Real Constitution, Formal Constitution and Democracy in the European Union

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Abstract

The European integration experiment might be *sui generis* in many ways, but this does not mean that one could not import theoretical insights from other fields of study that seek to understand the workings of political unions where unity and diversity coexist. In particular, the literatures on comparative federalism, political theory and constitutional politics can help set the study of the European Union in a broader context. One point that emerges from this theoretical cross-fertilization is the absence of a shared language space that could function as the forum for European democratic deliberation. As a result, democracy in Europe by default functions through the underlying real constitution of national *demoi* instead of a pan-European *demos*. Similar experiences in multination federations suggest that in such cases formal constitutions will inevitably come to reflect the deep differences between the constituent units. In this context, some degree of constitutional ambiguity might be not only unavoidable but also desirable.

Introduction

As the French and Dutch referendums have put the future of the European integration experiment in doubt, attention is now focused on trying to explain why voters have grown so disillusioned with the whole project. It is here that students of the European Union have started to come up with explanations derived from their field of study. Parallel to these attempts, there is a pervasive

sense of gloom that is taking over the study of the European Union. The 'pause for reflection' extended for another year seems to be a euphemism reflecting the realization that very little agreement exists as to the way forward.

This article aims to show that constitutional crises are not uncommon in cases where nations share a political union while retaining self-rule. Putting the current European constitutional crisis under a comparative lens could help us understand the underlying political patterns and set the debate in a direction that acknowledges these. The aim is therefore to widen the theoretical net to various fields of political science which can enrich the repository from which we derive insights to study the European Union. Comparative federalism, political theory on identity politics and constitutional politics are three such literatures. Insights from these fields of study might help set the question of the European constitution in a broader context. In particular, democratic patterns in linguistically divided multination federations provide helpful lessons concerning the relationship between 'formal' and 'real' constitutions. At the end of the day, what has happened in Europe is that the real constitution underlying the European continent has eventually come into conflict with the proposed formal constitution for the European Union. The distinction between formal and real constitutions has its origins in the German-language literature on constitutional politics (Pelinka and Welan, 1971, pp. 9–20; Pelinka, 1971, pp. 325–27; Luther, 1997; Pelinka and Welan, 2001, p. 19). It generally refers to the distance between the letter of the law and the day-to-day workings of constitutions and usually covers a wide variety of uncodified practices of constitutional politics. Now how could this theoretical fine-point help us understand the current problems facing the European Union?

Evidence from comparative federalism shows that formal constitutions alone have little influence on democratic patterns unless they correspond to the underlying real constitutions. Real constitutions, on the other hand, reflect the democratic frames of reference that define political communities. In other words, real constitutions reflect the *demos* that forms the base for modern politics. In contemporary politics, this has increasingly come to be defined in linguistic terms that provide the venue for democratic deliberation. These patterns are particularly visible in multination federations like Belgium, Canada and Switzerland. In these countries, the linguistic cleavage determines the democratic frame of reference. That is, public spaces for democratic deliberation correspond to language communities. Formal constitutions have ended up having only a limited impact on the basic patterns of democratic deliberation. Canadian and Belgian constitutions mostly failed in their nation-building objectives. Canadian politics tends to reflect the asymmetry between French-speaking Québec and the remaining nine provinces of

English-speaking Canada, while Belgian politics is divided into French and Dutch language halves. Swiss democracy is also increasingly reflecting the two main language spaces of German and French Switzerland.[1] The country has come to function in linguistic regions which do not always follow the cantonal demarcations drawn by the constitution. As a result, patterns of democratic deliberation have a decentralizing impact on federalism in these three cases. In linguistically homogeneous federations like Austria and Germany on the other hand, the frame of reference tends to be nationwide. Consequently, democratic deliberation follows national lines and has a centralizing impact on federalism. The real constitutions of Germany and Austria function in nationwide terms despite strong decentralization imposed by their formal constitutions. The following sections show that federalism in these countries contains useful insights into studying the relationship between an overarching union and the autonomy of the constituent units. In other words, comparative federalism can put the European Union's experience with the question of 'shared-rule and self-rule' in a wider context (Elazar, 1994, p. 159). This article will give an overview of the macro dynamics of federalism in Austria, Belgium, Germany, Canada and Switzerland in order to show the parallels with the constitutional politics of the European Union. The experiences of these federations indicate the limitations of constitutional engineering by political elites as well as the prevalence of uncodified arrangements that determine the day-to-day workings of federal systems. The final section of the article will sketch the patterns of intergovernmental negotiations in federal systems and the processes of constitutional compromise. It is especially the linguistically divided multination federations where one finds useful insights applicable to European constitutional politics.

I. Linguistic Spaces and Democratic Deliberation

Political theorists studying identity politics have long been interested in examining the close relationship between linguistic spaces and democratic deliberation (Schnapper, 1994; Barry, 1991; Moore, 2001; Webber, 1994). These theorists tend to highlight the role language communities play in providing public space for democracy. By extension, one could say that linguistically demarcated public spaces perform the role of the default

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[1] In addition to German- and French-speakers, there are two other linguistic communities of Switzerland. Italian-speakers constitute 4 per cent of the population and are concentrated in the southern canton of Ticino. A tiny group of Rhaeto-Romansche speakers live in the isolated alpine canton of Grisons forming less than 1 per cent of the Swiss population. In addition to their tiny populations and geographical isolation, both Ticino and Grisons are economically dependent on German Switzerland. As result, they have had less impact on federal politics.

demos, i.e. the collectivity which functions as the primary base for democratic politics. The close relationship between political communication and democratic deliberation is particularly visible in the modern politics of western democracies. This does not mean that this article pursues an argument anchored in the recent 'deliberative democracy' literature (Dryzek, 2000; Elster, 1998; Bohman and Rehg, 1997; Macedo, 1999). In the last decade or so, political theorists have been drawing our attention to the importance of fostering democratic deliberation as the basis for political legitimacy instead of the more traditional vote-centric understanding of politics. In this context, the very terms of the democratic debate are part of an ongoing process of democratic deliberation. This is not the line of reasoning that this article follows. Political communication and democratic deliberation are used in a thinner sense to denote the public space within which modern politics takes place. This space is closer to the vote-centric understanding of politics and is composed of traditional campaigning for votes. However, the article highlights a change away from the way politics has traditionally worked in the industrialized West, but this change is one of degree not of kind.

Due to a number of factors, the role of language and, therefore, of political communication and democratic deliberation have increased in advanced western democracies in the last couple of decades. These factors include:

1) The resolution of the old battles that defined political fault-lines like the right to strike, social rights, universal health care, public education etc.
2) Decline in traditional cleavages like class, religion, ethnicity and region that influenced voter behaviour (Dalton, 1996b, pp. 165–94; Inglehart, 1990; Lane and Ersson, 1991).
3) Decline in party membership and the consequent lessening of dependence on party leaders and party-affiliated media as information gate-keepers (Dalton, 1996b, pp. 196–219; Schmitt and Holmberg, 1995, pp. 101–9).
4) The consequent centrist accumulation of votes and shifting voter preferences from election to election (Franklin *et al.*, 1992, pp. 385–400).
5) The growing reach and visibility of mass media (Semetko *et al.*, 1991).

> The contemporary media provide voters with a greater variety of information sources and potentially a more critical perspective of established political actors such as parties, labour unions and industries. Access to diverse media environment enables the public to become active *selectors* of information rather than passive *consumers* of political cues provided by others. (Dalton, 1996a, p. 346)

As voters make their minds up with a degree of volatility that was unknown in the days of high party membership, and as political parties campaign to convince voters whose support they can no longer take for granted, language has assumed an increased role as the medium for political communication. Issues no longer follow simple blue-collar/labour v. white-collar/conservative fault-lines and voters no longer rubber-stamp their party lists in elections. Increasingly, politics rests on campaigning for the swing vote, on political communication and disseminating information and on public exchange of arguments and opinions. Linguistic spaces are the venues for such democratic deliberation because language sets the frame of reference employed by political actors and voters. In Will Kymlicka's terms, politics is now the 'politics of the vernacular' (Kymlicka, 1999, p. 121). Kymlicka believes that 'language is increasingly important in defining the boundaries of political communities and the identities of political actors' (Kymlicka, 2001, p. 212).

As the linguistic cleavage has come to work as the social base for demarcating the borders of collective identity, its importance for democratic politics has increased. According to Dominique Schnapper 'language is an ethnic marker, but it is also the essential instrument through which democratic life is instituted and maintained' (Schnapper, 1994, p. 141). Elsewhere Schnapper has argued that 'a common language is essential in order to establish the exchanges which constitute a democratic order' (Schnapper, 2004, pp. 219–20). The role of language communities in providing the public space for democracy is highlighted by Margaret Moore as well: 'In order to be a well-functioning national community, there has to be some form of common public life, a common framework of laws and a forum in which debates can take place' (Moore, 2001, p. 49). Brian Barry echoes this line of reasoning: 'for democratic politics to work, citizens must be able to communicate with one another and must have access to the same forums of political debate' (Barry, 1991, p. 178). According to Jeremy Webber 'language tends by its very nature to define the boundaries of political community. Language has this effect because, in addition to being a subject of public debate, it is the medium through which public debate occurs' (Webber, 1994, p. 200). Webber believes that 'there is thus an inevitable tendency towards autonomy in our linguistically defined political debates' (Webber, 1994, p. 204). Consequently, linguistically demarcated public spaces become essential as forums of democratic deliberation. Language thus creates a distinct public space in which political deliberation takes place; in other words it defines the *demos*. A logical consequence of this idea is that in multination federations, democratic deliberation finds its default venue in the various constituent language spaces. According Ferran Requejo: 'from this perspective, the challenge of

multinational democracies is "one polity, several *demoi*" ' (Requejo, 2004, p. 263, see also Resnick, 2003).[2]

For a long time, political scientists assumed that modernization would eliminate the importance of traditional social cleavages like language and ethnicity. In particular, the work of Karl Deutsch on political communication postulated that modernization and the accompanying assimilation would bring people closer together (Deutsch, 1966). However, a handful of observers – like Walker Connor – adhered to the idea that modernization could increase the political importance of identity markers like language: 'material increases in what Deutsch termed social communication and mobilization *tend* to increase cultural awareness and to exacerbate interethnic conflict' (Connor, 1972, p. 328; original italics). According to Connor:

> Advances in communications and transportation tend also to increase the cultural awareness of the minorities by making their members more aware of the distinctions between themselves and others. The impact is twofold. Not only does the individual become more aware of alien ethnic groups; he also becomes more aware of those who share his identity. (Connor, 1972, p. 329)

In contemporary politics we are increasingly witnessing the close relationship between linguistic spaces and democratic deliberation. Here language is no longer solely the symbol of shared cultural identity but it is increasingly the indispensable tool of a medium for political communication. Language determines and demarcates the public space for campaigning, debating and decision-making. According to Michael Greven: 'all political and social interactions can be seen as "communication"; without this communicative aspect of interaction, social and political life cannot develop and continue' (Greven, 2000, p. 44).

This study is not concerned with the normative connotations of this process. The aim is to show why language has become increasingly important and how this influences political processes in federal systems – and by extension, in the European Union. The objective of this article is not to reason on the desirability of a linguistically demarcated public space for democratic

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[2] It should be noted that these questions about language and democracy divide political theorists. Some criticize the cultural-linguistic argument on democratic deliberation. According to this view, language divisions do not present an insurmountable barrier in front of a common public space. For example, Arash Abizadeh believes that: 'Democratic deliberation at a societal level is often mediated via the media, and multilingual media personnel can and do serve to bridge the communicational gaps at the societal level between individuals who do not speak the same level. So language is not an impermeable barrier at the societal level' (Abizadeh, 2002, p. 503). Abizadeh also points to multilingualism as an additional factor in bridging language divisions: 'Why should we suppose that individuals are or must be monolingual?' (Abizadeh, 2002, p. 503). See also Stepan (1998) and Laitin (1998).

legitimacy. Instead, the objective is to show and explain the tendencies that determine the workings of real federal constitutions that lie beneath formal constitutions.

II. Evidence from Comparative Federalism

Studies that use a federal framework to analyse the European Union mostly focus on formal institutions (Hesse and Wright, 1996; McKay, 2001; Börzel and Hosli, 2003). However, the study of federalism can also include the examination of the uncodified patterns. In particular, the interaction between formal federal constitutions and real constitutions reflecting the *demoi* can help put the study of the European Union in a wider setting. Evidence from the Austrian, Belgian, Canadian, German and Swiss federal systems indicate the centrality of language and the role it plays in democratic politics. In all five cases, democracy relies on the relationship between real constitutions reflecting the underlying linguistic spaces and formal federal constitutions. Despite the tactical choices and constraints formal federal constitutions present, the workings of federalism are determined by the underlying linguistic spaces that provide the venue for democratic politics. Real constitutions reflect these democratic deliberations that take place within language spaces.

As a result of the pull of multiple *demoi*, Belgian, Swiss and Canadian political institutions have gradually changed to reach a better fit with the ethno-linguistic social structure. Before its official federalization in 1993, Belgium was a unitary state. But a Belgian 'nation' did not emerge to fit the unitary political institutions; these institutions changed to reflect the underlying linguistic divisions instead (Alen, 1990; Beaufays, 1998). Research has shown the separation between two distinct public discussion spaces in Belgium (Erk, 2003b; Van Parijs, 2004, p. 18). Federal institutions do not also neatly correspond to the Swiss federal society. The federal constitution did not create 26 distinct societies for each canton, but the two constituent communities in the form of Swiss Romand and Swiss German have continued to exist (Weibel *et al.*, 1997; Erk, 2003a; Kriesi *et al.*, 1996). In Canada, on the other hand, a federal structure based on ten provinces did not eliminate the social divide between Québec and the rest of Canada (Gagnon, 1991; Gagnon and Erk, 2001; Erk, 2006). In Canada and Switzerland, there has been some degree of mid-range institutional change in the direction of a better fit between the underlying real constitutions and formal constitutions. But more importantly, in both cases the federal system tends to bypass the federal constitution and works asymmetrically based on the constituent linguistic/cultural communities. Austria and Germany, on the other hand, have their

respective nationwide *demoi* regardless of the formal federal demarcations. This is reflected in the pressures towards nationwide politics in Germany (Hesse, 1962; Helms, 2002). Evidence shows that the nationwide public space has led many decentralized policy areas to be debated in nationwide terms with the result of the gradual centralization of these policies (Erk, 2003c, 2003d). In Austria, a similar process has taken place. The discrepancy between the nationwide real constitution and the decentralized formal constitution has led to centralist tendencies in the workings of the federal system (Pernthaler, 1988; Öhlinger, 1988; Erk, 2004).

In the modern politics of western democracies, language functions both as a unifying force and a cleavage. For example, language divides French-speakers and German-speakers in Switzerland and French-speakers and Dutch-speakers in Belgium from one another, but it also strengthens inner-group cohesion within the linguistic communities otherwise divided over religion, class and region. The linguistic cleavage provides the social base for demarcating the borders of collective identity. In the last 50 years, language grew into the main base of collective identity in these federal systems. While linguistic public space brings together Austrians, Germans, English-speaking Canadians otherwise divided over place, class or religion, it also divides Québécois from the English-speaking Canadians, Francophone Belgians from Flemings, Swiss Romands from Swiss Germans. The importance of language, of course, depends on the decline of other significant social cleavages in terms of their political relevance. Parallel to the decline of other social cleavages, modernization and the growing importance of political communication have accentuated the unifying – and the dividing – force of language.

III. A European *Demos*?

Ten years ago, Claus Offe wrote: 'had the European Union been a state and were it to apply for membership in the European Union, it would fail to qualify for membership because of the lack of democratic content in its constitution' (Offe, 1996, p. 145). But a new formal constitution did not solve the Europe Union's democratic problems. The experience of the multination federations of the industrialized West shows that in modern contemporary politics driven by political communication and democratic deliberation, constitutional engineering by elites is not the reliable way to construct a *demos*. There is hence a point of how far European integration can proceed without a common language that would form the basis of a European *demos*. This idea is not necessarily a new one (Weiler, 1995). Philippe Van Parijs calls this the democratic challenge of 'no viable democracy without a linguistically unified

demos' (Van Parijs, 2000). The 'no demos' argument postulates that the lack of such a pan-European democratic base caps the extent of how far integration can proceed.[3] However, this is an idea that has remained somewhat peripheral in European Union studies. Historically, the idea is associated with John Stuart Mill who wrote about the importance of linguistic-cultural homogeneity for liberal democracy:

> Free institutions are next to impossible in a country made up of different nationalities. Among a people without fellow feeling, especially if they read and speak different languages, the united public opinion necessary to the working of representative government, cannot exist. (Mill, 1861, p. 361)[4]

In the early twentieth century, Carl Schmitt continued this perspective to suggest that democracy was only viable for a homogenous people: 'Federation is legally and politically possible only when there is homogeneity. Substantial homogeneity is the essential precondition of every particular constitutional provision. Where this is lacking, federation is a futile and deceptive enterprise' (Schmitt, 1928, p. 40). Decades later, a similar reasoning was employed by the German Constitutional Court in its ruling on the Maastricht Treaty on the European Union. Following the treaty, the Karlsruhe court had to rule on a case challenging the constitutionality of a new European union. The court characterized the European Union as a compound of states ('*Staatenverbund*') and thus ruled that its legitimacy derived from the Member States. In light of this characterization of the European Union, the treaty was not unconstitutional (BVerfGE, 1993). The ruling was based on Article 20 of the German Constitution which establishes a connection between democratic legitimacy and the German people. A prominent student of German constitutional politics, Dieter Grimm, was one of the advocates of this view questioning the legitimacy of a European Union separate from its constituent Member States:

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[3] On the other hand, there are advocates of cosmopolitan politics who acknowledge the democratic implications of the divisions preventing a linguistically unified *demos*, but yet call for moving beyond this state of affairs. One important name within this tradition is Daniele Archibugi: 'I oppose the idea that democratic politics is in the vernacular with the contrasting thesis that democratic politics *must* be in Esperanto. I argue against the *descriptive* thesis whereby democratic politics is carried on in the vernacular by adopting the *normative* principle: democratic politics is not in Esperanto but, where necessary, it *can* and *must* be in Esperanto. Of course, I do not advocate the use of Esperanto, but rather the idea that it is the responsibility of individuals and governments to remove the language barriers that obstruct communication' (Archibugi, 2005, pp. 544–5). Furthermore, there are those who criticize an emphasis on the *demos* as the basis of democratic politics since they see it as a 'backward' and 'ethnic' way of thinking (Fossum, 2000, p. 115)

[4] Mill leaves the door slightly ajar however. In the section that follows, he states that while a common language is important to create a fellow feeling, a feeling of common nationality can come to exist among peoples of different races, languages and religions (Mill, 1861).

> Here is the greatest obstacle in the path of the Europeanization of the political substructure on which the functioning of a democratic system and the performance of the Parliament depends: it lies in the language. Communication is tied to language and linguistically mediated world experience and understanding. Information and participation, as prerequisites of democratic existence, are mediated through language. (Grimm, 1995a, p. 42)

This led to an exchange between Grimm (1995b) and Jürgen Habermas (1995) on whether or not Europe needed a constitution. More recently, Alan Patten and Will Kymlicka have joined the debate:

> Democratizing the EU presupposes that citizens throughout Europe can form a single 'demos', that is, that they can deliberate and act together as a single political community, whose decisions would reflect 'the will of the people' or 'popular opinion'. Yet it is very difficult to imagine how this sort of collective deliberation, agency and will formation can occur at a pan-European level. (Patten and Kymlicka, 2003, p. 10)

Patten and Kymlicka presaged the risks of an elite-led integration process alienating the voters:

> While there is a growing elite that can participate effectively at the pan-European level, the only forms of political participation and deliberation that are truly popular (that is, easily accessible to the mass of citizens) remain specific to each country, conducted in the national language(s). Put another way, politics seems to be most participatory and democratic when it is 'politics in the vernacular' conducted in the language of the people. (Patten and Kymlicka, 2003, p. 10)

Democratic deliberation in the European Union and a shared language space are thus intimately connected. To quote Grimm again:

> Language diversity results in the absence of a European-wide communications system which then in the long run means that there is neither a European public nor a European political discourse. Public discourse remains tied to national boundaries, while the European sphere is dominated by a technical and interest-based discourse remote from the public. (Grimm, 1995a, p. 44)

But Grimm is careful to note that this view stressing the importance of language need not imply that democracy requires a homogenous ethnic identity (Grimm, 1995b, p. 297). For others, national identity and language tend to go hand in hand. According to Michael Greven: 'A polity must also have a common political culture; it must ascribe the same meaning to the same phenomena, refer to common social practices and symbols and have common institutions' (Greven, 2000, p. 53). This is clearly a problem for the European

Union. Greven believes that 'there exists no European people that, as a prepolitical "given" could play the (virtual) role of a *pouvoir constituant* and sovereign; instead, there exists a multitude of peoples, each with a respective national identity and sense of belonging (*Wir-Gefühl*)' (Greven, 2000, p. 37). Put differently, Europe consists of multiple *demoi*.

IV. Multiple *Demoi*, Intergovernmentalism and Constitutional Ambiguity

The real constitution of Europe calls for a formal constitution that recognizes the multiple *demoi* that form the basis of the European polity. Comparative federalism can help here as well since a core part of this field is the study of intergovernmental negotiations between the centre and the subunits and the arduous processes of constitutional compromise. More specifically, the experiences of multination federations are particularly useful in this respect. These federal systems tend to contain deep differences between the constituent nations in terms of their approach to the nature of their political union. There are different interpretations of political legitimacy: is the federal union a compact between nations, between provinces, or is federalism a result of the nation's will to devolve political power to decentralized subunits? Writing about Canada's constitutional problems in the early 1980s, Keith Banting and Richard Simeon draw attention to a circular impasse that often grips multination federations:

> Lack of consensus makes constitutional change necessary. The same lack of consensus makes constitutional change particularly difficult [. . .] Because the constitution lacked consensus, it had to be debated. But the same lack of consensus made it impossible to agree on a new one. (Banting and Simeon, 1983, p. 25)

In their comparative analysis of Canada, Spain and Belgium, Jan Erk and Alain-G. Gagnon argue that, when important differences between the constituent nations of a federal partnership exist, ambiguity can be a potential source of longevity for the federal arrangements:

> Intentionally leaving the constitutional definition of a federal arrangement ambiguous may, under certain circumstances, promote the durability of federations as each side can interpret their membership in the association differently, rather than being forced to accept the legally defined interpretation of the federation favoured by one side of the partnership. When important differences between the constituent nations of a federal compact exist, constitutional ambiguity is a way to keep the federation going. (Erk and Gagnon, 2000, p. 93)

Richard Simeon echoes this point of view: 'The impulse to frame [all the relationships that must exist within a diverse society] in precise language is likely to generate irreconcilable conflicts. Hence the attraction of non-constitutional solutions and of constitutional silences and ambiguities' (Simeon, 2004, p. 118). Students of comparative federalism tend to believe that in multination federations with deep divisions a bit of vagueness is necessary for the smooth functioning of the system. When there are divergent and essentially incompatible conceptions of the union and, by extension, legitimacy, there is no magic formula to solve the problem. Ambiguity is, in a way, the acknowledgement of the permanence of this disagreement. Rainer Bauböck goes as far as to suggest that 'certain difficult relations can only persist on the basis of mutual misunderstanding' (Bauböck, 2002, p. 1).

The benefits of ambiguity in bringing about settlements to seemingly intractable issues are well recognized by students of constitutional politics as well. In a piece entitled 'Gag Rules and the Politics of Omission', Stephen Holmes describes the benefits of ambiguity and evasion in the following terms: 'by tying our tongues about a sensitive question, we can secure forms of co-operation and fellowship otherwise beyond reach' (Holmes, 1988, p. 19). Students of comparative federalism and constitutional politics seem to agree that certain uncodified practices that defy legal definition have more chances of providing acceptable rules of the game for difficult unions. Michael Foley holds uncertainty and imprecision to be useful tools in such situations. In *The Silence of Constitutions: Gaps, 'Abeyances' and Political Temperament in the Maintenance of Government*, Foley employs various colourful phrases to make the point that ambiguity and evasion form integral parts of constitutional compromises. The terms that he uses all reflect shades of the same idea: 'suspension of irresolution, studied inattention, dormant suspension, tranquillity of obfuscation and neglect, convention of non-exposure, strategic oversight, complicity in delusion, wilful neglect, protective obfuscation' (Foley, 1989, pp. 3–11).

Canada is a case in point for these types of constitutional deals. The inherently incompatible visions of political legitimacy between Québec and the rest of Canada has resulted in a federal system that in formal terms includes many unclear and unarticulated elements. One study has found 14 different issues that were left ambiguous in the original constitution (Thomas, 1997, p. 62). For a long time, federal-provincial relations were mostly based on convention. The ambiguity in the federal arrangement was not an obstacle to the functioning of the system, but according to Alain-G. Gagnon, it was with this ambiguity that Canadians were able to get through the many conflicts they faced (Gagnon, 1994, p. 98). Belgium is very alike in burying incompatible political visions under texts drafted in different languages. Marc

Uyttendaele calls this 'double lecture': 'The text is vague and its preparation process is often full of ambiguities and contradictions. It is drafted in two languages in a manner as to give different meanings that would satisfy the two communities of the country' (Uyttendaele, 1997, p. 43). The Belgian case is further complicated by the variegated and linguistically divided party structure. The inevitable outcome for constitutional politics is untidy compromises with convoluted and contradictory provisions that aim to placate everyone. Although Spain is formally not a federation, its post-Franco constitution reflects the difficult compromises – especially between the centre and the historical nationalities – reached during the democratic transition. There is an absence of a clear demarcation of competences between levels of government (Moreno, 1994). Ramon Arango finds an explanation for this in the complex settlement that formed the basis of the 1978 constitution: 'A balance had to be found without alienating either the centralists or the regionalists; terminology had to be carefully chosen or specificity sacrificed if the document was to be ratified' (Arango, 1995, p. 175). The outcome was 'a compromise constitution, a document largely devoid of dogmatism, full of accommodation, containing some flexibility and thus at times riddled with ambiguity' (Bonime, 1985, p. 19).

Essentially, it comes down to the differences that exist between nations that have to share a political union while retaining self-rule. These are unavoidable when two or more *demoi* exist in one political union. Democratic legitimacy resides where democratic deliberation takes place, but the shared political space requires some sort of a formal constitutional compromise. It is the contention of this article that the formal constitution for the European Union would work best when it reflects the underlying real constitution of Europe composed of multiple *demoi*. But the accompanying inevitability is that the lack of a shared *demos* will lead to a formal deal that would contain a fair amount of ambiguity. So instead of trying to concoct a document that mirrors the Philadelphia constitution creating an ideal political order, the best way would be to emulate the inelegant and ambiguous compromises that multination federations have picked for themselves as constitutions. This is not necessarily a bad thing since what is at stake here is a pragmatic deal that would allow political co-operation between nations to continue. Theodor Eschenburg is reported to have once said that 'something could be outside the law and yet still function, while something else could be within law but not function' (quoted in Pelinka and Welan, 2001, p. 13). When deep disagreements over the nature of the political union exist, perfection and constitutions might not go well together. Evidence from comparative federalism suggests that, due to the coexistence of incompatible visions concerning the shared political union, it is unlikely that a complete match between the real and

formal constitutions can be attained in multination federations. But at the same time, stability necessitates that the distance between the two should be as small as politically feasible. This means that the European constitution should come as close as possible to the recognition that democratic delibera- tion follows linguistic lines; thereby acknowledging that the basis of demo- cratic legitimacy is likely to remain within the constituent nations. And in terms of the political union these nations share; it is important to realize that when differing visions over the future exist, a pan-European idealist formal constitution might not be the best way forward. Working constitutions emerge from practice and tend to inelegantly reflect their origins in conflicts and compromise. Constitutions designed for multination polities that appear perfect on paper can end up being rejected by the people who feel alien to these elitist blueprints.

Conclusion

Broadening the academic literatures from which lessons can be drawn can only enrich European Union studies. This article shows that particularly the literatures on comparative federalism, political theory and constitutional poli- tics can help put the study of the European Union under a wider lens. At the core is a shared desire to understand the workings of political unions where unity and diversity coexist. New ideas and fresh perspectives are likely to permeate the study of the European Union if potential theoretical links with adjacent fields of study are explored.

One result of the search for cross-fertilization across fields of study is the idea that a strong relationship exists between democracy and language. This perspective is generally found in the political theory literature that examines identity politics. Linguistic spaces function as forums of deliberation that are central to democratic life. In the modern politics of western democracies this venue has come to demarcate the borders of the primary political community, i.e. *demos*. This ties into an idea from the field constitutional politics; namely the conceptual difference between formal and real constitutions. One can argue that the uncodified underlying social structure, or the real constitution, reflects the democratic frames of reference that define political communities. In this context, a workable formal constitution for a union made of multiple *demoi* requires a recognition of its real constitutional base as a multina- tion entity. This is where federalism literature contributes to the theoretical line of reasoning. Evidence from comparative federalism suggests that in multination unions there is a high likelihood that constituent nations might disagree on the nature of the political community they share. In fact, there

might be no common ground to establish a consensus. There could be incompatible visions of the future and competing conceptions of legitimacy might not match. The way forward lies in the recognition of this basic disagreement. In these cases, the common commitment to leaving the precise terms of the union vague in service of avoiding potentially divisive issues is one option to avoid deadlock. Evidence from multination unions with deep divisions indicates that some ambiguity is necessary for the smooth functioning of the system. When there are competing visions based on essentially incompatible conceptualizations of the communities of fate, constitutions will inevitably reflect these underlying differences and be riddled with imprecision. To minimize tension, the formal constitution should come as close as possible to reflecting the multiple *demoi*. But the contradictory visions concerning their shared political union will inevitably result in documents that contain incongruous visions of political legitimacy buried in ambiguity.

At the end of the day, what comes out from this article is that there is nothing terribly unique about the current constitutional crisis in the European Union. Evidence from comparative federalism shows that these types of crises frequently visit multination unions. And quite often, such unions find a way out by concluding constitutional deals that implicitly recognize the competing political visions. Europe does not need an idealist formal constitution, it needs a workable arrangement that reflects its real constitution composed of multiple *demoi*.

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seen in historical and comparative perspective. As Gary Marks writes in his chapter: '[I]n its practice, European integration has been open-ended in a way that has escaped those who have thought in terms of grand architectural plans or final destinations'(p26).

This view, which colours the entire book, is refreshing and certainly provocative for the bulk of political scientists who tend to overstate (and overvalue) the ability of the social sciences to predict and prescribe social processes such as European integration. As Gary Marks argues in his piece comparing national state formation with the European Community, neither of the two were products of a grand 'master plan' but evolved by trial and error.

The book contains other sympathetic revelations. While ordinary textbooks have led us to believe that the European experiment is unique in providing for an unprecedented internationalism in terms of labour, goods and financial mobility and an emerging social citizenship, Carl Strikwerda in his chapter 'Reinterpreting the History of European Integration: business, labour, and social citizenship in Twentieth-Century Europe', rebuts this view. As he puts it: '[I]t is seldom recognised that the Common Market created economic integration in the sense of lowering tariffs, but it, too, left intact much of the bewildering variety of national laws on the right to work, invest, practice professions, and move capital'(Strikwerda: 67). Strickwerda contrasts this with the situation of pre-1914 Europe, which is normally characterised as one of the most nationalist in this century. If one looks at labour mobility in particular, the period prior to World War I was extremely liberal. There were no such things as passports or national citizenship to restrict mobility and limit rights of non-nationals. Labour unions collaborated across borders in order to secure common basic rights for all. Rephrasing Alan Milward, Strikwerda then goes on to argue that compared to today's European Community where members are, first and foremost, concerned with saving their own skins, the pre 1914–period was exceptional and certainly more internationalist than conventional wisdom normally preaches. Strickwerda seems, however, to neglect some important socio-economic factors. For instance, that when cross border mobility was so high in the pre-1914 period, it had obviously to do with the absence of the welfare state and, thus, the fact you had only one choice when unemployed: you could either starve to death or move to find whatever job there might be on the other side of the fence.

It would be highly unfair to confine this review to only three contributions. The book contains many highlights, for instance, Gérard Noiriel and Michel Offerle' insightful analysis of citizenship and nationality in nineteenth-century France— in particular, when contrasted with the equally illuminating and certainly opposing study of German citizenship by Christiane Lemke. The editors have put much effort into linking the 13 contributions together by splitting the book up into parts with lengthy introductions. It might not have been necessary to legitimise the individual section's compatibility in this manner, but what comes out of it is a highly stimulating study of European integration from below. The only really frustrating and regrettable thing about this volume is the many trivial misprints. This is simply not acceptable for such good scholarly work, as the book before us undoubtedly is.

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Andrew Moravcsik, *Centralization or Fragmentation—Europe Facing the Challenges of Deepening, Diversity and Democracy* **(Council on Foreign Relations, New York 1998), ISBN 0-87609-224-5 (paperback)**

This is a small collection of essays by well-known scholars of European integration. It has the advantages and disadvantages of these type of books. The authors are a guarantee of quality and, in effect, the book presents some of the state of the art political theories which address important areas of European integration. But, precisely because of the strong individual and independent value of each contribution the book appears, at times, to strive to achieve a unified framework of analysis or a coherent vision of European integration. Also on the downside, much of what is stated in the essays is also 'recycled' from the author's previous works. On the other hand, this can also constitute an advantage to readers less familiar with the work of political scientists in European integration. For this audience (such as lawyers . . .) the work constitutes a welcome and excellent introduction to some of the most interesting work currently undertaken in European integration. At the same time, it reviews some of the key areas of the European Union: European Economic and Monetary Union; the internal market; social policy; and the common foreign and security policy.

The 'fragmented' different essays are 'centralised' by a lengthy but captivating introduction by Andrew Moravcsik. His point of departure is well known from his previous work: the European Union is still to be conceived as a intergovernmental organisation and its evolution to be explained with reference to the Nation State. Still, Moravcsik also predicts a polity development for the EU and even speaks of a European State formation (at p4). The tension between these two elements pervades for much of the introduction. The first part is devoted to a historical review of the process of European integration. Moravcsik re-states his theory of European integration and describes the different steps in the uneven and hybrid process of European integration as a result of State interests and bargaining power. The second part of the introduction, relates his theory to the different chapters of the book, attempting to derive from the analyses of the different substantive areas of the European Union made therein, evidence confirming his general proposition that Member States still govern the process of European integration. This does not mean that the remaining essays are to be conceived as instrumental to Moravcsik theory. Their value goes far beyond that (as the authors in question guarantee) and some of their conclusions may, in effect, contradict Moravcsik assertions. Erik Jones explores the tensions inherent in the Economic and Monetary Union and predicts an unstable political process and a not-so-optimistic future. Majone, describes, once again, the notion of the European Union as a regulatory State founded on a kind of technocratic legitimacy. Paul Pierson's essay is both a case for his own theory of European integration (historical institutionalism) and a review of the development of what he calls a European 'multi-tiered system of social policy' (p144). Finally, Philip Gordon's analysis of the common foreign and security policy predicts the continuation of the present status quo, although the conditions he considers to be necessary for the creation of a true common foreign and security policy (mainly dependent on a convergence of State interests through either a belief in a higher common goal, or an expected convergence between the common policy and their national policy) are not likely to be fulfilled in the near future.

One of the main conclusions of the book is that the present challenges of the European Union are to be addressed through an increased resort to flexibilisation to

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