WILL INDIVIDUAL ATTACHMENTS AMONGST EU CITIZENS TURN THEM INTO EUROPEANS?
Mismatch between the EU institutional context and deliberative democracy
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WILL INDIVIDUAL ATTACHMENTS AMONGST EU CITIZENS TURN THEM INTO EUROPEANS?

MISMATCH BETWEEN THE EU INSTITUTIONAL CONTEXT AND DELIBERATIVE DEMOCRACY

Through a closer examination of Habermas’s constitutional patriotism model, the article disentangles the relationship between EU institutional developments, the possible unfolding of a European public sphere - conceived by Habermas as the only source of legitimacy for binding decisions, and as a necessary prerequisite for the development of a civic sense of belonging to the EU by European citizens - and the affective (‘horizontal’) relations amongst Europeans. Several dynamics are brought to light. First comes through clearly that at the core of Habermas’s conception of supranational citizenship lies the unfolding of horizontal relations amongst Europeans – necessary to the functioning of the European public sphere which is central to Habermas’s model. However, if it is via the development of a vertical attachment – itself fostered by European policies aimed at the creation of a European identity – that affective relations amongst citizens can also develop, the way horizontal forms of integration amongst individuals can reciprocally feed into the identification of citizens with the EU project as a political entity is less clear. The article argues, in particular, that the EU institutional context is not conducive to the development of a deliberative form of democracy, because institutions are structurally predetermined to filter public discussions in such a way that not all participants to the public debate feel represented equally by those political decisions that emerge. In such a context, and even assuming that a genuine transnational public sphere would progressively develop, citizens are unlikely to develop a sense of belonging to a genuine community of citizens.

Les attachements individuels entre citoyens de l'Union européenne les transformeront-ils en Européens?

Discordance entre démocratie délibérative et contexte institutionnel européen

A travers une lecture approfondie du modèle de patriotisme constitutionnel d'Habermas, cet article tente d'élucider le lien entre développements institutionnels européens, l'émergence possible d'une sphère publique européenne – conçue par Habermas

1 I would like to thank all the participants of the SEE Colloque ‘Amours et Désamours entre Européens’ in Grenoble, 6-7 December 2007, and in particular Olivier Costa for his detailed and valuable comments on an earlier version of this paper. I would also like to thank Christophe Bouillaud, Celine Belot as well as an anonymous referee for their very useful comments on later versions of my work.

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comme la seule source de légitimité des décisions publiques et comme condition préalable au développement d’un sens civique de citoyenneté chez les Européens – et les relations affectives (‘horizontales’) entre Européens. Plusieurs dynamiques sont mises en lumière. Tout d’abord, il ressort qu’au cœur de la conception habermasienne de citoyenneté supranationale se trouvent aussi les relations horizontales entre Européens, essentielles au fonctionnement de la sphère publique européenne – et sur laquelle repose le modèle d’Habermas. Cependant, si l’existence d’un attachement ‘vertical’ au système politique européen – lui-même promu par les initiatives de l’Union européenne visant à la création d’une identité européenne – peut permettre aux relations affectives entre Européens de se développer, la façon dont les formes horizontales d’intégration entre individus peuvent, réciproquement, avoir un impact sur l’identification des individus à l’Union européenne en tant que projet politique est moins claire. L’article montre, en particulier, que le système institutionnel européen n’est pas propice au développement d’une forme délibérative de démocratie, dans la mesure où les institutions sont structurellement prédisposées à filtrer les discussions publiques de telle manière que les différents participants au débat public ne se sentent pas également représentés à travers le contenu des décisions politiques. Dans un tel contexte, et en imaginant même l’éventualité qu’une réelle sphère publique européenne émerge progressivement, il est peu probable que les citoyens de l’UE développent un sentiment d’appartenance à une réelle communauté de citoyens.

Introduction

Scholars who have tackled the issue of European identity, have, so far, been mainly preoccupied with the one core dilemma: how to reconcile the need to foster a sense of European citizenship amongst people in order to give the EU the possibility of becoming a real political project, on the one hand, and the absence of a common history and culture amongst European peoples as a possible basis for a sense of common awareness, on the other. The ‘constitutional patriotism’ of Habermas, the ‘supranationalism’ of Weiler, the ‘European commonwealth’ of MacCormick, the ‘community of concern and engagement’ of Kostakopoulou have been proposed as solutions to ensuring citizen participation in the EU without resorting to the use of ‘culture’ and history as tools for fostering a sense of common awareness among European citizens. If the diversity of the approaches developed reflects the diversity of the scholarly background of their inventors, what these approaches have in common is their shared belief that there is no necessary, conceptual link between an ethnos and democracy. Ethnos, which refers to the characteristics of the people, their cultural identity and value-based sense of community, has indeed been conceived in more traditional theories of democracy, as the only basis for democratic authority.
Yet, the idea of ethnos as the fundamental basis for democratic authority has been largely debated and contested in discussions concerning democracy, citizenship and political participation in the context of the EU. Weiler, for instance, has argued that membership of a polity can be conceived in civic-non-organic terms, in so far as such a project is based on ‘legal rights’ that are in agreement with ‘the foundational purposes of European integration’ (Weiler 1995: 167). The mirror critique against models of civic citizenship sees them as ‘ideal’ types which disregard more subjective and effective elements of national (in the event European) identity formation.

Another commonality to these approaches is indeed their focus on vertical dynamics of integration – the process by which citizens develop a feeling of belonging towards a European political entity, rather than the horizontal transformation of affective relations amongst Europeans. A major limitation, one could argue. Simmel told us, a century ago, that ‘it cannot be said that society must exist before all these separate relations [amongst individuals] make their appearance in society’. If ‘any single relation may be eliminated, to be sure, since in the societies known to us there are always enough remaining relations, [if] we try to project ourselves beyond all these relations, however, there remains no society at all’ (Simmel 1903: 664). Horizontal affective relations amongst Europeans seem, at first reading, to have remained neglected by political scientists and philosophers. Through a closer examination of Habermas’s constitutional patriotism model, we will however examine, here, the relationship between vertical and horizontal dynamics of integration, arguing that rather than being two separate aspects of integration, the unfolding of one depends on the other.

In a first stage, we will disentangle the relationship between institutional developments, the unfolding of a European public sphere\(^2\) - conceived by Habermas as the only source of legitimacy for binding decisions, and as a necessary prerequisite for the development of a civic sense of belonging to the EU by European citizens - and the horizontal relations amongst Europeans that may ensue. At the centre of our reflection will be the way vertical integration, understood as citizens’ awareness of being part of a common political entity and a common community of norms, impacts on horizontal attachments amongst individuals. In a second stage, and by taking the relationship between horizontal and vertical

\(^{2}\) An extended definition of the term public sphere in section 1.
developments in a bottom-up ‘other way round’ fashion, we will reflect on the way horizontal attachments amongst Europeans can find their expression via institutional mechanisms. At the centre of our thinking will be the ability of the EU political system to reflect the sum of public debates in a non-neutral manner, without which prospects for the unfolding of a civic sense of citizenship in the ‘Habermas mode’ are also poor. Habermas’s model is examined under the light of an in-depth analysis of the EU institutional system as well as the existing literature on the EU institutional bias (Scharpf 1996, Héritier 1999) and the uneven access of different societal groups to the EU system (Warleigh 2001, Muchalowik 2004, Baumgartner 2007). In Habermas’s account, public debates taking place via the media, the existence of a civil society or other types of publics can gain consideration in the centre via various channels, amongst which Courts and parliaments are the most obvious ones. From the deliberative perspective, decisions are legitimate when they are steered by communication flows that start at the periphery. Yet, the central argument made here is that, in the EU institutional context, the political system filters public debates in such a way that not all participants to the public debate feel represented equally by those decisions that emerge from the centre. Even with the development of a genuine transnational public sphere (assuming optimistically that such occurrence would ever be possible), citizens would be unlikely to start identifying with the values of the EU, if they would perceive a mismatch between the democratic rhetoric that is embodied by the European Community and the actual democratic deficit in EU policy-making. In the last part of the article, it will be argued that in so far as EU-level decisions do not reflect the sum of public debates, they may also limit the ability of citizens to socialize as ‘Europeans’. Arguably, the reverse outcome could even occur, where citizens would come to perceive the discrepancy between the content of communication within the public sphere and the tenets of EU-level decisions, and turn back against the EU project. Going back to the words of Simmel, though, we will give thought, in our conclusions, to the possibility for socialisation to occur in a more antithetical form, as horizontal attachments developing out of a feeling of resistance to the current manifestation of the EU project.
1. The we feeling in Habermas

1.1. The public sphere as a source of political legitimacy

Departing from the assumption that a democratic order does not inherently need to be mentally rooted in the ‘nation’ as a pre-political community of shared destiny (Habermas 2001a: 76), Habermas argues that once embedded into a liberal political culture, the democratic process can provide the necessary ‘glue’ that binds together citizens with different interests, cultural forms of life, or worldviews. To Habermas, in complex societies it is ‘the deliberative opinion- and will-formation of citizens, grounded in the principles of popular sovereignty, that forms the ultimate medium for a form of abstract, legally constructed solidarity that reproduces itself through political participation’ (Habermas 2001a: 76).

Along these lines, Habermas points to the constructed nature of identity formation at the nation-state level. National consciousness ‘rests on the egalitarian self-understanding of democratic citizens, and arises from the communicative context of the press, and from the discursive struggle for power of political parties’ (Habermas 2001a: 102). More to this, democracy and the nation-state have ‘jointly produced the striking innovation of a civic solidarity that provides the cement of national societies’ (Habermas 2001b: 16). If one acknowledges to the artificially moulded nature of national identities, then hopes for the unfolding of a European identity are founded. In the absence of European ‘nation’, the democratic process is indeed, if any, the only path towards the possible creation of a form of solidarity amongst European citizens.

Habermas’s constitutional patriotism’ conceives the creation of a supranationally shared political culture based on the rule of law, separation of powers, democracy and respect for human rights. In the context of the EU, the argument goes that owing to the development of a European public sphere, civic solidarity can replace a corresponding community as a pre-political basis of trust. Yet, a politically constituted context of solidarity among citizens who despite remaining strangers to one another are supposed to stand up for each other is a communicative context rich in prerequisites. According to Habermas, civic solidarity can be fostered under the following conditions: existence of a European charter (constitution), development of a real European party system, unfolding of a European civil society complete with interest groups, non-
governmental organisations (NGOs) and citizens’ movements, the presence of arenas for deliberation, the existence of a degree of responsiveness in the decision-making system (accountability) and the unfolding of transnational mass-media.

Thus, the model is based on a strong notion of participatory democracy and promotes, in particular, the flourishing of a European public sphere. Habermas defines the public sphere as ‘a network of communicating information and points of view […] the streams of communication are, in the process, filtered and synthesized in such a way that they coalesce into bundles of topically specified public opinions. Like the lifeworld as a whole, so, too, the public sphere is reproduced through communicative action, for which mastery of a natural language suffices; it is tailored to the general comprehensibility of everyday communicative practice’ (Habermas 1996: 360). For Habermas, a viable public sphere consists of a communicative space (or spaces) in which relatively unconstrained debate, analysis and criticism of the political order can take place. The existence of a ‘public sphere’ entails that equal citizens assemble into a public and set their own agenda through open communication. In more recent works, Habermas closely linked the idea of public sphere to the principle of universalistic argumentation. The deliberative perspective posits that opinions are shaped and tested in public debate and that people are able to change their opinions when faced with better arguments (Calhoun 1992). For Habermas, neither given institutions nor concrete persons guarantee the legitimacy of the law. Only the public debate in itself has norm giving power (Eriksen and Weigard 2003).

1.2. The public sphere as the vector of horizontal attachments

Habermas’s constitutional patriotism model, with its focus on the conditions for democratic participation as basis for the unfolding of a we feeling among Europeans, is often understood as a vertical approach per se. Horizontal relations amongst citizens are, at first sight, ignored by civic citizenship approaches of the Habermasian type. Constitutional patriotism, in its focus towards citizens’ attachment to democratic values, seems to concentrate essentially on citizens’ vertical attachments towards a political community. But coming back on these very conditions for democratic participation - the existence of a well functioning public sphere, essentially - Habermas’s vision becomes more composite. Via their engagement in
transnational discursive debate, European citizens also engage in a process of recognition of akin interlocutors in other states. Participation in the discursive debate implies the identification of other participants to the discussion as equal and valuable partners in the deliberation process. For individuals to show their readiness to change their stance in light of better arguments, the recognition of ‘other’ citizens as similarly valuable interlocutors is a prerequisite. Thus, if citizens assemble into a public in order to set the agenda through open communication, deliberation and discursive conflict can also be the mediums for the development of transnational horizontal attachments. As pointed by Delmotte (2007), exploring the connection between vertical and horizontal integration comes down to examining how vertical integration, which is activated via institutional mechanisms, influences processes of horizontal integration, which unfolds via the transformation of affective relations amongst Europeans.

Coming back to Habermas’s account on the building of national consciousness, two points become relevant. National consciousness could arise, Habermas explains, in a context where developed an egalitarian self-understanding of democratic citizens and where the discursive struggle for power of political parties took place (Habermas 2001a: 102). Two aspects of horizontal integration are detectable: the process by which citizens grow to perceive each other as equal (via their equal participation to the democratic process, and, more specifically, to the public space of communication) and the way publicised lines of conflicts take shape via the process of public deliberation. The two dimensions are interdependent, since, as mentioned already, for individuals to enter a situation of discursive conflict, the prior recognition of other parties to the conflict as equal interlocutors is necessary. Perhaps can we disentangle, here, an interesting way of approaching horizontal affective relations amongst citizens and their impact on community-building mechanisms. Simmel pointed to the socialising function of conflict, arguing that ‘although antagonism in itself does not constitute socialisation, no more is it likely to be lacking as a sociological element in the formation of societies’ (Simmel 1903: 498). Simmel tells us, that historically, every unification contains, along with factors which he qualifies as ‘unifying’, others which make against unity. Perhaps it is through the delineation of transnational (EU-wide) fractures of opinions, views or concerns, that a genuine we feeling will unfold amongst Europeans. If current research on the matter is pessimistic
as to the development of a genuine European civil society, it is still possible to detect — if yet impossible to measure, given the lack of organisation and concerted mobilisation of these groups — growing transnational fractures amongst Europeans. ‘Postmaterialists’ share concerns, such as clean air and water, across borders of EU states. Workers and trade unionists from old EU member states expressed their common worries about a possible ‘race to the bottom’ of welfare systems further to the 2004 Eastern enlargement. Businesses and corporate actors are best organised transnationally and have found receptive interlocutors within the European Commission (Doug 2002). If the delineation of such fractures is still very tentative, given the perseverance, also, of national-based preferences and structures of mobilisation, the potential emergence of transnational solidarities and shared identities amongst citizens from different states who acknowledge themselves as similar is highly relevant to our discussion on community-building.

1.3. The socialising function of conflict within a Community of norms

The observation of the socialising function of conflict becomes indeed all the more relevant in the context of EU integration. Still along with Simmel, when conflict arises in a context in which ‘the observance of forms […] are held to be inviolable by both parties’ and the later are aware of ‘being encompassed by a social power and order which are the means of giving to the procedure its significance and security’, the struggle rests on a presupposition of a unity and a community of the parties very tightly maintained (Simmel 1903: 510). It is the creation of institutional and legal mechanisms which allows conflict to take place within a unity of norms and limitations — itself necessary for struggles to experience their community-building function. There comes through again the tie between vertical and horizontal dynamics of integration. In the EU context, discursive conflict is indeed delineated by citizens’ common adherence to the same democratic principles and rules of procedure. Perhaps what is however lacking is an awareness, amongst citizens, of the common

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1 See for instance Warleigh (2001) for an account on the absence of a genuine European civil society, or Doug (2002) for an analysis of the obstacles towards the organisation of EU-wide social movements.

2 Inglehart (1990) has described the process by which certain groups have shifted from an overwhelming emphasis on material well-being and physical security towards greater emphasis on the quality of life.
rules. For conflict to fulfil its socialising function, a prior consciousness of belonging to a community of norms is essential. This is where the Community’s attempt to resort to the manufacturing of symbols, as means of fostering European citizens’ *we* feeling, becomes of the essence. When reflecting on the preconditions for the unfolding of a European public sphere, Habermas was also concerned with the role of symbols. He suggested, in particular, the creation of a European Charter (or European Constitution), arguing that the making of a Constitution for Europe could play a vital catalytic role, as it represents ‘a unique opportunity of transnational communication, with the potential for a self-fulfilling prophecy’ (Habermas 2001b: 17). To Habermas, a European Constitution could have an inducing effect on the formation of a European demos (Habermas 1999), on the condition that equal individual liberties, membership rights, rights to legal protection and due process, and social welfare rights would be granted to EU citizens. Thus, the more the institutional system of the EU is ‘integrated’ and perceived as such by citizens, the greater the socialising function of conflict also can be. Vertical attachments to the EU ensure that antagonisms, conflicts and cleavages amongst European citizens are delineated by their feeling of belonging to the same political community, condition upon which conflict can exercise its socialising function according to Simmel. When looking at vertical and horizontal integration dynamics as intertwined, it is possible to distinguish a clear correlation between institutional designs, the functioning of the European public sphere, and horizontal attachments in the form of developing transnational cleavages in the deliberation process.

2. The Public Sphere and Institutional Structures in the Habermasian Model

The underlying presence of horizontal attachments in the Habermasian vision of community-building is clear. The role of institutional developments on the development of a *we* feeling amongst Europeans is also easily detectable. Remains however to be examined how the sum of public debates amongst citizens, were they to develop up to the unfolding of a fully-fledged European public sphere, can in principle be reflected in political decisions. Horizontal attachments amongst citizens – whether in the shape of the
deepening of deliberative practices and the delineation of transnational fractures of opinion amongst Europeans - need, in order to feed back positively into the political process of integration, to find an expression into the actual content of decisions that emerge at the EU level.

Elaborating on the relationship between the sum of debates and patterns of interaction taking place in the public sphere, and their reflexion in actual decisions by the centre, Habermas notes that 'binding decisions, to be legitimate, must be steered by communication flows that start at the periphery and pass through the sluices of democratic and constitutional procedures situated at the entrance to the parliamentary complex or the courts' (Habermas 1996: 356). Thus, a functioning public sphere presupposes the existence of institutions, which can relay action originating in the lifeworld to the system world. By such institutions are meant institutionalised spaces of deliberation as well as those political institutions that ensure that decisions are made and carried out: complexes of administration, judicial system and parliamentary bodies. In Habermas’s conception, if opinion formation takes place outside the system, it yet needs to be channelled towards the system before emerging as a decision. Politics, as a constitutionally regulated action system, is connected with the public sphere and ‘depends on lifeworld sources of communicative power’ in such a way that ‘the political system is not subject to the external constraints of a social environment but rather experiences its internal dependence on enabling conditions’ (Habermas 1996: 385). These enabling conditions for legitimate binding decisions are, in Habermas’s words, not at the disposition of politics. To be legitimate, binding decisions must depend on processes of opinion and will-formation situated at the periphery. Habermas acknowledges that such conditions are not fulfilled in Western democracies, where we observe, rather, an operating mode based on ‘routines’ or established patterns of decision-making. Where Habermas sees a possibility for his model to unfold, however, is through a combination of a certain ‘openness’ of routines to renovate impulses from the periphery in a case of conflict, when ‘processing matters according to the usual conventions is eclipsed by another mode of operation’ (Habermas 1996: 357). In times of crisis, Habermas argues, actors in the civil society can succeed in playing a momentous role, so as to reverse the political system’s mode of problem solving. Issues are, following Habermas’s line of thought, publicized by the civil-social periphery, to such an
extent that they receive formal consideration within the core political system. This is where lies, the article argues, the greatest obstacle to the possible functioning of deliberative democracy in the EU institutional context and, thus, the main critique to vertical (civic) approaches of European citizenship.

3. The EU Institutional Context as a Biased ‘Filter’

3.1. The EU institutional bias

It has already been argued by researchers of the EU, that EU institutional structures, understood as formal and informal rules within which actors debate, bargain, and decisions are made, privilege the access of certain actors, rather than others, to the formulation process of EU policies. The privileged access of commercial actors to EU institutions, in particular, has been widely discussed (see for instance Baumgartner 2007). Héritier (1999) also argues that despite the Commission’s attempts to reinforce democratic support and accountability of the EU decision-making process – by improving the transparency of policy-making and promoting the creation of supportive networks in policy domains - final policy outcomes at the EU level usually disregard concerns for overall well-being and the polity at large (Héritier 1999: 279). Scharpf (1996), in a way that can be more directly related to our discussion on the relationship between institutions and the public sphere, maintains that EU decision rules comprise a ‘decisional bias’, which favours certain actors and their preferences. He explains that whereas negative integration – which consists, essentially, of eliminating trade barriers - can be implemented by the European Commission and the European Court of Justice (ECJ), which make use of their regulatory and judiciary powers respectively, positive integration – which aims to harmonise national legislation and set up common forms of administration - requires the consensual agreement of twenty-seven member states within the Council of Ministers. In what he calls the ‘supranational-hierarchical mode’, the Commission, the ECJ and the European Central Bank (ECB) (Scharpf 2006: 851) are able to exercise policymaking functions without the involvement of politically accountable actors in the Council or in the European Parliament (EP). The ECJ has indeed successfully asserted the supranational character of EU decision-making back to the 1960s, when it established the doctrines
of the supremacy and direct effect of Community law. Concretely, this meant that litigants in every member state could invoke EU law before national courts. Following this line of reasoning, negative integration and market liberalisation are more easily set in place than market-correcting mechanisms in the EU decisional context. Regardless of debates taking place in the periphery, certain decisions are ‘institutionally’ favoured by the centre.\(^5\)

Habermas acknowledges that in most Western democracies, decisions are taken according to established modes of decision-making and that in order for deliberative democracy to function, new concerns must find channels - political parties or important court decisions – to affect public agendas. He explains that in times of crisis, societal actors can publicize their concerns via a multiplicity of mediums, such as the media, universities, clubs, and mass protests, or again initiate litigation strategies to push through their agendas via the judiciary channel. Court decisions, the election of marginal parties or changes in the platform of mainstream parties are the main means through which concerns can make their way to the core of the political system and receive formal consideration (Habermas 1996: 381). In a context in which a decisional bias favours market liberalising policy solutions, Habermas’s vision of deliberative democracy could unfold on the condition that the political system would be able to absorb new voices and their concerns. It is only on this condition too, that the socialisation of Europeans, through transnational deliberation and discursive conflict, can fully operate. However, such outcomes, in the EU context, are most unlikely, for various reasons. First and foremost, the ECJ and the European Parliament are unlikely to play the role conceived by Habermas as vectors of voices from the periphery.

3.2. The ECJ as a predisposed vector of the periphery

The role of the ECJ as a political actor in the EU policy process has been widely discussed by political scientists. Academic lawyers have also argued that the ECJ succeeded in transforming the founding Treaties into a Constitution (Dehousse 1998; Weiler 1993; Bieler (2006) and Apeldoorn (2002) have also argued that the EU has, since the mid-1980s, been restructured along neo-liberal lines, pointing in particular to the role of the Economic and Monetary Union (EMU) in setting price stability as the primary objective and constraining member states’ fiscal policies through the convergence criteria of the stability pact.
Burley and Mattli (1995) have shown how European law has acted as a shield that effectively insulates the legal system from political tempering by national governments (Burley and Mattli 1995). The ECJ’s assertive role can be evidenced in nearly as many sectors as exist EU sectors of intervention, but what is interesting is the ‘path’ used by the ECJ in order to extend the remit of EU law. Put simply, the ECJ has often asserted the competence of the EU in new sectors through the economic ‘backdoor’. In the field of social policy for instance, the ECJ has eroded member states’ sovereignty over their social policy regimes in the interest of labour mobility (Liebried and Pierson 1995). EU intervention in the sector was produced as part of the market-building process. The ECJ has been successful in defining policy issues from an economic perspective, so as to be able to apply the economic principles of the EU Treaty to sectors that were formerly beyond the remit of EU competence. The same pattern typically applies to sectors where the EU did not derive any legal competence from the Treaties, as has been the case for instance in the field of cultural policy (Littoz-Monnet 2007). When the ECJ had to weight cultural policy considerations over free market ones, cultural concerns were only exceptionally given priority. In the same way, when the ECJ had to balance workers’ rights against the freedom to provide services, it often ruled in favour of the free market ideal. In the Viking case for instance, which centered on a Finnish shipping company (Viking Line) that decided to reflag its ship to Estonia in order to benefit from lower wage costs, the ECJ gave weight to free market considerations. Further to the International Transport Workers’ Federation taking collective action on behalf of the Finnish seamen in order to dissuade Viking Line from effecting the proposed changes, Viking Line argued before the ECJ that the action constituted a breach of the company’s freedom of establishment. EU judges found that collective action could indeed be exercised only under strict conditions if it impeded businesses from locating where they wished within the EU.

Tackling problems from an economic angle was the only way for the ECJ to assert the EU’s competence, but it was a very efficient one. The Commission has served as an efficient accomplice to the Court in its supranationalisation strategy via the economic principles of the Treaty. The Commission’s rule-making powers are, at first sight, confined to routine decisions and the implementation of

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6 Case C-438/05, 11 December 2007, ECJ.
Council legislation. Yet, the Commission has proved that it could use its regulatory powers in an extensive fashion in the field of competition policy. By defining what constitutes ‘discrimination practices’ and ‘unfair competitive practices’, the Commission can find opportunities for enacting ‘policy’ law (Nugent 1999). EU competition policy has four main aspects: antitrust and cartels, merger control, state aids and liberalisation. The powers were used purposefully by DG Competition within the Commission in a way that sometimes went further than states’ initial expectations. By giving the European Commission the right to regulate in the field of competition policy, member states locked the EU decision-making process towards a certain path. The application of EU competition law was to be possible without further involvement of member states, in a supranational mode. Beyond the strict exercise of its regulatory powers, the Commission has also acted as a skilful agenda-setter (Cram 1997). Jabko (1995) also shows how the European Commission successfully sold the notion of ‘the market’ to different audiences, so as to promote far-ranging and unexpected institutional change.

The ability of the ECJ and the Commission to apply the economic principles of the ‘Treaty in a supranational mode was exploited by commercial actors. Commercial interest groups initiated ‘eurolitigation’ strategies before the Court, invoking EU law in order to challenge legislative arrangements at the domestic level (Burley and Mattli 1993). If some notable exceptions must be noted, where the ECJ in fact favoured cultural, environmental or social policy considerations over economic ones, it is also possible to keep these judgements in the category of exceptions. Via the rulings on the principle of mutual recognition, and in fields such as social policy (Liebried and Pierson 1995) or audiovisual policy (Harcourt 2004), the ECJ has consistently favoured objectives of market liberalisation. What this implies, in relation to Habermas’s argument, follows. In the EU context, the Court cannot fulfil the role conceived for Courts by Habermas, when he argues that new issues can make their way towards the political system via important court decisions (Habermas 1996: 381). Because at the core of EU law are economic principles, ECJ rulings are inherently destined to be based on these principles – making the definition of exceptions a possible but less than obvious endeavour.
3.3. The EP as an inhibited Vector of the Periphery

Now turning to the role of the EP, as a possible mediator of debates raised in the public sphere, several points are to be made. Following Habermas, changes in the platform of mainstream parties, or the election of marginal parties, are the main means through which concerns can make their way to the core of the political system and receive formal consideration. Yet, such changes are unlikely to occur in the EU institutional context. No genuine ideological debate has taken place so far within the European Parliament. European parties tend to share similar positions and vote together on most important amendments to EU legislation. According to Hix and all (2003), the lack of competition between parties is a sign, among others, of the democratic deficit that exists in the EU. If this is certainly true, prospects for the development of genuine European parties, which could potentially change their platform under pressure from the periphery, are weak. The rules that govern the legislative process do not leave much room for ideological debate among parties within the EP. For most procedures, an absolute majority of all MEPs is required to amend legislation. If the European Parliament does want to pull its weight onto legislative outcomes, it has no choice but to be collusive. In relation to this argument, we could even say that European parties have acknowledged their collective institutional interest to increase the influence of the EP as a whole (Kreppel 2000). This also implies that the EP must pass moderate proposals that will be acceptable to the other institutions if it wishes to influence policy outcomes. As for marginal parties, if they can be elected and enter the European Parliament, as is already the case, they can hardly be influential for the reasons mentioned above. Because of existing decision-making rules, the European Parliament is bound to be moderate, regardless of dissident voices that may exist within it. In the fragmented institutional context of the EU, where legislative texts filter through the Commission, the Council and the Parliament before emerging as binding decisions, the EP cannot be responsive to new, possibly dissident, stakeholders’ concerns and ensure that they are reflected in final policy outcomes.

The unfolding of a genuine European civil society and of transnational deliberation would therefore, in this respect, not necessarily change the current state of things. The sum of debates which would stem from a fully-fledged European public sphere, if it were to develop, would indeed not be likely to find those necessary
'sluices' for their introduction into the EU political system, so as to disturb established 'routines' and policy agendas. Current attempts from the European Commission to link civil society to the European decision-making process only reinforce this argument. In line with academic research proposing forms of participatory democracy in order to address the crisis of representation in the EU, EU official documents have included the participation of civil society in institutional reform projects (Saurruger 2007). However, the recent stress upon the necessity to include the civil society to the policy-making process is rather instrumental to the Commission's attempts to further its favoured agenda in the absence of genuine accountability mechanisms. Recent research shows, rather, that social movements are unable to act as catalysts for the participation of citizens (Balme and Chabanet 2001) and that weaker social actors continue to face heavy transaction costs when they attempt to organise across borders (Saurruger 2007).

4. **Feed-back mechanisms between vertical and horizontal forms of attachments**

The ECJ and the EP are thus unlikely to play the role conceived by Habermas as vectors of voices from the periphery. The Court, rather, remains locked into its role of guardian of the EU Treaty, itself founded on economic principles. The Parliament, if more permeable to dissident voices and more prone to the unfolding of deliberative modes of deliberation, remains bound to make moderate proposals when interacting with other European institutions. In a situation in which dissident voices from the periphery have few channels to access the centre, a general identification and socialisation of citizens as 'Europeans' sounds unlikely. When only certain groups find access to the decision-making process, others are more likely to turn back against a political entity which they perceive as unable to reflect their concerns into concrete decisions. Political scientists have already pointed to the uneven access to the EU institutional system of different societal groups (see for instance Michalowitz 2004, Warleigh 2001). Saurruger (2007) also explained that when civil society encounters the European Union, it models its behaviour around techniques of interest representation that are accepted by European officials instead of engaging in more contentious behaviour. As mentioned earlier, Doug (2002) showed that business
associations influence the decision-making process, but weaker social actors continue to face imposing transaction costs when they attempt to organise across borders. In a context in which different voices have unequal access to the center, horizontal attachments amongst Europeans will not necessarily correlate with their greater socialisation as members of the EU as a political entity. Those citizens and societal groups that would not see their preferences being represented through the content of EU-level decisions may, on the contrary, develop Eurosceptic sentiments and feel less and less attached to the EU project. This phenomenon has already been discussed, amongst others, by Taggart and Szczerbiak (2002), who identified a ‘soft’ form of euroscepticism, where there is no principled objection to European integration, but where concerns on the content of certain policy areas lead to the expression of qualified opposition to the EU. A recent manifestation of such reaction took shape in the form of massive demonstrations against the European Commission proposals for the Directive on Services in the Internal Market, before it was adopted in December 2006. Workers and trade unionists from Belgium, France, Germany, Italy and the Netherlands, gathered together in Brussels against the proposals from the Commission on services liberalisation. A similar blend of eurosceptic discourse prevailed during the campaign preceding the Constitutional treaty referendum in France. A significant share of Euro sceptic arguments came from certain sections of the Left, which opposed the neo-liberal ethos of the EU project, its democratic deficit, and the favoured access of corporate actors to EU institutions (Crespy 2008). Such form of Euroscepticism can be opposed to ‘hard’ eurosceptic sentiments (Taggart and Szczerbiak 2002), which exist when there is fundamental opposition to the EU because it embodies some previously identified ‘enemy’, such as bureaucracy or supranationalism. Whereas hard euroscepticism seems to be more ‘fixed’ as political reaction to the EU, soft euroscepticism is more dependent on the content of EU-level decisions and the ability of the EU to represent different societal groups and interests in a non-biased manner. Thus, if vertical integration, in the form of institutional or symbolic identity-manufacturing initiatives from the EU, seems to impact on the development of horizontal attachments, affective relations amongst Europeans do not necessarily, in return, result in a greater attachment to the EU as a political entity.

There is, however, more to this. If the inability of certain citizens to access the centre certainly hinders the development of vertical
attachments, it may, on the other hand, reinforce horizontal attachments, which arise out of a feeling of resistance to the current manifestation of the EU project. Simmel said that opposition can ‘give us the feeling that we are not completely crushed in the relationship’, and rather ‘permits us to preserve a consciousness of energy, and thus lends a vitality and a reciprocity to relationships from which, without this corrective, we should have extricated ourselves at any price’ (Simmel 1903: 493). If deliberation practices and discursive conflict indeed allow for the reinforcing of existing transnational cleavages of opinion, then conflict could become a vector of socialisation of Europeans. This is all the more true when citizens who may develop antagonistic feelings towards the EU nevertheless keep their sense of belonging to a same community of norms. Such is potentially the case, when one looks at the nature of current euroscepticisms. Left-wing eurosceptics, in particular, debate on the content of EU decisions, but identify with the EU as a new locus of governance. In the event, a growing awareness of the bias of the EU could result in the development of a common European-wide ‘view’ amongst citizens and thus stronger horizontal relations. Possibly, but we now must be only speculative, if horizontal attachments amongst Europeans would develop up to a stage in which organised contentious behaviour would take a genuinely European shape, such developments could affect the content of EU decisions and eventually feed into vertical form of attachments, in such a way that citizens allegiances to the EU as a political project would also intensify.

Conclusion

On a conceptual level, one first remark concerns the impossibility of looking at vertical and horizontal forms of attachments independently. Through a closer examination of Habermas’s constitutional patriotism, came through clearly that at the core of Habermas’s conception of supranational citizenship lie the unfolding of horizontal relations amongst Europeans – necessary to the functioning of the European public sphere which is central to Habermas’s model. However, if it is via the development of vertical

*Although this may not apply to the more radical left-wing voters, who tend to reject the EU in its essence for being a capitalist project, and to ‘hard’ sovereignist eurosceptics who oppose the EU in its essence.
attachments – themselves fostered by the deepening of political integration and policies aimed at the creation of a European identity – that affective relations amongst citizens can also develop, the way horizontal forms of integration can feed into the identification of citizens with the EU project as a political entity is less clear.

From the deliberative perspective, decisions are indeed legitimate when they are steered by communication flows that start at the periphery. Yet, in the EU context, the political system filters public discussions in such a way that not all participants to the public debate feel represented equally by those decisions that emerge from the centre. In such an environment, and even assuming that a genuine transnational public sphere would progressively develop, citizens are unlikely to start identifying with the values of the EU, if they perceive a mismatch between the democratic rhetoric that is embodied by the European Community and the actual democratic deficit in EU policy-making. Thus, a second point to be made is that the EU institutional context is not conducive to the development of a deliberative form of democracy. Prospects for the development of a sense of solidarity among European citizens are not only related to the difficulties of developing a European public sphere, but also to the very institutional design of the EU. In this context, the widely spread development of a civic sense of citizenship amongst Europeans is very uncertain.

Perhaps such considerations ought, however, to be put in perspective. First, discussions on the functioning of Western democracies at the national level have also pointed to the imperfections of their functioning, commenting on features such as the professionalisation of the political elite, the lack of representativity of national assemblies and the role of the media (Gaxie 2003). We ought, thus, to keep a certain reflexive distance, when scrutinising the democratic functioning of the EU. Second, community-building also arises out of antagonism, which, to quote again Simmel’s words ‘although […] in itself does not constitute socialization, no more is […] likely to be lacking as a sociological element in the formation of societies’ (1903: 498). Thus, perhaps, opposition, lack of identification and critical distance towards the EU as a political entity are not most alarming with respect to prospects for community-building. More tormenting are the absence of a well sketched-out European public sphere for conflicts to unfold on a transnational basis, as has been discussed by many others (see for instance Eriksen 2005), and the current failure of the EU institutional
system to absorb the outcome of public debates in a non-biased way, as was argued in detailed here.

**Bibliographie**


