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Political Representation: Legitimising the EU without
the Nation-State

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Abstract

This paper explores post-nationalism through the lens of representation to assess whether post-nationalism is appropriate for legitimising the supranational EU polity. It claims that the concept and the practice of political representation in the modern state depend on establishing a tripartite distinction between state, government and civil society. This is contrasted with competing notions of the modern state, notably Rousseau's idea of popular sovereignty and the Jacobin notion of 'immediate democracy'. The tripartite system, it is argued, enables the sovereign state to found political authority on democratic principles and also allows it to represent an abstract common good. Furthermore, the idea of the nation and the construction of a national narrative are shown to complement the system of representation by providing a transgenerational concept of the common good to which government can be held accountable.

The paper subsequently contrasts this national principle of representation with attempts to legitimise the supranational EU polity in a post-national manner: democratic governance and constitutional patriotism. However, governance offers no guarantees as to how and why citizens will be better represented through its transnational networks and by insisting on stakeholding does away with the idea of a common good. Constitutional patriotism forgets that any EU constitution on which it is supposed to be founded will itself be the product of a plurality of debates, memories and reasons associated with various distinctive national narratives. Thus post-nationalism, at least as currently imagined, does not seem well adapted for solving the legitimacy problems bedevilling the supranational EU.

Keywords

legitimacy, European Union, post-national democracy, representation

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Introduction

The modern liberal-democratic state is based on the principle of representation in order to render the exercise of political authority legitimate. Representative democracy as it has developed in the Western hemisphere since the nineteenth century relies on political parties to form governments and represent voters (Duverger, 1965; Gallagher *et al.*, 2005) as well as other forms of citizen mobilisation such as social movements (Tilly, 2004). Traditionally associated solely with the nation-state as a form of political organisation, it is now an open question as to whether such democratic practices are only possible within this context (Held, 2006). Post-national theory suggests that the scope for citizenship and democracy is not confined to the nation-state and thus is a promising alternative for legitimising the EU supranational polity in the absence of a national bond between its citizens. However, this article discusses whether post-nationalism really is appropriate for solving the problems of legitimacy and accountability that bedevil the EU.

Post-nationalism is understood here as the advocacy of a form of democratic political organisation unbound to the notion of the nation-state (Habermas, 1998, 2001a; Eriksen and Fossum, 2000) and its rigidly bounded sense of a congruent community, territory and political authority (Gellner, 1983). Theorists of post-nationalism in the European Union context separate democratic accountability from the existence of a shared national identity either by putting their faith in the ability of novel governance networks to represent citizens (Schmitter, 2007) or in the ability of constitutional rights to generate a shared political identity, known as constitutional patriotism (Habermas, 2001a; Lacroix, 2002; Cronin, 2003). In both cases this explains why neither citizenship nor political participation are believed to depend on the nation-state. However, the article argues, both variants of post-nationalism find it difficult to recreate the conditions for democratic accountability and thereby to legitimise a supranational political system in the complete absence of the concept of the nation.

To make good this argument, the article first examines how political representation functions in the nation-state. The particular focus is the complex relationship whereby the state claims to pursue a general interest that exists separately from the decisions of the government of the day and which is not identical to the periodic, democratically expressed will of the nation or political community. It is claimed that government's representation of the people is conditioned by the state's ability to act in the name of a transgenerational political community – the nation. Having a transgenerational narrative of a political community to draw on provides the state with a credible basis for its own identity as a servant of the common good, which – albeit with varying degrees of difficulty – allows European integration to be legitimised through member states' domestic mechanisms of representative democracy.

This argument will be contrasted with alternative conceptualisations of the EU polity as a deliberately post-national and post-sovereign creation that should legitimise its existence and functioning either through democratic governance or constitutional patriotism. Whereas governance tries to reinvent representation in a post-national fashion, one that is shown to be deeply problematic in terms of accountability,

constitutional patriotism represents a very different approach to understanding the post-national polity. The latter makes the case for the plausibility of (or conditions for) the emergence of a European *demos* that can act both as constituent power and democratic community with a shared political identity (Habermas, 2001a; Lacroix, 2002, Cronin, 2003). However, a closer analysis of this supposedly post-national concept reveals that this patriotism actually continues to rely on the legitimising function of the nation-state, at least in so far as it presupposes the establishment of a constitution democratically accepted by all EU member states (Lacroix, 2002; Magnette and Lacroix, 2005). Thus the analysis reveals the enduring *usefulness* of the concept of the nation-state for the purposes of legitimising a supranational political order rather than any purported eternal and natural essence of the nation itself.

Hence this critique of the post-national concept of legitimising political authority differs from two of the most prevalent objections raised against those who long for the passing of the nation-state. One objection points to the historical connection between democracy and nationalism, especially as a condition for engendering social solidarity (Miller, 1995; Offe 1998); another, that of Pierre Manent (1997; 2006), argues that only the nation provides a satisfactory answer to the problem of bounding political space, thereby also creating the necessary *pouvoir constituant* for democratic politics to begin. This article does not dwell on the merits and flaws of these arguments. It seeks rather to demonstrate that the debate over post-national government in Europe has yet to address adequately the important issue of how political representation functions to render political authority accountable and thus legitimate. As a result, in trying to imagine democratic politics beyond the nation-state, this debate has overlooked the special linkage between the nation-state and representative government and what this entails for the construction of a supranational polity that is ultimately, when states accede to the EU or revise its treaty basis, a contract between states (Abromeit, 1998, p. 98). The argument presented here thus adds weight to the growing calls for European integration to be understood in terms of a *demoicracy* (Nicolaïdis, 2004) or a union of states and their citizens (Abromeit, 1998; Schmidt, 2006; Fabbrini, *forthcoming*), which requires a more sophisticated reworking of the European constitutional order than that envisaged either by governance or constitutional patriotism.

The article proceeds as follows. It begins by sketching the principles of representation and democratic accountability that exist in the modern European state. Then I outline the two challengers to the principle of representative government, Rousseauian direct democracy and Jacobin immediate democracy, and why these were not compatible with the modern state. Next it is explained how the democratic system of representation thus rests on a tripartite separation between the state, the government and civil society. This conceptual and practical separation is used to show how the notion of the nation complements the system of sanctioning, governing and mandating accountability created through representation. Finally, I discuss post-nationalism in the guise of democratic governance and constitutional patriotism to show the inherent obstacles these face when invoked to legitimise the construction of the supranational EU polity.

The principles of representation and democratic accountability

Hobbes was probably the first to identify the uncanny feature of modern political societies: that the unit or group whose interests are supposed to be represented in the political sphere does not exist outside the very act of being represented. Or in his own words:

A Multitude of men are made *One* Person, when they are by one man, or one Person, Represented... For it is the *Unity* of the Representer, not the *Unity* of the Represented, that maketh the Person *One*. And it is the Representer that beareth the Person, and but one Person: And *Unity*, cannot otherwise be understood in Multitude. (Hobbes, 1992, p. 114)

By this he means all political life is necessarily based on some kind of representative fiction, an imagined bond, because if there actually existed a community that could speak and act for itself then it would have no need for representation by what is thus a 'feigned' or 'artificial person'. In the parlance of modern political science, representation is in effect an agent that creates a principal.

Hobbes's obdurate belief in the natural tendency for discord – 'man's tongue is a trumpet to war and sedition' (1992, p. 71) – meant that for him the utmost priority for effective government is to agree to defer all political decisions to a single and all-powerful representative. The democratic doctrine of popular sovereignty put paid to the Hobbesian system of absolutist, in the sense of limitless, representation by inventing the notion of a community of equals also known as 'civil society'. The latter is, as the sociologist Reinhard Bendix (1993, p. 161) described it, 'a convenient term for the aggregate of associations and activities constituting more or less organised communities, but without public authority'. Political representation in its contemporary incarnation is the idea that government somehow – and it is only legitimate if it does so – reflects and is responsible to this bounded aggregate of persons and interests.

From this concept of representation two consequences follow. Firstly, private or partial interests enter the public sphere. This is what Hannah Arendt (1998, p. 33) pointed out: 'with the rise of society, that is, the rise of the "household" (*oikia*) or of economic activities to the public realm, housekeeping and all matter pertaining formerly to the private sphere of the family have become a collective concern.' Secondly, partisanship is no longer considered antithetical to ruling in the general interest as government by parties is thought to be compatible with rule by the people for all the people. Party has lost its pejorative connotation of sedition.

Representative government in its democratic form, therefore, is more than just a way of controlling government by giving citizens an opportunity to scrutinise its conduct and recall agents deemed unworthy of public trust. Jean-Jacques Rousseau, the great critic of representation, thought that a properly constituted political society should hold regular assemblies where the sovereign people would pronounce themselves on two motions: 'Does it please the sovereign to maintain the present form of government? Does it please the people to leave the administration to those at present charged with it?' (1968, p. 148). This highly constrained way of holding representatives to account, resembling in part certain features of direct democracy based on referendums (Frailin, 1978), falls somewhat short of the benchmark of contemporary democracy based on

representation. Although certain theorists of modern representative democracy insist upon the elitist or cartel nature of this system (Schumpeter, 1954; Katz and Mair, 1995), the practice of representation is usually also considered to be sustained by the twin notions of the sovereign citizen and the more or less active demos (Sartori, 1973, p. 90). Thus a system of representation that permits only a periodic and purely retrospective form of accountability today smacks more of benevolent dictatorship because it deprives citizens of more active forms of political engagement.

In contrast with the Rousseauian idea, therefore, the modern system of self-government relies on political parties and citizen mobilisation to connect governed and governing by making the latter responsive to the changing and not necessarily obvious preferences of the former. Thanks to parties, elections are not simply plebiscitary moments that merely sanction or admonish the incumbent government but – to varying degrees – an opportunity for civil society to express policy preferences, to negotiate the fit between the identity of governed and governing and for political leaders to justify or explain party platforms. In addition, the media or the public sphere more generally serves to create a context for day-to-day scrutiny of government and policy-making. Thus within the system of democratic representation there are three kinds of accountability. Firstly, a sanctioning accountability whereby the electorate judges the retrospective performance of government. Secondly, a mandating accountability, whereby the electorate expresses preferences about the kind of policies and political projects they desire. Finally, there is also a governing accountability, whereby the electorate is informed of and debates the ongoing action of the government.

Most accounts of representation take for granted some kind of prior settlement to the question of what or who constitutes the political community to be represented. How representation relates to and depends on having an already-constituted community is not within the scope of this article. Of interest here is the fact that in modern political experience there has been no easy answer to the problem of how the relationship between political authority and the community being represented is to function.

What follows is a brief theoretical and historical argument that tries to explain the context which makes the linkage between government (representatives) and people (represented) possible by means of democratic representation. Only in this context was a more extensive form of accountability possible that, *pace* Hobbes, makes the maintenance of responsible government possible despite and through the institutionalisation of political discord. This explanatory account will begin after the ‘democratic revolution’ of the late eighteenth century, that is, after popular sovereignty came to be recognised as the origin of political legitimacy. It will seek to emphasise how modern representative government functions by establishing a particular and complex relationship between represented and representatives, one in which neither the people nor the parties that govern can lay exclusive claim to the language of the common good. What prevents either of them from doing so is the practical and conceptual separation between the state, the government and civil society. Yet this system of separations is not a machine that runs by itself. If the government is to represent the people whilst the state remains an impersonal and neutral apparatus for serving an abstract general interest, this requires, I argue, that the state represent a transgenerational political community as the embodiment of this common good.

Neither direct democracy nor immediate democracy: representation and the importance of the distinction between state, government and civil society

The republican tradition has always contested the need to distinguish between the independent exercise of power and the people in whose name it is exercised. In this political imaginary the state ought to be the sovereign people because logically if the people are sovereign they will never act against their own interest and harm themselves, something representation cannot guarantee. The point was best made by Rousseau (1968, p. 63): ‘the Sovereign, since it is formed entirely of the individuals who make it up, has not and cannot have any interests contrary to theirs; consequently the Sovereign power has no need of a guarantor toward the subjects’.

In revolutionary France, the Jacobins adapted this democratic metaphor of a body incapable of self-harm to fit their notion of representation, which replaced the personification of political authority by a Bourbon monarch with that of an elected government acting in the name of the people considered as a mythical whole. As Pierre Rosanvallon (2004) has argued, this principle ought not to be confused with direct democracy, in which the active, sovereign people are both legislators and magistrates – a Rousseauian principle that rejects any delegation of authority. He describes it rather as ‘immediate democracy’, which signifies ‘that the people can express itself as a body, and as a whole that takes on a clear meaning and an obvious form’ (Rosanvallon, 2004, p. 14). Both these forms of democracy attempt to make the law only according to the common good, which became known as the ‘general will’. The Jacobin ideal, however, was, like Hobbes, hostile towards intermediate bodies because it was not thought possible for the common good to exist in the disunited people at large. According to Baker (1990), the reasoning behind this argument was that since electoral constituencies are only ever fractions of the people, they can only express a particular will. ‘The general will’, he explains, ‘could only emerge at the point at which all the representatives of the various constituencies come together: the legislative power can begin only at the moment when the general assembly of the representatives is formed’ (*ibid.*, p. 248). Immediate democracy accepts the idea of representation but only on the condition of denying the people any voice except that of their elected representatives and suppressing the claims of sectional interests.

In such a system there is no legitimate way to contradict the representatives’ own understanding of the common good. Hence the representative principle of this type of government, as Rosanvallon (2004, p. 14) explains, is ‘the monopoly of the expression of the collective ... immediate democracy rejects the interface i.e. the institution or procedure that makes a functional contribution to structuring collective expression.’ By definition, therefore, this idea of the state cannot acknowledge the existence of political parties (as well as other social actors or interested groups) who represent different conceptions of the public good nor can it accept a permanent public debate about the merits and demerits of policy choices. Hence the Jacobin ideal does away with the very idea of civil society which can hold political authority accountable.

The historical experience of the failure of alternative ways of institutionalising popular sovereignty has perhaps shaped the development and success of the modern

representative state as much as the inherent benefits of this type of political regime. In contemporary Europe, even with the proliferating use of instruments of direct democracy the state is neither Rousseauian, where the people are supposed to be actively sovereign, nor is it Jacobin, where the state relies on representatives to speak for the people because they are assumed to have identical interests *qua* citizens. Nevertheless, the modern representative state recognises the sovereignty of the people, hence its democratic cant, but it differs from these other forms of government because it maintains a meaningful separation between the state and the community of individuals it is supposed to represent (variously known as civil society, the people, the citizenry etc).

In fact, as was seen above, the notion that the state must be considered as something distinct from the people in whose name it acts is also present in Hobbes, meaning this is not an inherently democratic feature. The reason why the modern state is not Hobbesian requires further clarification therefore. According to the author of the *Leviathan*, it is only in so far as there is an accepted representative of a multitude (the *multitudo* becomes *unus* through an act of *unio*) that it becomes meaningful to talk of a political society with a will and the ability to act. Beyond the representation of this union one can identify separate individuals, groups of individuals or even the totality of individuals but none of these can be properly designated as constituting the political community, even if some seek to speak and act in its name. Thus to represent a community is to be a person, with her own property and name that is neither a specific collection of individuals nor the entire citizen body. The representative of a political community, Hobbes claims, is to be

distinguished and differentiated by a *unique* name from all particular men, having its own rights and its own property [*res sibi proprias*]. Consequently, no single citizen nor all together (except him who stands for the will of all) are to be *regarded as the commonwealth*. (Hobbes, 1998, p. 73)

This is all true of today's EU member states for they certainly cannot be confused with the people, who remain nominally sovereign 'because the people are simply a more numerous collection of named individuals, none of whom are any likelier to assume personal liability for the actions of the state than their governors are' (Runciman, 2003, p. 28). Beyond the acceptance of popular sovereignty and democratic dissent, the other significant difference then between the current reality of the state and the way Hobbes imagined it is that modern states have established another separation, in addition to the state/people distinction. The modern representative state is distinguishable from earlier types of governed territories because of the separation that exists between the state and the government. When tracing the development of the state as 'an impersonal form of political authority distinct from both rulers and ruled', the intellectual historian Quentin Skinner attributes this fundamental turning-point in political thought in large part to Hobbes. But although Hobbes argued, according to Skinner (1989, p. 124), 'that citizens ought not to pay allegiance to those who exercise these rights of sovereignty, but rather to the sovereignty inherent in the state or commonwealth itself', his absolutist concept of authority could not accommodate a radical distinction between the abstract state and its particular agents. *Leviathan* can only exist if there is a human will to make it act.

In contemporary politics, the representative quality of the state depends on being able to distinguish the idea of political authority from both the people (or sections thereof) and

the governors of the day. The state thus assumes an independent character. Harvey Mansfield describes this peculiar status as an abstraction from identifiable persons or groups:

The state may be thought to have no interest, like a neutral, or to have its own interest, in order to serve as an arbiter, but in either case the essential point is that it does not belong to any of the contending parties or groups. The state has an existence independent of such parties or groups. Indeed, its independence seems to be constituted not so much by self-subsistence, which would make it resemble those parties or groups, as by abstraction from them. (Mansfield, 1983, p. 849)

Political science usually considers the division of political power in terms of that between legislative and executive branches but perhaps the primary separation in the modern representative state is the one between state and government. George Bernard Shaw certainly thought this was a fundamental distinction: ‘the established government’, he polemicised, ‘has no more right to call itself the state than the smoke over London has to call itself the weather’ (Shaw, 1884, p. 1). Except perhaps in the spoils system, the party (or parties) that forms a government never takes over the state apparatus. It only fills a few offices of state, and even then only temporarily; it is forced to uphold the existing laws of the state and, above all, it has to speak the language of the state when it governs if it is to speak in the name of the political community as a whole rather than merely for those who elected it. In any case, it is impossible for a government to represent only those who actually voted for it as this is a purely anonymous (ballots are secret) and abstract community that also bears little relation to the actual membership of a particular party since membership is so much smaller than the electoral mandate. Writing in the immediate aftermath of an election, it is traditional for journalists to question how a democratic government can govern if chosen by only, as was the case for Tony Blair’s Labour Party in May 2005, a quarter of eligible voters. Arithmetical proportions clearly explain and justify little, so surely there must be something else that sustains the principle of representative government.

The clue to what this something else is can be found by paying attention to language. The language of the state is by no means the same as the language of government. Nowhere is this more obvious than in the international arena. The vocabulary used in international politics illustrates this difference rather well: the notion of ‘statecraft’ or ‘reason of state’ is used to signal the fact that governments, with their various short-term agendas, come and go but the state remains a constant presence. Much of the business of international politics would be impossible were the certainty of the state’s continued existence not assumed. A government is bound by prior international treaty obligations the state is obliged to honour; it is held responsible for previously accumulated public debt and it conducts international relations on the basis that any agreements it signs will continue to bind the state long after the current government has ceased to be in office. Hence the state is a connection with the past, a concept of the present and an assumption about what the future will look like. In many ways, therefore, the state is exactly what a government – the particular agents of the state at a given time reflecting the partisanship of the last electoral moment – is not: enduring over time, abstract, non-partisan or at least not party political, for it has its own interests independently of domestic party struggle.

The argument here is that this tripartite state/government/civil society separation significantly enhances the quality of representation. This is because it leaves the state un beholden – in theory at least, even if the Marxist tradition would reject this claim entirely – to any specific policies, parties or interest groups. Parties and other groups can argue over the role of the state and use their electoral mandates to reinterpret it, thereby providing an opportunity for acceptable political innovation. Conversely, the existence of the state can tame both the rampant populism and the egregious self-serving of a party of government as it gives political actors (whether politicians, judges, bureaucrats or even the army) the opportunity to reject or disown an electoral mandate delivered by (a portion of) the people by appealing to a ‘higher’ interest, duty or even oath of service to the state. Thus although not democratically tied directly to the sovereign people – only a minute fraction of public officials are elected – the impersonal state nevertheless is understood to represent the public good. Hence a government that holds the reins of the state having won a majority of votes is constantly pressured by the media and opposition parties to perform the role of promoting the general good rather than serve the interests of the government’s electoral constituency.

This analysis suggests that that the representative connection between the people and the government is complemented by the manner in which the state represents a transhistorical common good pertaining to a specific political community. Next I want to sketch how the impersonal state manages to represent an abstract sense of the common good only in relation to a bounded political community that exists over time and how the national narrative has proved helpful for legitimising European integration.

The nation enables the state’s claim to represent the common good of its citizens to be credible.

The nation provides the narrative of a political community whose democratic state is supposed to represent its citizens’ best interests. The language of international politics affords anecdotal examples of how the nation is considered to shore up the concept of the impersonal state. When states are said to ‘fail’, as in Somalia, Sudan or Afghanistan, it is often claimed that this proves the impossibility of building solid political institutions in the absence of a strong sense of nationhood. The American Department of State speaks of ‘nation-building’ rather than ‘state-building’ in multi-ethnic Iraq and Bosnia. This is a tacit acknowledgment that the modern representative state, an institution supposed to be distinct from the government, the bureaucracy and the people, cannot be sustained by its own devices (Lind, 1994). Nor can it be assembled from a blueprint and handed over to the locals by an interventionary force like bridges, schools or hospitals.

The argument for why the idea of the nation makes the state’s claim to stand for the common good of its citizens credible can only be outlined briefly here. To do so, I propose to concentrate on contrasting the concept of the nation and that of the state to show the striking ‘fit’ that makes them mutually reinforcing and which helps the latter become accountable to the former. The state is constrained and shaped by the past and is expected to act as a source of action and continuity in the future when it comes to treaty obligations, public debt or organizing elections. Likewise, the nation is a mediated relationship with the past through history, symbols and myths, all of which suggest a

shared identity (whether in terms of values or purposes) that extends into the future (Manent, 2006). This is precisely what Edmund Burke (1987, p. 85) had in mind when he described political society as based on a contractual relationship with concomitant obligations, that is as ‘a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born’. Like the state, therefore, the nation spans different generations and is thus not identical with the ‘people’ physically present at any one given time.

Whilst it may be an imagined rather than a natural political community, the nation nevertheless embodies a clear idea of a group with a common interest that is abstract, not easily monopolised by a single privileged clique and thus unpartisan. As the previous two sections showed, this is exactly what the modern democratic state is supposed to represent and which cannot be accomplished reliably by a single person (the Hobbesian model) or through immediate democracy (the Jacobin principle) or even by the people themselves (the Rousseauian principle). The first is too demanding on the virtues of an individual, whilst the second alternative depends on preventing civil society from expressing itself at the cost of failing to safeguard the governed from the mischief of the governors.

Thus modern representative politics takes place in a context where the state’s ability to represent an abstract common good is fundamentally linked to an abstract political community constituted by a national narrative. In today’s complex and fragmented societies, the state’s claim to represent the nation fundamentally complements the connection between party government and the people. In addition, this same narrative can also provide a way of connecting electoral majorities and minorities by creating a single, greater community government and opposition alike can appeal to. Indeed, the lesson from comparative federalism is that problems of contested stateness occur precisely when territorial minorities in continued opposition to federal government seek to recant their membership in the federal whole (McKay, 2001).

Originally, the eighteenth-century theory of political representation, as found in Burke or Madison, was that it provided a medium for the expression of certain fixed and objective interests that needed to be brought together in a deliberative assembly (Pitkin, 1967). Good government was thought to follow from the presence of, and debate between, mercantile, landowning and professional interests. This model of society is no longer meaningful given the social and economic pluralism of contemporary western liberal democracies. A filtering system like the US electoral college hardly seems tenable given that now ‘there are infinite groups to deal with, these groups have no uniform positions, and it is almost impossible to provide them with an institutional voice’ (Gargarella, 1998, p. 271). With the breakdown of a society structured around few and fixed interests, as Roberto Gargarella rightly argues, government’s claim to fully represent the people becomes harder to maintain because ‘there are no good reasons for believing that those in power will have an incentive to protect the interests of common individuals as if they were their own interests’ (*ibid.*).

This is where speaking the language of the nation helps: not as a substitute for but as a way of strengthening sanctioning, mandating and governing accountability. When it comes to voting on a government’s performance in office, the welfare of the nation

becomes the standard of measure, allowing voters to appreciate that there may be more than their immediate self- or group-interest at stake. Similarly, as far as the accountability of day-to-day government is concerned, the good of the abstract and encompassing national political community again provides a convenient and emotive criterion for judging the quality of policy and legislation, thereby allowing parties of government and opposition to compete for voters on equal grounds. The national narrative thus opens up a new perspective for citizens and political actors alike to understand politics even if a version of this same story can be used for purposes of discrimination or exclusion (Smith, 1993). Hence theorists of nationalism recognise that whilst the language of the nation might be the source of ethnic nationalism this is by no means the only use to which it can be put since the national narrative can also engender a civic, or even liberal, conception of nationhood (Tamir, 1993; Kohn, 2005). As Calhoun (2002, p. 169) explains, the nation ‘provides an account of the subjectivity of ordinary people, the collective action of the people; processes of self-making and popular guidance of government’.

Furthermore, the new perspective on politics made possible by the concept of the national community is very important given that, as has been the case with the US Congress, the representation of plural interests based on separate electoral constituencies often ‘leads to collective irresponsibility at the level of the political system’ (Bogdanor, 1985: 300). Without a narrative of community, as provided by the nation in the modern nation-state, which political actors can use to legitimise the setting aside of particular interests in favour of compromise and a wider concept of the public good, the chances for the failure of collective responsibility increase dramatically. The value of the nation here is the potential inclusiveness of its associated narrative, whereby it offers the possibility, if only a rhetorical one, of reaching out to all through a shared citizenship identity. In this way it does not enshrine a system that favours a self-satisfied (or worse) majority and makes the fiction of democracy as rule for all the people easier to believe.

However, it is perhaps with respect to mandating accountability that the nation proves most useful. The ability to emplot policy goals into a wider historical narrative of the common good pertaining to a particularly community can make reform or explain the need for change, especially of a more radical kind, easier by appealing to motives beyond immediate self-interest. By referring to the national commonweal, political actors can justify and render meaningful political projects by reference to the past, the problems of the moment and expectations about what lies ahead. A classic instance, as noted by the British historian Linda Colley, is Britain under Margaret Thatcher. As leader of the Conservative Party, Thatcher ‘won successive elections in large part because she and her advisers contrived, quite consciously, a more effective British story than her opponents’ (Colley, 2004).

In fact, the ability of representative politics in nation-states to embed mandated political change into a broader national narrative has played a crucial role in the construction of the EU supranational polity (Parsons, 2003). This is because the EU, despite all the talk of constitutionalism, fundamentally remains a contract between states that requires the consent of all its members when recontracting (Abromeit, 1998, p. 98; Boucher, 2005) as well as the consent of the people of a state seeking to join the club. Consequently, the

politics of European integration has – following an early period of ‘permissive consensus’ based on tacit popular consent (Abromeit, 1998, p. 57) – been characterised by the vicissitudes of justifying further integration by emplotting it into the different national narratives of the member states (Risse *et al.*, 1999) and prospective members (Ehs, 2007).

Hence, although it is no easy task, it is when the idea of Europe has been conjoined with a national political story that Europeanisation has proved easiest to legitimate. For instance, this was certainly the case in Italy, where, so as not to be refused entry into the single currency, Romano Prodi’s government justified the necessary austerity measures by declaring it was time for Italy to join the rank of normal European countries and stabilise its public spending (Ginsborg, 2003). Conversely, the question of potential EU membership for Switzerland, which froze its official application in 1992, is largely a debate over the compatibility of membership with the three central tenets of Swiss identity: neutrality, federalism and direct democracy (Kriesi and Trechsel, *forthcoming*).

Within European states, therefore, the language of the nation has an important constitutive effect on representative politics. It creates the conditions for responsive as well as responsible government that otherwise would not exist if representation were based purely on an unmediated connection between governed and governing, thereby helping to legitimise the exercise of political authority. Moreover, as part of its contribution to mandating accountability, the national narrative has been used to try to render legitimate the construction of the supranational EU polity albeit with seriously imperfect results. Nonetheless, it is argued that the concept of the nation is not helpful for imagining democratic legitimacy in operation in the EU. Yet as the next section will demonstrate, there is good reason to doubt the obsolescence of the usefulness of the idea of the nation at least in relation to legitimising the construction of a supranational political order.

Post-Nationalism and the EU: can democratic governance and constitutional patriotism legitimise a supranational polity?

The process of European integration is variously said to weaken, transform, rescue or replace the nation-state (Fossum, 2006) yet it is almost universally acknowledged that the creation of a polity that is neither a sovereign state nor based on a national community greatly complicates democratic legitimacy (Schmidt, 2006). The twofold ambition of abandoning nationalism and avoiding the creation of a new hierarchical form of political organization in Europe is part of Monnet’s original design that ‘unity in Europe does not create a new kind of great power’ (1962, p. 211). The future of democratic legitimacy in this non-nation-state has largely been imagined in two ways: democratic governance and constitutional patriotism. These will be examined in turn with regard to how effectively they confine the nation to the dustbin of history by finding alternatives mechanisms for establishing the democratic legitimacy of the EU polity.

Governance is the modish word that tries to capture the process of political deliberation and decision-making that exists both outside and alongside the nation-state, in international organisations, amongst multinational corporations, professional

associations, non-governmental organisations etc. What is perhaps most interesting about the term is that it is assumed to ‘disregard the public/private divide’ because this ‘faithfully mirrors modern regulatory practices’ (Joerges, 2005, p. 258). In other words, it proposes that legitimacy and accountability are best served by having representatives of the people – understood in terms of groups with different interests – participate directly in policy formulation.

As Schmitter argues, this involves ‘semi-autonomous organizations... and it is the embeddedness of these organizations into something approximating a civil society that is crucial for the sake of governance’ (2007, p. 9). Thus governance means that groups of citizens with common interests (environmental protection, local autonomy, lobbyists) or something at stake (consumers, producers etc) participate in rule-making through the representatives of these constituencies. Instead of basing representation on the tripartite separation of state, government and people democratic governance relies on governance networks to connect citizens to the business of government.

The governance model of participation via interested representatives raises a number of major problems. Firstly, there is the obvious problem – both practical and theoretical – of identifying sectoral or stakeholder groups let alone devising mechanisms for how these constituencies can furnish representatives for governance negotiations on public policy. Hence governance in Europe relies on organised groups but ones which in turn have to be authoritatively recognised by the EU polity, thereby muddying the representative connection between citizens and decisions made in their name. This dependence on official recognition, which frustrates the mandating aspect of accountable representation, gives rise to a second problem, namely what Abromeit calls ‘self-representation’ (1998, p. 23), whereby the claim to represent a constituency can be largely self-made.

Precisely the ‘embedded-ness’ of a sectoral or stakeholder group cannot be taken for granted since participation in governance relies on the interplay between those with the power to recognise participants in governance and those asking to be recognised. In other words, there is no *a priori* reason to believe that this mechanism is more inclusive of citizens’ concerns. The process of co-option by public authorities of representative groups can also undermine the representative bond that governance is supposed to foster with civil society. Evidence from party politics suggests that the process of being accorded quasi-public status has transformed Western European political parties from private, voluntary associations into what Mair (2006, p. 47) calls ‘public service agencies’ for whom office-seeking is now an end in itself.

Consequently, as Abromeit explains, governance is ‘in conflict with the traditional notion of democratic representation (which includes the idea of a balance between interests and the *bonum commune*)’ (1998, p. 23.). The risk is, therefore, that a system of representation that does away with the notion of the state as servant of the public good in relation to a political community as a whole with a common narrative will encourage not only collective irresponsibility as a result of policy-making for disparate constituencies. In addition, the process of public recognition of sectoral or stakeholder groups and the questionable embedded-ness of these in civil society also minimises the element of ‘reversibility’ (*ibid.*, p. 97), whereby policy decisions can be reversed and

decision-makers recalled and replaced. By making policy change and the removal of representatives more challenging, the people's sanctioning and governing accountability becomes harder to exercise. In this way governance is also clearly not a solution to the issue of depoliticisation (Mair, 2006) understood as the gradual hollowing out of government by the people in favour of a governing class ruling for the people (*ibid.*).

In fact, governance undermines the very concept of the people as a single community with a common good since its *modus operandi* is based on policy networks of representatives of different sections of civil society. At the same time, the insistence on identifying groups within society with separate interests is at odds with the notion of democratic citizenship as based on 'a universalist perception of the individual and the ensuing refusal to tie him or her to narrow, parochial, and particularistic social roles' (Preuss, 1996, p. 535). From the beginning in fact, European integration has always had difficulties treating individuals as citizens, preferring until recently to refer to persons as economic actors such as employers, employees or self-employed (Olsen, 2006).

This analysis makes it all the more surprising that the EU should have, thanks to the 2001 White Paper on European Governance staked 'its future on the successful application of governance arrangements' (Schmitter, 2007, p. 11). The cosmopolitan notion that constitutional patriotism can serve to define a political community connected to a polity that is not a state is partly a recognition that the governance model that relies on representing sectoral segments of the people undermines the notion of citizenship as well as the conditions for democratic accountability. Constitutional patriotism posits that individuals' political identity can derive from the constitution they live under, establishing a political bond that constitutes a political community without relying on the imagined community of the nation (Cronin, 2003). Regardless of whether or not rights and values – especially those considered universal – are sufficient to produce the sameness that generates a sense of community, the question for this article is how this concept accounts for the legitimation of supranational political authority.

Proponents of a European constitutional patriotism assume that this novel form of political community without statehood or nationalism will be the product of the conferral by the EU of specific individual rights or the promotion of certain constitutionally-enshrined values. Although member states themselves have a strong (albeit far from unblemished) tradition of rights protection, EU-conferred rights can take three forms: 'rights against the institutions and agents of the Community ... rights against institutions of the individual's own nation state ... rights against the institutions of a Member State other than the individual's own' (Preuss, 1996, pp. 548-9). The granting of rights against member states, whatever their precise nature, evidently entails increasing the scope of EU competences. This explains why the establishment of a patriotic constitutional bond between EU citizens is also associated with calls for the parliamentarisation of the EU polity, which supposes fewer national vetoes, greater powers for the European Parliament and the transformation of the Council into an upper house (Habermas, 2001b).

The assumption here is that the first step towards a European *demos* is the founding of a new EU constitutional order that legitimises the extension of EU competences. A constitution creating new rights for EU citizens – particularly *vis-à-vis* their member

state – is thus seen as a necessary prelude for the political bond that will eventually enable the emergence of pan-European political parties or voluntary associations and help mould a common public sphere. However, such an account of the supposed origins of constitutional patriotism singularly fails to acknowledge the role played by the nation in the process of legitimising the construction of a European constitutional order in the first place. Given that EU treaty reform requires the unanimous consent of the member states (with various forms of domestic ratification), the procedure for justifying an EU constitution depends to a very large extent upon the ability of each member state to emplot such constitutional change into their national narrative.

As the debacle over the Treaty Establishing a Constitution for Europe unequivocally demonstrates, the process of fundamental constitutional change in the EU is highly fraught. The ability of representative politics in each member state to justify such transformative change differs from country to country. Indeed, it is most problematic precisely in those countries where Europeanisation has proved most difficult to reconcile with a national narrative, whether because of an insular tradition (United Kingdom), strong attachment to Atlantic security guarantees (Poland, Czech Republic) or where Europe is seen as legitimate only when compatible with certain national interests (France).

Moreover, the national element of the debates over the EU constitution is further evinced by the appearance in different contexts of heterogeneous points of contention or associated fears, such as the Charter of Fundamental rights in Britain, the ‘Polish plumber’ in France or immigration more generally in the Netherlands. A narrative of integration common to all countries is lacking. Even where Habermas’ notion that ‘the common core of a European identity ... is the lasting memory of a nationalist excess and moral abyss’ (1998, p. 21) can be said to apply – certainly not the case in Britain or Ireland – ‘the manner in which such [painful memories] are interpreted varies so widely that talk of a “core” European identity along these lines is unconvincing’ (Turner, 2004, p. 302).

Hence in the face of such multifarious, nation-specific arguments over the merits and demerits of EU constitutional change it is difficult to describe the establishment of a European constitution as a post-national moment. This can be seen in the eventual downgrading of the Constitutional Treaty into a ‘Reform Treaty’ after the former proved impossible to ratify unanimously. This is why, as Bellamy and Castiglione (2004, p. 190) explained even before the failed 2005 referendums on the EU Constitution, the constitutional dialogue in the EU over the last decade has not produced ‘a move to an idealistic post-national, post-sovereign utopia based on a consensus on the just and the good’. Rather, as different member states have negotiated and justified constitutional reform on different grounds according to the concerns of their separate *demoi*, the result has been a ‘negotiated compromise’ (*ibid.*). This compromise is constituted by ‘mutual exclusions, limited cooperation and ... the acceptance of important differences – including derogation from certain common policies, multiple speeds and a variable geometry’ (*ibid.*: 191). This complex web of exceptions and opt-outs is precisely the price paid for having to emplot supranationalism into the representative politics of twenty-seven nation-states.

It thus appears that constitutional patriotism cannot provide a genuinely post-national way of legitimising the EU polity as the constitution that is supposed to engender a common political identity will itself be the product of a plurality of debates, memories and reasons associated with various national narratives. In fact, constitutional patriotism can be understood as the product of viewing European integration through a particular national lens since the concept itself was conceived in the German Federal Republic as a means of rethinking political identity in a country with such a chequered past (Turner, 2004). Thus as things stand no EU constitution will be mandated in a post-national manner. Even if in the future a single demos subsequently refers to such a constitution as its political lode star, the origins of this document, so long as constitutional change is based on unanimous state agreement, will lie in the representative politics of nation-states.

Conclusions

This article explored post-national theory from the perspective of whether post-nationalism was adapted for legitimising the EU supranational, non-state polity in the absence of a national bond between its citizens. The analysis developed a framework for understanding the functioning of political representation in the modern European nation-state as one based on establishing a distinction between the state, the government and the people. In this context it was shown how the nation – in particular the transgenerational national narrative – serves to complement democratic accountability mechanisms by giving substance to sanctioning, governing and mandating accountability.

It is by contrast with the nation-state model of democratic accountability through representation that post-national alternatives for legitimising the EU appear flawed. Democratic governance is an unconvincing solution because in trying to establish transnational networks linking European civil society with policy makers governance does not specify exactly how and why citizens will be better represented in such networks. Moreover, governance, with its reliance on stakeholders, experts or lobbyists, does away with the idea of a common good pertaining to the whole political community, which all representatives ultimately are trying to serve and which can thus trump certain particular interests. Thus there is little evidence to suggest that governance offers any improvement on the existing system whereby EU citizens are represented largely on the basis of national politics, both by their governments in the Council (whose actions are accountable to national parliaments and public spheres) and by their MEPs in the European parliament (elected in ‘second order’ contests where national issues predominate).

Constitutional patriotism, on the other hand, expects a post-national identity to emerge in the wake of a new EU constitution that establishes new rights for its citizens. However, this model conveniently neglects to take account of the importance of the national narrative for mandating political change in an EU system based on unanimous agreement for treaty reform. Thus the patriotism imagined to be post-national presupposes the acquiescence of nation-states that have successfully incorporated an EU constitution into their national narratives. In this way the supranational EU polity can hardly be said to have been legitimised without the nation-state.

By pointing out certain flaws in post-national conceptions of EU legitimacy, this article thus confirms that redesigning legitimacy and representation for the supranational era is an arduous task. If the analysis is correct, it appears that post-nationalism is far from being the most promising solution to the problem of legitimising a supranational polity. Rather, what is needed seems to be some new admixture whereby the representative system of the nation-state can be combined with direct democracy at the regional, national and European level (Abromeit, 1998). In this way the strengths of the system of representation based on the nation can be retained and complemented by measures that reflect the fact that the nation is one but not the sole political community that matters in the organisation of political authority in modern Europe.

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