it is difficult to get a broad public debate going in the absence of a shared national identity. To quote Timothy Garton Ash: "the heart of Europe's democracy problem is not, Brussels, it's Babel"[4]. Jürgen Habermas and his disciples are right in principle to insist that between nation and democracy the link is not "conceptual" but "conjunctural"[5]. In the event, conjuncture holds back and the national format, though not an end in itself, still remains the main catalyst for democratic deliberation. Even though

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[2] See P. Magnette, "European Governance and Civic Participation : Can the European Union be Politicised ?" in Jean Monnet Working Papers n°6/01,
http://www.jeanmonnetprogram.org.papers/01/010601.html

[3] Failure from which this author is not exempt, see Justine Lacroix "For a European Constitutional Patriotism", *Political Studies*, vol. 50, n°2, 2002, p. 944-958.

[4] Timothy Garton Ash, "Europe's real problem is Babel *", The Guardian*, 18 octobre 2007.

[5] See Jürgen Habermas, *L'intégration républicaine [Republican Intervention],* Paris, Fayard, 1999 ; *The Postnational Constellation: Political Essays*, The MIT Press; 1st MIT Press Ed edition (March 19, 2001) ; "Citoyenneté et identité nationale. Réflexion sur l'avenir de l'Europe" [Citizenship and National Identity. Analysing Europe's Future] in Jacques Lenoble et Nicole Dewandre (eds.), *L'Europe au soir du siècle. Identité et démocratie [Europe at the Turn of the Century. Identity and Democracy]*, Paris, Esprit, 1992, p. 17-38.

there is emphatically no logical connection between the national principle and the democratic concept, their effective interdependence proves more hard-lived than the "post-nationalists" had originally thought. As long as vernaculars remain the main medium for public exchange, the democratic debate will struggle to break free from its national matrix.

A second, undeniably more operational, contributing factor hinges on the fact that institutions do not suffice to create a political life. It still needs what political scientist Andrew Moravcsik calls "salient" issues to thrive on – issues, that is, liable to mobilise the voters, to politicise them and to bring about the creation of majorities. Those are in descending order: all the issues bound in social security, pensions, retirement, taxes education, family law and order… Now, it is all too often forgotten that Europe plays virtually no part – a vague intergovernmental cooperation excepted – in these fields. This is not to say, of course, that European questions are not "important" or that they have no significant redistributive impact. But their nature is unlikely to "motivate the sort of major shifts in mass voting, political learning or political organization that would be necessary to generate a shift of organization, allegiance, education, and behavior required to politicize EU decision-making at the mass level."[6]

A federation of democracies

Does it follow that the case for considering possible avenues towards a "European citizenship" is dismissed? That's what both the partisans of a "national" paradigm – for whom the nation-state remains citizenship's be-all and end-all and the partisans of the "supranational paradigm" – who banked on the gradual emergence of a "European people" appear to think. The former can gloat that they had foretold that, short of becoming itself a large nation, Europe would never become an object of political commitment. The latter, disappointed by the States' comeback in the European realm, sometimes read in it the "death" of the project for a political Europe. While other voices, especially from the English-speaking political science scene, beckon us back to the real

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[6] Andrew Andrew Moravcsik, "The Myth of Europe's Democratic Deficit", *Intereconomics: Journal of European Public Policy*, November-December 2008, p. 331-340.

world, where to consider the European Union as a mere international organisation restricted to regulatory functions and to the defence of the States' commercial interests[7].

The position held here aims to be both more modest and more optimistic: More modest in that it accepts that the emergence of a European people is unlikely, at least within our lifetime. The fact is that as long as the social redistribution effected by the European Union remains inferior to 2% of GDP, Europe will not be in a position to supplant the nations as prime purveyors of social and political intervention[8]. And more optimistic too, as this judgment may also be an invitation to re-think European citizenship outside the federal state model. If the truth be told, several authors have already stressed that the European construction, far from being on course towards a new State, comes closer to the original federal concept understood as a lasting union resting on a *free* convention. As Olivier Beaud's work shows, a federation is defined by the "duality of its political existence" since it is comprised of, on the one hand, a political unit which arises from the unity of the Member-States (the federation) and, on the other, of a plurality or multitude of political units "which did not, when creating a federation, renounce their state status and have no intention of being treated as the provinces of a decentralised unitary state"[9]. As it happens, the European construction has, from the outset, defined itself as a new type of political community, founded in the ongoing plurality of the peoples it is comprised of – its "co-existing multiple *demoi*"[10]. From a historical point of view, the full specificity of the European integration project has lied with its ability to reach a level of political integration comparable in some regards to the most advanced federal states, whilst sustaining powerful, indeed reinforced, states[11]. From a juridical point of view, the singularity of the European model hangs on this idea of "a harmonisation or even a unification that were not imposed through the subordination to a

[7] See Andrew Moravcsik, *ibid.* or Anand Menon, *Europe. The State of the Union*, London, Atlantic Books, 2008.
[8] Pierre Rosanvallon , "Les formes de la démocratie et l'avenir de l'Europe" "Models of Democracy and the future of Europe", in Anne-Marie Le Gloannec and Aleksander Smolar (dir.), *Entre Kant et Kosovo. [Between Kant and Kossovo]. Essays presented to Pierre Hassner*, Paris, Presses de Sciences Po, 2003, p. 433.
[9] Olivier Beaud, *Théorie de la Fédération [Theory of Federation]*, Paris, PUF, 2007, p. 19.
[10] See in particular J.H.H. Weiler, *The Constitution of Europe*, Cambridge, Cambridge University Press, 1999 and Kalypso Nicolaïdis, "We, the Peoples of Europe…", *Foreign Affairs*, 83/6, p. 97-110.
[11] Alan Milward, *The European Rescue of the Nation-State*, London, Routledge, 1992.

dominant system but agreed by co-ordinating all the systems around common principles; the idea, all in all, that the foregoing of a degree of sovereignty is indeed that of a community of states and not that of vassals subjected to imperial laws"[12]. Professor of law Joseph Weiler has shown that two consequences followed from this European particularity. First Europe's "constitutional discipline" does not enjoy the same type of authority as is to be found in the United States, or indeed in any other federal state, where federalism is rooted in one single and shared sovereign will. Second, the precedence of European law is not underpinned by the primacy of political power. "There is a hierarchy of norms: community norms trump conflicting member states norm. But this hierarchy is not rooted in a hierarchy of real power. Indeed European federalism is constructed with a bottom to top hierarchy of authority and real power"[13] – in so far as the ultimate authority rests with its parts and not in what is (wrongly) perceived as its "centre". The European Union may thus be understood as a "federation of democracies" [14] wherein two paths towards a renewal of European citizenship could be contrived: that of the construction of a "universalisation of the law"[15] and that of a gradual Europeanisation of the national public spheres.

European citizenship or the universality of rights

European citizenship is often berated for its alleged irrelevance: It is true that its "civic" dimension is somewhat disappointing since it is restricted to the right to elect Euro MPs seen as remote and moderately representative, a right whereby it is possible to petition the European Parliament and to make a complaint to the Mediator. However while European citizenship continues to be conceived of through the prism of collective self-government, its real nature may be eluding us. For citizenship should also be read as a – by definition never completed – historical process of extension of rights to those who do not have any.

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[12] Mireille Delmas-Marty, "L'espace judiciaire européen, laboratoire de la mondialisation [The European Legal Space, a Laboratory for Globalisation]" in Giuliano Amato et al., *What Future for Europe*, Robert Schuman Centre for Advanced Studies, European University Institute, 2000, p. 37. Translation by the translator of this paper

[13] J.H.H. Weiler, "Federalism without Constitutionalism. Europe's Sonderweg" in Kalypso Nicolaïdis et Robert Howse, *The Federal Vision*, Oxford, Oxford University Press, 2001, p. 57.

[14] In Jean Leca's words

[15] To quote Pierre Rosanvallon, "Les formes de la démocratie et l'avenir de l'Europe [Models of Democracy and the Future of Europe]", art.cit., p. 443.

In this respect, the achievements of European citizenship – understood here in its broadest sense, as the right to move, indeed to settle freely anywhere on the whole of the European territory there to be entitled to (almost) the same rights as the host country's inhabitants – are far from negligible. Some restricted sectors (e.g. accessing high public functions) excepted, the prevailing principle is henceforward nothing less than equality of treatment between nationals and other Europeans on such matters as right to work, equal pay and working conditions but also the range of social and fiscal benefits set up by the States. And contrary to popular belief, it is worth pointing out that this type of citizenship is not the preserve of elites: It does not apply only to Erasmus students. The first to progressively avail themselves of these rights were once Italian migrants. They will in the future include Bulgarian cleaners or Romanian navvies. Beyond migrant workers, students, pensioners and tourists, European law has also played a significant part towards defending the right of individuals – be it in the fight against gender discrimination or for the recognition of the same status for both homosexual and heterosexual couples.

To a certain extent it is tempting to look on the European construction as the expression of a "fourth age of rights" after social scientist Thomas Humphrey Marshall's famous (and arguable from a historical angle) trilogy that saw three phases of citizenship: civil citizenship (affirmation of the principle of equality before the law); political citizenship (recognition of universal suffrage) and social citizenship (the setting up of the welfare state). A "forth age" would herald not so much the bestowing of new rights than the formidable extension of their application realm far beyond their original national anchorage. Indeed, from a legal point of view, European citizenship is mainly deployed at trans-national level since the rights it bestows concern first and foremost the relationships the citizens from one State may have with any other EU Member-State. As such, European citizenship encapsulates "the quintessential core of the European project, which is to wear down the boundaries of citizenship"[16].

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[16] Paul Magnette "Comment peut-on être européen ? [How Can Someone Be European?]", *Raison publique* n°7, 2007, p. 105.

In this respect it behoves to stress the recent progress effected by a number of European texts towards extending free-circulation and non-discrimination related *acquis* to "non-Community" nationals legally settled on Union territory. The fact is worthy of note since a number of theorists have regularly denounced the discrimination, nay the "apartheid" that had been enforced between European and non-European[17]. In the eye of the law this is no longer quite true, even though the treaties formally restrict the status of "European citizen" to member-States nationals exclusively: A European directive passed in 2003[18] tentatively opens the way towards a (degree of) status equalization between member-States and third country nationals with a long-term residence permit on Union territory, and thus towards a form of "residence citizenship".

If it continued along these lines, the European Union could portend a space where identity boundaries qualifying the exercise of rights are gradually eroded. The use of the conditional mood is called for here in view of the fact that what reconciliation is attempted between the rights of the "Europeans" and those of "third country nationals with valid permits" entrenches further the gap between them and illegal migrants whose fate is a direct challenge to the European bloc's cosmopolitan ambitions[19]. Combined with asylum policies unconcerned with Geneva Convention obligations[20], the restrictive guidelines for the "space of Freedom, Security and Justice"[21] could blight Europe's (*acquis* evidenced) claims to be the "laboratory" where national origins are divorced from recognised rights. From this angle we concur with Étienne Tassin in considering that, far from being a "collateral damage" of European unification, "illegal immigration could on the contrary be the heart of the problem", for it is impossible to accept "that this is

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[17] See Étienne Balibar, We, the People of Europe? Reflections on Transnational Citizenship, translated by James Swenson, Princeton University Press, 2003

[18] Directive 2003/109/EC on the Status of third-country nationals who are long-term residents. See in particular Jean-Yves Carlier, *La condition des personnes dans l'Union européenne[The Condition of Individuals in the European Union]*, Bruxelles, Larcier, 2007.

[19] See Denis Duez, *L'Union européenne et l'immigration clandestine [The European Union and Clandestine Immigration]*, Bruxelles, Éditions de l'ULB, 2008.

[20] Danièle Lochak, *Les droits de l'homme [Human Rights]*, Paris, La Découverte, Paris, 2005, p. 97-98.

[21] Jörg Monar, "Cooperation in the Justice and Home Affairs Domain : Characteristics, Constraints and Progress, *Journal of European Integration*, vol.28 n°5, 2006, p. 496-509.

nothing but a border police matter that would leave unscathed the unique logic according to which political Europe is structured"[22].

That is why rather than endlessly wondering how to bring about political participation on a broad scale, it would be more in keeping with the nature of the European entity to re-launch the movement for the "denationalisation of rights". This would benefit European citizens, of course, but also those who do not belong to the "inner" nations; and it could progressively turn Europe into the place where is achieved a "universality of right" founded in a *fractional* loosening of the bond woven between nationality and citizenship.

It is also worth considering Pierre Hassner's proposal towards conferring European citizenship to those Europeans who, being stateless or refugees were not citizens of a State of their own[23]

However, it is important to point out that the distinction drawn here between citizenship as "participation to collective self-government" and citizenship as "extension of rights" does not create a differential. It does not set apart a so-called "active" and virtuous citizenship founded in the sense of common good and the insertion within a community from a "passive" and selfish citizenship, so-called because understood as the mere enjoyment of rights by individuals reduced to their own interests. The fact that European citizenship is more "in line with a human rights system understood as freedoms than with one of citizen's rights understood in terms of involvement"[24] does not entail that it be bereft of any political dimension. In an article become a reference, Claude Lefort has shown that human rights, far from obscuring the dissolution of social bonds, could also bear out and inspire a new network of relationships between people. They can augur of a new type of legitimacy and a public space wherein individuals are both

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[22] Etienne Tassin, "L'Europe cosmopolitique et la citoyenneté du monde [Cosmopolitan Europe and World Citizenship]", *Raison publique* n°7, October 2007, p. 46 et 60.

[23] Pierre Hassner, "Refugees : A Special Case for Cosmopolitan Citizenship ?" in Daniele Archibugi, David Held and Martin Kölher, *Re-imagining Political Community*, Cambridge, Polity, 1998.

[24] Anne-Marie Le Gloannec, "La citoyenneté européenne ou les apories du modèle impérial [European Citizenship or the Dead-ends of the Imperial Model]", in Anne-Marie Le Gloannec and Aleksander Smolar (dir.), *Entre Kant et Kosovo. Essays presented to Pierre Hassner*, *op. cit.*, p. 442.

product and agents[25]. When considering specifically the European context, two dimensions connected to this "citizenship of rights" deserve closer attention.

On the one hand, the fact that some rights protect individual interests does not mean that they cannot be reclaimed in a political struggle fought *with* others and *for* others – "in the real world (…), in cases where rights really matter, what is striking is that, on the whole, claims are put forward by people on other individuals' behalf"[26]. For instance the associations for the defence of migrants' rights lead actions of mobilization at European level; whether fighting to extend the whole of European citizenship *acquis* to regular residents on the EU territory or to oppose the 2008 Return directives concerning third country nationals residing there illegally, they have an undeniable collective dimension. These civic action lines may well not be vehicled by political parties, or their claims framed in terms of "rights": that is no reason to exclude them from the political realm. On the other hand, the gradual recognition of an equality of rights can contribute to reinforcing the self-esteem of the target populations and thereby favour a degree of mutual recognition between European peoples. As Paul Magnette wrote "For the hundreds of Italian nationals who came to work in French and Belgian mines and iron and steel plants, this reflects their life experience. Before the war they were treated like foreigners expected to return to their home country, they became after the war second-class citizens and gradually gained access to civil and social rights and to some political rights that they had originally been denied. The rare sociological surveys dedicated to this question have shown that this development had contributed to the restoration of migrant workers' national pride. Indeed, emigration countries, as their migrant population stopped suffering from discrimination, felt freed from the negative prejudice that tarnished their perception abroad"[27]. There is good cause to assume that this process will be extended to other European peoples along with the lifting of the measures restricting new Member States nationals. In other words, those who see in Europe "a vast experimental field for

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[25] Claude Lefort, Politics and Human Rights, translation by John B. Thompson published in the collection *The Political Forms of Modern Society* (Cambridge: Polity Press, 1986). http://tinyurl.com/mthlko
[26] Jeremy Waldron, *Nonsense Upon Stilts. Bentham, Burke and Marx on the Rights of Man,* London, Methuen, 1987, p. 197.
[27] Paul Magnette, "Comment peut-on être Européen?", art.cit., p. 99-113.

the ideology of the rights of the individual"[28] need not be wrong in their conclusions. They may however have underestimated the political implications of these "struggles for rights", whether in terms of socialisation, emancipation, restoration of self-confidence or mutual recognition between peoples.

The Europeanisation of the national realms

There is obviously no question here of reducing European citizenship to the construction of a "universality of rights". The interplay of rights and interests, though it may constitute the transnational embryo of new forms of citizenship, will never address adequately the citizens' feeling that they are confronted with European trends "the genesis of which they find hard to grasp, let alone finding a way to alter them"[29]. But in this respect, the future of "European democracy" is often imagined around a "superimposition" model – as made up of a vast public sphere wherein all the Europeans would debate European issues whereas domestic issues would remain the preserve of the national spheres. And yet, in the absence of a European *demos*, a public discussion process on Europe can but rely on the "old" citizenship formulae set up inside the member States.[30] Thinking a European citizenship is thus, to a great extent, about considering a possible interface between the national and the transnational; between so-called "liberal" approaches and more "republican" conceptions of political involvement.

Such is perhaps the lesson to be drawn from the referendums organised in France in 1992 and 2005 – times at which the citizens got to "talk about Europe", from the street to the market via the tube and the school gate. This seriously qualifies Moravcsik's point above about the absence of "salience" in European issues, or Anand Menon's assertion that the very nature of the Union would sentence it to "apathy and indifference"[31]. A real mobilisation on Europe seems possible, but at this stage of historical development, it only

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[28]Marcel Gauchet, *La démocratie contre elle-même[Democracy at its OwnThroat],* Paris, Gallimard, 2002, p. xxiiii.
[29] Paul Magnette, *Le régime politique de l'Union européenne[The Political regime of the EU]*, Paris, Presses de Sciences Po, 2003, p.238.
[30] Richard Bellamy, "Between Past and Future : the Democratic Limits of EU Citizenship" in Richard Bellamy, Dario Castiglione and Jo Shaw (eds.), *Making European Citizens. Civic Inclusion in a Transnational Context,* Basingstoke, Palgrave, 2006, p. 260.
[31] Anand Menon, *Europe. The State of the Union*, *op. cit.*, p. 220.

"catches on" within the national spheres. In this sense, to begin addressing the dispossession experienced by the citizens in regard of European questions, it may help to "re-mix" European issues in the national space rather than thrusting them immediately in a European space which, necessary though it be, concerns only, for the time being, States and social and professional representatives.

This Europeanisation of the national spheres would incidentally not go beyond meeting the principles of a well-conceived cosmopolitanism, which has never meant the foregoing of national identities in favour of integration into a new political community. Cosmopolitanism "is not an abstract construct erected on the ruins of national democratic theory (…) it is through the nation-state that the cosmopolitan dimension of the law becomes conceivable and achievable"[32]. Ultimately, of course, the cosmopolitan standard cannot be satisfied by "kicking" the European debate back into the national courts without risking reinforcing the diverse perceptions of the Union harboured in one or other country: A federation is not a mere association of compartmented democracies[33]. The champions of "Republican cosmopolitanism"[34] are looking to an opening of the national spheres one to another with a view to develop the fundamentals of a shared political culture. But this "second level of democratisation" supposes that a prior effort towards appropriating the European dimension has been undertaken within each of the Member States.

In other words, the reflection on "European democracy" is not exhausted with the analysis of reforms to be implemented at community institutions level. It begins with a questioning of the possible modalities of a day-to-day, rather than episodic, anchoring of European questions within national democracies. This could take the shape in particular of an enhancement of the control national parliaments exert over the negotiations their executives lead at European level – as is incidentally provided for in the Lisbon Treaty. After all that is where the true "democratic deficit" is to be found: in the absence, within

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[32] Francis Cheneval, *La Cité des peuples. Mémoires du cosmopolitisme [The Peoples' City. Memories of Cosmopolitanism]*, Paris, Cerf, 2005, p. 263 et p. 276.
[33] Paul Magnette, *Au nom des peuples. Le malentendu constitutionnel européen [In the Name of the Peoples. The European Constitutional Misunderstanding]*, Paris, Cerf, 2006, p. 149.
[34] Jean-Marc Ferry, *Europe. La voie kantienne [Europe, the Kantian Path]*, Paris, Cerf, 2005.

the national spheres, of an adequate supervision of European dealings – an absence which has been know to enable governments to use the community tier to allow through measures their countries would otherwise reject. The European construction has undeniably helped speeding up the democratic transition of a number of States – be they Greece, Spain, Portugal, or today the "new" Eastern and Central European countries. But it is no less true that it does sap the control exerted on governments at local level[35]. An interesting example at this level – for all that it obviously burdens the negotiations process – is that of Denmark and Sweden whose ministers can only vote in Brussels with the *ex ante* agreement of their national parliaments. Meanwhile the remedy must not be overrated: as Renaud Dehousse points out, it will fall to all the actors on the national political scene – from the political parties to the media via all the other political entities in between – to adjust and put paid to the henceforward artificial cut-off between the national political set-ups and the European level[36].

Now it is worth keeping in mind that this "appropriation" by the citizens of the European questions is not without risks for advocates of European integration. In a thorough-going discussion on the draw-backs of a sweeping politicisation of European level mandates, Stefano Bartolini emphasises that "Very often both EU officials and supporters of integration *cum* democratisation have the firm belief that if people knew more, were more competent and informed, and participated more, then they would realise that what is done by the EU is eventually good and in their interest". However the "politicisation" of European questions only makes sense if its champions are willing to accept that this opening of the debate to the public at large may turn its indifference, nay its original support into an opposition to the actual turn taken by the European construction[37]. When it comes to the national sphere, this observations means that widening national debates on Europe beyond the parliamentary realm alone can, seen in terms of EU advances, be a risk – a risk European leaders do not always show willing to

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[35] Richard Bellamy, "Between Past and Future : the Democratic Limits of EU Citizenship" , art. cit., p. 259.
[36] Renaud Dehousse, "L'Europe après les non [Europe after the 'nos']", contribution to a symposium on the future of the EU constitutional process organized by the Constitutional Affairs' Committee of the European Parliament, Brussels, 13 and 14 October 2005. See also, *La fin de l'Europe [The End of Europe],* Paris, Flammarion, 2005.
[37] Stefano Bartolini "Should the Union be 'Politicised'? Prospects and Risks", Policy Paper n°19, *Notre Europe,* http://tinyurl.com/nypy9a

take. There is indeed good cause to wonder at the practice consisting in by-passing a referendum poll by means of a parliamentary ratification, the new Lisbon Treaty being in most points similar to the text rejected by the French on 29 May 2005. The process consisting in asking a small State, Ireland, to vote again until her answer be what the other countries expect gives pause for thought. Perhaps European militantism does not justify everything: in the short term, Europe (rich of her new treaty) may well have won, but in the long term, acting this way is liable to confirm the diagnosis of those who decry "a Europe of the peoples without the peoples"[38].

To be more precise, it is reasonably consistent to argue, as do some adversaries of the "politicisation" of matters European, that Europe would never have come together if it had relied from the outset on the *direct* will of the peoples; the benefits of European integration, they say, are worth the few "losses" in terms of democratic participation in the devising of the norms. However, it is not consistent to want Europe politicised whilst keeping the upper hand on the outcomes of the process undertaken in this spirit.

To be sure, some will say – indeed have said – that a majority of European States had already ratified the Constitutional project, which justified, in the very name of democracy, circumventing the Dutch an French votes by a sleight of hand permitting the adoption of the simplified treaty. But that is precisely where we touch on a difference between a federal state and a federation of democracies. When the United States Constitution was adopted in 1787, dispositions were taken for it to come into force after the ratification by nine of the thirteen States then making up the American Confederation. Today any amendment to the United States Constitution requires ratification by three quarters of the federation States. The European order rests on each of the participating States' free agreement. This is not to say that the European construction relies entirely on a purely horizontal integration process cemented only by the parties' goodwill. The constraints to which the States and the citizens subscribe as a result of their European commitment may be more exacting at times than those imposed by American federalism. They accept the precedence of European law over national law – though reserving the

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[38] Marcel Gauchet, *La condition politique [The Political Condition]*, Paris, Gallimard, 2005, p. 492.

right to check the conformity of such law with their constitution. They accept to find themselves in the minority on certain matters and to be taken to the Court of Justice of the European Communities if they fail in their duties. Ever since the founding decisions of the Court of Luxembourg in the early sixties, the principles of "direct effect" and of the primacy of Community law are rooted in an immediate bond between European norms and the citizens.

However these peoples are also organised in States, which remain at the heart of the European Union's decision process and the masters of its constitutive charter, namely the European treaties. In other words, these States are bound by constitutional discipline of their own free will and not by subordination to the sovereignty and authority of a "federal people". The States accept the Community's constitutional discipline "as an autonomous and voluntary act endlessly renewed on each occasion, of subordination, in the discrete areas governed by Europe…"[39]. In this sense, moving the revision of treaties to majority voting for the purpose of efficiency[40] would call into question the European political balance – A principle that does not however forbid those who so wish to move ahead through distinct provisions.

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[39] J.H.H. Weiler, "Federalism without Constitutionalism. Europe's Sonderweg " in Kalypso Nicolaïdis and Robert Howse, *The Federal Vision, op.cit*., p. 69.
[40] As suggested notably by Jean-Louis Quermonne, *L'Union européenne dans le temps long [The European Union as an Ongoing Process]*, Paris, Presses de Sciences Po, 2008, p. 190.