ORIGINAL ARTICLE

Constitutionalism, populism, and the imaginary of the authentic polity: a socio-legal analysis of European public spheres and constitutional demoicratization

JIŘÍ PŘIBÁŇ

School of Law and Politics, Cardiff University, Wales

Correspondence
Jiří Přibáň, School of Law and Politics, Cardiff University, Law Building, Museum Avenue, Cardiff, CF10 3AX, Wales
Email: priban@cardiff.ac.uk

Abstract

The sociology of constitutionalism emphasizes the duality of constitutions as both power limitations and power enhancements. Following the socio-legal perspective, this article focuses on the constitutional imaginary of the public sphere and distinguishes it from the imaginary of the authentic polity, in which the constituent power of the people is protected against the corrupting effect of representative institutions and technocratic bodies. The promise of authenticity is behind the recent resurgence of populism and the constitution of what Zygmunt Bauman describes as 'explosive communities'. The final part of the article focuses on the transnational politics and law of the European Union (EU) and discusses its possible responses to the imaginaries of constitutional populism – most notably, the emergence of European public spheres and *demoicracy*. Without the constitutional imaginaries of an anti-explosive transnational and democratically constituted community, further enhancement of the power of EU institutions will always lead to populist backlash at the national and local levels of its member states.

1 | INTRODUCTION

Studies of populism often draw on the contrast between constitutionalism as a limitation of political power and populism as its escalation and expansion beyond legal limits. Contrary to this conceptual distinction, the sociology of constitutionalism emphasizes the duality of constitutions as both power limitations and power enhancements. Following the socio-legal perspective, I focus on the constitutional semantics and self-description of constituent power as the authentic will and identity of the people. I analyse these constitutional self-imaginaries and self-identifications as specific societal power formations typical of populism.

The constitutional imaginary of the public sphere, so formative for the very idea of modern liberal and constitutional democracy, involves the distinction between public opinion (*doxa*) and expert knowledge (*episteme*). Its function is to reconcile the opinions of ordinary citizens that legitimize democracy and the knowledge of experts that technocratically steers modern society. However, this imaginary of the public sphere has to be further distinguished from the imaginary of the authentic polity in which the constituent power of the sovereign people is protected against the corrupting effect of representative institutions and technocratic anti-majoritarian bodies dominated by expert elites. The typically modern distinction between idyllic life in local community and the alienating effects of mass society is reinvented by populists to challenge the 'establishment' or the 'system' and fight for the 'true' and 'real' interests of the people. I argue that it is precisely this promise of authenticity that is behind the recent resurgence of populism and the constitution of what Zygmunt Bauman describes as 'explosive communities' evolving in local, national, European, and global contexts.[1]

In the final part of the article, I subsequently focus on the transnational politics and law of the European Union (EU) and discuss its possible responses to the imaginaries of constitutional populism – most notably, the emergence of European public spheres and *demoicracy*. I come to the conclusion that the EU can retain its original ethos as an anti-explosive alternative to the explosive nationalist imaginaries of concretely existing, authentic, and 'true' nations expressing their 'true' will exclusively through the sovereign state. However, to do so, it needs to integrate elements of public mobilization to enhance its democratic legitimation. Without the constitutional imaginaries of a transnational and democratically constituted community, further enhancement of the power of EU institutions will always lead to populist backlash at the national and local levels of its member states.

2 | TROUBLES WITH THE CONCEPT: INTRODUCTORY REMARKS ON POPULISM AND ITS POPULARITY

When the word 'populism' was announced as the *Cambridge Dictionary* Word of the Year in 2017, it signified a spectacular change in political language and values associated with different words and concepts relating to post-1989 globalized politics and society.

No one using the word 'populism' now would be making historical references to the Populist Party in the United States (US) and its leftist programme of state control of the railways or restrictions on land ownership formulated at the end of the nineteenth century.[2] Similarly, neither would

---

[1] Z. Bauman, *Liquid Modernity* (2000) 197.

[2] J. Judis, *The Populist Explosion: How the Great Recession Transformed American and European Politics* (2016).

they have in mind totalitarian regimes labelled 'people's democracy' or 'dictatorship of the proletariat' and contrasted to the liberal democracies founded on the rule of law. On the contrary, contemporary users of the word would be making specific references to the anti-establishment political movements and parties of both the left and the right. They would have in mind individual politicians who mobilize and polarize the public and successfully exploit a wide range of social issues from global trade and immigration to economic decline and growing inequality.

'Populism' became the 2017 Word of the Year on the basis of a spike in internet searches undoubtedly related to the victory of Donald Trump in the US presidential election in 2016. However, the word had already been an intrinsic part of everyday political language for the past three decades. The electoral successes of populist parties have become typical in all liberal democracies in European and global contexts. Voices of public disapproval and discontent have been appropriated and mobilized by politicians on the right and the left alike and used as vehicles of growing political influence and power since the 1990s. These voices became louder following the financial crisis of 2008 and the subsequent economic and political crises that spilt over into the legitimation crisis of local, national, European, and global institutions. In the European context, the specific Eurozone crisis coincided with the rise of populism in many member states – most notably in the hardest hit, Greece.[3]

In some European countries, such as Austria and Denmark, populists have won and lost public support and political power without changing the constitutional regime, yet the popularity of their programmes has forced mainstream parties to rethink and reshape their own policies. In other countries, such as Hungary and Poland, populist leaders have managed to dismantle the old political regime and constitute a new illiberal and authoritarian one.[4] The impact of populism on democratic politics is thus manifold and cannot be summarized by simple categorizations and evaluations.

Despite this relatively unproblematic political context, there is an intrinsic paradox in the word 'populism': the more it is used, the less it is understood. It invites all sorts of intellectual speculations as much as moral outrages and is associated with both hopes and fears in contemporary societies and their politics. Populism gets contrasted to modern rational politics as a force that threatens democracy, distorts the public sphere, and weakens its legitimation capacity.[5] Democratic constitutionalism is considered to be part of this modern political rationality threatened by populism.[6] Furthermore, populism is associated with the direct self-expression of collective will, which means that the relationship between the people and its leader is unconstrained by the principles of democratic representation and constitutional separation of power.[7] Most importantly, populism is driven by the jargon of authenticity because there is always a call for 'true' will and voice of the people to be heard, unrestricted and uncorrupted by institutions of representative constitutional democracy.

Critics of liberal constitutionalism often perceive populism as a necessary antidote to the prevailing anti-majoritarian and authoritarian tendencies in contemporary constitutional

---

[3] G. Katsambekis, 'Radical Left Populism in Contemporary Greece: Syriza's Trajectory from Minoritarian Opposition to Power' (2016) 23 *Constellations* 396.

[4] C. Mudde, 'Europe's Populist Surge: A Long Time in the Making' (2016) 95 *Foreign Affairs* 25, at 26.

[5] C. Mudde and C. R. Kaltwasser (eds), *Populism in Europe and the Americas: Threat or Corrective for Democracy?* (2013); P. Cossarini and F. Vallespín (eds), *Populism and Passions: Democratic Legitimacy after Austerity* (2019).

[6] A. Arato and J. Cohen, *Populism and Civil Society: The Challenge to Constitutional Democracy* (2021) 153.

[7] J. W. Mueller, *What Is Populism?* (2016) 40.

democracies.[8] According to these critical voices, populism is a force of democratic mobilization against the ever-growing power of technocracy that dominates over public reason and democratic deliberation. Populism expands democratic legitimacy and operates as a counterforce against anti-majoritarian institutions legitimized by expert knowledge and its de-politicizing impact on democratic politics.[9]

Populism represents changes and trends in local, national, European, and global politics, and political leaders and the general public all around the world face significant shifts in both the style and substance of democratically legitimized politics. The voice of disapproval and disconnection among ordinary citizens has been seized on by populist leaders buoyed by anti-establishment rhetoric as much as by the weakening legitimacy of liberal democracy and the nation state. Populism thus expands its arguments beyond modern statehood and its historical and normative framework.[10]

The line between anti-establishment and anti-systemic politics is always thin and often blurred in populism, as demonstrated during the Trump presidency in the US. Undoubtedly, the rise of populism in the last three decades is related to the globalization of society and its economic and political impact across the world.[11] Populist politics is fuelled by public anger stemming from growing economic and social insecurity and the equally growing limitations on action that can be taken by politicians to tackle these issues at the national and local levels. Populism is thus a negative response to the powerlessness of both local and national politics vis-a-vis the powerful impact of the global economy on issues of social justice, equality, and solidarity built within the framework of modern nation states. Several preliminary remarks, therefore, can be made before moving to the analysis of populism as the imaginary of the authentically self-constituted polity.

First, the nation state as a former cornerstone of constitutional democracy is at the centre of attention of populist politics. While the populist right promises its restoration to the former national glory, the populist left aims to radically transform it into a power that can successfully challenge the negative consequences of economic globalization.[12] The nation state, its democratic institutions, and the public sphere are thus at the heart of populist protests and contestations.

Second, the rise of populism globally and locally is closely related to the growing public distrust of expert knowledge and anti-majoritarian technocratic governance. Epistemic communities of experts steering economic, legal, and other policies are portrayed as 'enemies of the people' and the real causes of growing inequality, social injustices, and political exclusion.

Third, the tension between public opinion and expert knowledge is related to the typical perception of populism and constitutionalism as opposites. While populists mobilize the public and describe themselves as the voice of ordinary people, constitutionalism is associated with the anti-majoritarian and legally justified protection of individual and specific minorities. The juridification of politics and its criticisms highlight this divide between legal experts serving the rule of law and political leaders declaring to be the authentic voice and servants of the people.

---

[8] T. Donnelly, 'Making Popular Constitutionalism Work' (2012) 2012 *Wisconsin Law Rev.* 159, at 161–162.

[9] See for instance J. Morelock (ed.), *Critical Theory and Authoritarian Populism* (2018).

[10] A. Arato, 'Political Theology and Populism' in *The Promise and Perils of Populism: Global Perspectives*, ed. C. de la Torre (2015) 31.

[11] L. Grattan, *Populism Power: Radical Grassroots Democracy in America* (2016).

[12] P. Gerbaudo, *The Mask and the Flag: Populism, Citizenism and Global Protest* (2017).

3 | CONSTITUTIONAL IMAGINARIES AND THE PUBLIC SPHERE

If the concept of political populism is old, overused, and often misunderstood, the concept of social imaginaries has only recently been embraced by legal and social theorists in their explorations of constitutional law and politics.[13] Charles Taylor formulates the general concept of social imaginaries as 'the ways people imagine their social existence',[14] including normative expectations, practices, and narratives shared and considered to be legitimate by society. They are the way in which societies are imagined by those who live in them. Imaginaries, therefore, are intrinsic part of the constitution of those societies and the construction of their reality. They constitute a shared sense of understanding and make political authority legitimate and morally acceptable. The constitution of such shared understanding and its legitimation force in modern society is also important for understanding the problem of populism in constitutional democracies and beyond them.

Social imaginaries transform immanent facts of power into transcendental values.[15] They are societal forces (*potentia*) that imagine functionally differentiated modern society as one legitimate polity of values (*communitas*).[16] Modern social imaginaries thus make social institutions and practices both functional and meaningful by creating imaginary order out of the semantic chaos of functionally differentiated society. In the context of democratic constitutional politics, the general possibility of a legitimate political order depends on the imaginary of collective self-rule. The constitution of modern society as a community of values and a self-governing people has co-evolved with the imaginary of the public sphere.

The public sphere imagines the moral bonds and mutual obligations of members of political society through the constitution of a pluralistic space open to contestable opinions and reasonable arguments of all members of society.[17] It draws on the idea of a moral order constituted by the belief that individuals participating in this sphere are equal and enjoy freedoms and rights limiting government.[18] Political power thus needs to be accepted by those subject to it and legitimized by its societal benefits constituted through the public sphere. This differentiation between the political order constituted by power and the societal order constituted by the mutual benefits and expectations of individuals communicated through the public sphere is typical of modern democratic societies. Using the image of modernity as social differentiation, Taylor considers the public sphere to be a dimension of civil society differentiated from the polity, which has governmental power. Like the market economy, the public sphere constitutes a common space evolving independently of political power and communicating through other media and forms of disciplinization of individuals.

Furthermore, the imaginary of the public sphere introduces the idea of a common space in which people can share opinions and beliefs, undertake actions together, and reach consensus

---

[13] See especially P. Blokker, 'The Imaginary Constitution of Constitutions' (2017) 3 *Social Imaginaries* 167; C. Browne, 'The Modern Political Imaginary and the Problem of Hierarchy' (2019) 33 *Social Epistemology* 398; Z. Oklopcic, *Beyond the People: Social Imaginary and Constituent Imagination* (2018); J. Přibáň, *Constitutional Imaginaries: A Theory of European Societal Constitutionalism* (2022).

[14] C. Taylor, *Modern Social Imaginaries* (1999) 24.

[15] Id., pp. 43–47.

[16] Přibáň, op. cit., n. 13, p. 3.

[17] J. Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (1989) 239.

[18] P. M. Garry, *Limited Government and the Bill of Rights* (2012).

as regards the constitution of the social and moral order. As Taylor, following Jürgen Habermas, states, 'what the public sphere does is enable the society to come to a common mind, without the mediation of the political sphere, in a discourse of reason outside power, which nevertheless is normative for power'.[19] In short, it is the imaginary of commonality that constitutes collective identity through social communication, independently of the political system and its institutions. At the same time, its function is to limit and legitimize political power by something operating outside the political system. For Habermas, Taylor, and others, the public sphere functions as an external societal guarantor of the limitation (and therefore legitimation) of political power by public opinion. Legitimacy is not a matter of internal procedures; it is secured through external normative criteria constituted and protected by the public sphere. The public sphere and discussion are constituted outside political power, yet this power is expected to listen to the public sphere's voices and opinions. While non-political in the sense that it is constituted outside the system of political institutions, the public sphere nevertheless exercises societal power over politics and directly leads to another typically modern social imaginary: the imaginary of the self-governing and self-constituting people.

4 | POPULIST MOBILIZATION, IDENTITY POLITICS, AND PROBLEMS WITH 'THE SYSTEM'

The imaginary of the public sphere constitutes non-political moral and societal forces pushing the modern individual to accept and conform to this social order and obey its rules. Modern individualism turns out to be the very essence of collective social pressure and the power of morally justified social norms precedes the political power operating through legal norms and the rule of law. Accompanying the modern discourse of civil rights and freedoms is the social pressure and discipline forcing individuals to constantly reshape and readjust their behaviour in order to meet expectations of civility and public morality. Social discipline is the other side of the moral and political system of human rights and freedoms protected by the public sphere, which limits political power and gradually transforms it into democratic government of the people, by the people, and for the people.[20] The imaginary of the public sphere thus becomes inseparable from the imaginary of the sovereign self-governing people.

The imaginary of one people living under one rule of law assumes normative limitations of political power as much as its constitution through democratic mobilization. It is precisely in this sense that modern populism in all of its varieties and forms – from ethnonationalist to internationalist – is an intrinsic part of democratic societies. Ernesto Laclau famously argues that populist reason mobilizes the multitudes and speaks for 'the outsiders' of 'the system'.[21] This call for political mobilization by public reasoning immediately raises sociological questions of the system's constitution, internal operations, limits, and external environment. However, Laclau draws on the long tradition of critical theory that identifies the system with power, exploitation, hegemony, and ideology. He shrugs off more nuanced sociological distinctions by criticizing both structuralist and functionalist paradigms and analyses the formation of collective identities and the variety of political movements and social forces involved in these formations.

---

[19] Taylor, op. cit., n. 14, p. 91.

[20] Přibáň, op. cit., n. 13, pp. 25–26.

[21] E. Laclau, *On Populist Reason* (2005) 153.

Entrenched in the modern political thinking of the left, Laclau's conceptualization of populist reason is expected to constitute the will to knowledge as political force. According to this view, the system is considered to be merely synonymous with totality and homogeneity while the multitudes and their collective identities challenge the totalizing coherence of social bonds and replace the logic of equivalence with the logic of difference. The social heterogeneity of the multitudes opposes the homogenizing and unifying forces of the system. The legitimizing force of those outside the system is determined by their anti-systemic capacity of alternative social formation, collective identity, and political self-constitution. The dynamic between the legitimation and the delegitimation of the system is reformulated as populist reason's mobilization of the excessive 'crowds' against the common good of a rational political community.[22]

These criticisms of structuralist and functionalist paradigms may be painted with a broad brush. Nevertheless, Laclau's philosophical appraisal of populism has a special value for sociological and socio-legal theory because it demonstrates how closely populism is associated with the contemporary identity politics of the left as much as of the right. Furthermore, Laclau draws attention to the sources of legitimacy based on knowledge and reasoning of what constitutes a 'good' polity in modern society. As populism is so often described as a force of irrationalism, delegitimation, and existential threat to the system of constitutional democracy, an analysis of populism from the perspective of critical philosophy and identity politics paradoxically helps to explain in sociological terms the internal operations of this system.

However, the first step towards this sociological understanding of populism requires the abandonment of the normative distinction between the system and its environment. Laclau's concept of the system is constituted by the political imaginary of hierarchically organized institutions of power, which ultimately keeps a polity together by guaranteeing its safety and survival. The other side of this sovereign guarantee is the system's capacity to determine who fits into it and who is to be treated as an outsider and enemy.[23]

This typically modern imaginary of society constituted by political sovereignty is popular among political and legal philosophers and theorists. However, it is deficient for two different reasons. First, the coeval historical development of the nation state and constitutional democracy is typical of the imaginary of the sovereign nation state with its unity and hierarchy of power and obedience as much as of the imaginary of the public sphere, which is pluralistic, heterarchical, and open to different and often conflicting views, opinions, arguments, and reasoning. Second, the political system does not constitute the totality of society and does not function as the ultimate condition of its existence and survival. On the contrary, it is only one system of society, which is also constituted by many other systems. Laclau's political normative call for the logic of difference and heterogeneity thus already has its factual and functional response in the constitution of modern functionally differentiated society.

5 | FROM HOMOGENEITY TO THE AUTHENTICITY OF CONSTITUENT POWER

The public sphere is considered to be a 'metatopical space' that, according to Taylor, 'constitute[s] a metatopical agency, but one that [is] understood to exist independent of the political constitution

---

[22] Id., pp. 47–48.

[23] Id., p. 151.

of society'.[24] This constituent power of the public sphere as a common agency and societal force legitimizing the political constitution depends on the capacity to simultaneously communicate different themes related to individual and collective interests and opinions. However, this appeal to heterogeneity also paradoxically presumes the possibility of value homogeneity and moral commonality that dominates many classic and recent theories of modern constitutionalism.

For instance, the concept of social homogeneity as a precondition of the functioning political constitution informs Hermann Heller's theory of democracy.[25] According to him, modern society is heterogeneous, including the people as the constituent power of democratic politics, and it is precisely the legal constitution protecting freedom and social equality that turns this heterogeneous people into the unity of a democratically self-governing polity. Heller's notion of social homogeneity represents a critique of political existentialism and its notions of a culturally homogeneous community externally legitimizing the state and its constitution. According to Heller, the belief that a culturally homogeneous people can be identified as a racial community that can 'demand from the state the breeding of a cultural community by racial means'[26] is a legitimizing force of the Nazi concept of the racially constituted and exclusive state.

This shift from the legally substantiated and protected social homogeneity of modern democracy to the cultural homogeneity of the concrete existence and collective will of a people is extremely important and echoes the debate between Heller and Hans Kelsen as well as between Heller and Carl Schmitt.[27] Unlike Heller, Schmitt formulates the absolute concept of the constitution as the complete condition of political unity and order and 'the concrete manner of existence that is a given with every political unity'.[28] Homogeneity is guaranteed by the polity's very existence, represented by the state and its will.

The constitution is thus referred to as the state's 'soul', concrete life, and individual existence.[29] For Schmitt, the state's will depends on the collective will of the German people. Reflecting on the constitutional system of hierarchically ordered norms and provisions of the Weimar Constitution, Schmitt concludes:

The unity of the German Reich does not rest on these 181 articles and their validity, but rather on the political existence of the German people. The will of the German people, therefore something existential, establishes the unity in political and public law terms beyond all systematic contradictions, disconnectedness, and lack of clarity of the individual constitutional laws. The Weimar Constitution is valid because the German people 'gave itself this constitution'.[30]

On this view, the constitution is constituted by the collective will of a nation, and constitutional sovereignty is conditioned by national sovereignty formulated as the concrete existence of a substantively homogeneous people. Collective identity and will are located outside the order of

---

[24] Taylor, op. cit., n. 14, p. 99.

[25] H. Heller, 'Authoritarian Liberalism?' (2015) 21 *European Law J.* 295.

[26] Id., p. 298.

[27] See also A. Malkopoulou and L. Norman, 'Three Models of Democratic Self-Defence: Militant Democracy and Its Alternatives' (2018) 66 *Political Studies* 442; D. Dyzenhaus, *Legality and Legitimacy: Carl Schmitt, Hans Kelsen and Hermann Heller in Weimar* (1997).

[28] C. Schmitt, *Constitutional Theory* (2008) 59.

[29] Id., p. 60.

[30] Id., p. 65.

constitutional norms, and the authentic sovereign nation determines its existence through this order and unity.[31]

This imaginary of the authentic will and concrete existence of a homogeneous people as the constitution's precondition and ultimate legitimation is matched by the people's collective self-identification with the state as a protector of cultural unity and order. This is a typical imaginary of modern nationalism and nation state, which was subsequently racialized and turned into the totalitarian state.

In his treatise *Foundations of Democracy*, Kelsen toys with Abraham Lincoln's triadic structure of democracy as government of the people, by the people, and for the people and speculates on the circumstances in which the people might be misled about their 'true' interests and the 'true' will of the people might be corrupted by political institutions and formal procedures and rules of the legal constitution.[32] Discussing the form and substance of democracy, Kelsen thus states that arguments from the perspective of the truth and authenticity of the concretely existing people may be easily twisted and shifted from the participatory 'government by the people' to the autocratic 'government for the people' because a charismatic leader, an elite, or a revolutionary avant-garde may claim to be the only 'true' and ultimate representative of the people's interests.[33]

Kelsen's rejection of the absolute concept of the constitution as the concrete order and ultimate popular will is important for considering the problem of populism. In discussions of whether populism is a style of political persuasion or an ideology with its own specific set of ideas used as a blueprint for political action,[34] the argument from authenticity brings populism closer to the ideological vision of a 'true' popular will unspoiled by elitist interference governing a pure and sovereign people in its 'true' self-government.

6 | THE IMAGINARY OF THE AUTHENTIC POLITY

Arguments from authenticity are typically anti-elitist and emphasize the 'common-sense' values and practical wisdom of ordinary citizens. Populism is considered to be a political style used by political leaders that makes them appear as 'true' representatives and guardians of those 'common-sense' values and wisdom, especially in struggles against the allegedly corrupt political system and its power holders. Populists can therefore be regarded as authentic in their anti-establishment rhetoric, even if their claims are insincere, dishonest, and full of lies and overtly false accusations.

The populist semantics of authenticity is deeply rooted in the Romantic imaginary of modern society as permanently threatened by moral corruption and alienation. Following Jean-Jacques Rousseau's normative ideal of authenticity, some contemporary philosophers and theorists of law and politics still consider authenticity to be an important bridge between a private and public sphere in modern politics.[35] This general argument is subsequently pushed further by advocates of populism who perceive charismatic political leaders as guardians of common bonds and affects

---

[31] Dyzenhaus, op. cit., n. 27, ch. 1.

[32] H. Kelsen, 'Foundations of Democracy' (1955) 66 *Ethics* 1, at 4.

[33] Id., p. 5.

[34] B. Moffitt, *The Global Rise of Populism: Performance, Political Style and Representation* (2016) 28.

[35] A. Ferrara, *Modernity and Authenticity: A Study in the Social and Ethical Thought of Jean-Jacques Rousseau* (1993).

that cement the polity's unity.[36] Politicians are expected to be trustworthy on the basis of their personal honesty and public knowledge of their 'true' intentions. Authenticity is considered to be a guarantee of mutual trust between political leaders and the general public.[37]

The semantics of authenticity identifies politicians' 'real' personality with their public persona and draws on the assumption of 'real' knowledge of both the people's interests and leaders' intentions.[38] Political claims and strategies of authenticity are successfully exploited by populist leaders, as documented, for instance, in the permanent social media campaign of Donald Trump.[39] These claims are therefore criticized as part of what Theodor Adorno describes as 'the jargon of authenticity' in his critique of philosophical and political existentialism decades ago.[40] The arguments from authenticity are considered to be merely an indication of political nostalgia and superficiality, obscuring the more profound contradictions and power struggles of modern politics.[41]

The authenticity arguments are often driven by ethnonationalist distinctions between the in-group members of an authentic polity and its outsiders, who could be posturing elites with their expert knowledge as much as immigrants and members of national, religious, sexual, and other minorities. Nevertheless, they are not limited by imaginaries of the nation as one culturally homogeneous ethno-polity and can be detected in a great variety of radical criticisms of the way in which technocracy and digital culture disconnect people from authentic political communication, collective deliberation, and communal connections.

Populist claims of authenticity may be different in terms of their content. The populist right's notion of the people draws on its concrete historical and ethnic pre-political existence, which is allegedly under threat. The populist left's ideal of homogeneity and authenticity imagines the people as a collective of initially heterogeneous individuals and groups who eventually constitute one sovereign polity of socially equal, politically participating, and ethically solidary citizens. At the same time, as clearly witnessed in Latin America, the populist left can use the same cultural registers and signifiers as the populist right and incorporate them into the difference between the elites representing the system and the masses representing the multitudes. Like Trump and other right-wing populists, leftist leaders such as Evo Morales and Hugo Chávez also claimed to be the only voice of 'the people-as-one'.[42] Further complicating these differences in style and content, right-wing populism also promises social equality and solidarity within the ethnically constituted polity. The divide between right-wing and left-wing populist politics and movements can therefore become blurred, such as during the *gilets jaunes* protests in France in 2020.[43]

Populist politics shows that the imaginary of the authentic polity existing truthfully and in harmony with its 'real' collective identity is common to the great variety of populist politics and

[36] C. Mouffe, *For a Left Populism* (2018) 70.

[37] A. Ferrara, *Reflective Authenticity: Rethinking the Project of Modernity* (1998).

[38] D. R. Pillow et al., 'Not Simply in the Eye of the Beholder: Authenticity as a Product of Candidate Preference and Unfettered Speech' (2018) 39 *Political Psychology* 849.

[39] T. Shane, 'The Semiotics of Authenticity: Indexicality in Donald Trump's Tweets' (2018) 4 *Social Media & Society* 1.

[40] For the original use of the term 'the jargon of authenticity', see T. W. Adorno, *The Jargon of Authenticity* (1973). For its recent adoption and elaboration, see for instance M. Valverde, 'Forms of Veridiction in Politics and Culture: Avowal in Today's Jargon of Authenticity' (2018) 11 *Behemoth: A J. on Civilisation* 96.

[41] H. Hardt, 'Authenticity, Communication, and Critical Theory' (1993) 10 *Critical Studies in Mass Communication* 49.

[42] C. de la Torre, 'Is Left Populism the Radical Democratic Answer?' (2019) 27 *Irish J. of Sociology* 64, at 67.

[43] C. Devellennes, *The Gilets Jaunes and the New Social Contract* (2022) 10.

continues to play a profound role in the contemporary globalized political condition, including the post-national condition of the EU. The imaginary of the public sphere as a common space constituting general societal communication is criticized by populist leaders as distorting the 'true' and authentic collective self of the sovereign people or causing the marginalization and discrimination of different identities and selves of heterogeneous groups. Institutions of representative democracy and popular will legitimized by the public sphere are condemned as failing to represent authentic political voices uncorrupted by political and social institutions. Populists and their followers then demand alternative forms of political mobilization and the institutional transformation of representative democracy and its constitutional framework. The call for authenticity and unmediated truth in politics, uncorrupted by alienating institutions, has profound legal and political implications and needs to be further analysed as an intrinsic part of modern constitutional imaginaries.

7 | AUTHENTICITY AND ALIENATION: PHILOSOPHICAL, SOCIOLOGICAL, AND CONSTITUTIONAL CONTEXTS

The politics of authenticity was born when the Romantics radicalized the originally ethical concern with finding the authentic self by turning it into the political claim that authenticity driven by the ethics of truth and honesty must legitimize public life and politics. The inner authentic self finds its reflection in the collective self of a wilfully self-constituted democratic polity. To live an authentic political life in truth requires the politics of democratic will formation, which includes the politics of resistance against all sorts of alienating societal forces, from market rationality to bureaucratic reason and expertise-based technocracies. The original distinction between public opinion (*doxa*) and expert knowledge (*episteme*) thus finds its secondary coding in the distinction between authenticity and alienation.

The imaginary of the authentic polity assumes political living in truth as an authentic community of shared values that must be defended with courage, will, and – should it be necessary – resistance.[44] The imaginary combines the horizontally evolving communal bonds and the hierarchical political organization and thus symbolically bridges the typically modern gap between community and society by making the community's authentic existence the first condition of society's political legitimation. Political society is expected to be founded on a community of authentically lived and shared values.[45] In its struggle for a new morality and politics, the self – if subjugated – has to revolt against society to become an authentic individual and citizen.[46]

According to the politics of authenticity, modernity is perceived as both a call for the authentic constitution of individual and collective selves and a risk of their destruction by anonymous societal forces. Karl Marx, following Rousseau's analysis of the individual's self-alienation in society, describes these forces as processes of alienation,[47] which can be resolved only by a revolutionary act of political will.[48] Furthermore, Max Weber associates them with the very process of modernization as increasingly instrumental and bureaucratic rationalization, and Émile Durkheim

[44] C. Taylor, *The Malaise of Modernity* (1991) 118.

[45] D. Schecter, *Sovereign States or Political Communities? Civil Society and Contemporary Politics* (2000) 112.

[46] M. Berman, *The Politics of Authenticity: Radical Individualism and the Emergence of Modern Society* (1970) ch. 1.

[47] R. Jaeggi, *Alienation* (2014).

[48] C. Castoriadis, *The Imaginary Institution of Society* (1987) 101–112.

identifies the problem as anomie, which should be tackled by more responsive organic solidarity. These classic theories are now challenged by global modernization.[49]

Drawing on these traditions of political theory and sociology, Habermas famously seeks to reformulate the apparent conflict between the systemic rationality of functionally differentiated society and the life-world of its members as a legitimation crisis to be resolved through public mobilization and communicative reason.[50] In the context of legal and constitutional theory, this conflict should be resolved by the idea of democratic self-determination, according to which 'citizens should always be able to understand themselves also as authors of the law to which they are subject as addressees'.[51]

Habermas' philosophical vision of constitutional democracy draws on the idea that social solidarity and political legitimacy can be secured through the combination of constitutional patriotism and the civic self-determination of the constituent power of the people simultaneously securing the private and public autonomy of legal subjects.[52] Unlike this most sophisticated critique of technocracy and call for the political mobilization of free, equal, and socially both heterogeneous and solidary citizens of one democratically self-governing polity,[53] the imaginary of the authentic polity incorporates the claim of political living in truth and collective will formation beyond expert knowledge and alienating social institutions and systems, especially the market with its economic rationality and administration with its bureaucratic reason.

The imaginary of the publicly and freely self-legislating people constituted through the rule of law and the public sphere based on communicative reason is directly refuted by populist reason promoting political leaders' skill to mobilize collective emotions and affective bonds.[54] The process of legitimation by democratic mobilization is conditioned by the possibility of the self-identification of members with the 'true' nature and existence of their imagined polity. The paradox of modern constitutional democracy – in which the constituent power of the sovereign people, by definition unlimited, can materialize only through constituted power of a limiting legal constitution – subsequently finds its specific form in the imaginary of the authentic polity by stretching the first constitutional question 'Who is the people as a political sovereign?' into the pre-political question 'What is the "true" and honest voice and will of this people?'

8 | FROM IMAGINED COMMUNITIES TO COMMUNAL IMAGES

The classic sociological distinction between community and society continues to inform identity politics and constitutional populism in the era of Europeanization and globalization. For a brief overview of identity politics, dictionaries might once again be useful.

According to Eric Hobsbawm, the *Oxford English Dictionary* of the early 1970s described 'ethnicity' as a rare word mainly indicating past social superstitions.[55] Terms like 'collective identity' and 'identity politics' had been largely absent from the social and political sciences. For Hobsbawm,

---

[49] A. Martinelli, *Global Modernisation: Rethinking the Project of Modernity* (2005) 24–29.

[50] J. Habermas, *The Theory of Communicative Action, Volume 2: The Critique of Functionalist Rea*son (1987) 332–373.

[51] J. Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (1996) 449.

[52] Id., p. 450.

[53] J. Habermas, *The Lure of Technocracy* (2015) ch. 1.

[54] Mouffe, op. cit., n. 36.

[55] E. Hobsbawm, 'Identity Politics and the Left' (1996) 217 *New Left Rev.* 38.

the rise of identity politics and communitarian ideologies has coincided with the weakening of communal bonds and solidarity caused by the process of globalization.[56] He therefore considers identity politics to be merely another cultural and societal reaction to the ongoing process of modernization that is now spreading globally beyond national borders and identities.

This perspective considers recent populist imaginaries of the authentic polity to be merely another historical example of the ideological and value conflicts between the Romantic nativism and the modernization now expanding beyond the nation state. The distinction between society and community merely gets reformulated as the conflict between the destructive effects of the global economy, industry, and technology and the political heroism of populists challenging these forces and speaking the authentic voices of their peoples. These political heroes, once again, are expected to constitute a new political and societal order by resisting and challenging the power of economic profit and bureaucratic reason.[57]

Identity politics involves the mobilization of authentic voices against the alienating and depoliticizing forces of the market economy and the bureaucratic state. Politicians and people are to win this struggle against businessmen, administrators, and engineers, yet the struggle leads to billionaire businessmen paradoxically becoming the most persuasive populist leaders. Hobsbawm's explanation of identity politics as a continuation of political Romanticism by other means thus appears incomplete and insufficient.

There is a founding paradox in nationalism because nations are claimed to be social essences that have fallen asleep and are in need of 'awakening', yet nationalists are busy inventing and constructing specific modern identities to bring those nations back to life.[58] The paradox of an already existing nation that is yet to constitute its existence by the political and cultural engagement of its members, however, means that the nation's 'true' and authentic voice has to be represented by those speaking on behalf of that nation. The constitutional paradox of unlimited constituent power exclusively manifested through its constituted institutions thus finds its reflection in the anatomy of modern nationalism based on the historically contingent process of constructing national identities that are nevertheless considered to be essential and permanent.

Critically drawing on theories of national identities and modern nationalisms established by Benedict Anderson and Ernest Gellner and adopted by Hobsbawm and others, Manuel Castells also comments on the most obvious fact that the age of globalization is also the age of nationalist resurgence despite normative calls for cosmopolitan ethics and heterogeneous cultural globalization triggered by the emergence of a global economy.[59] According to Castells, nations as Anderson's 'imagined communities'[60] or Gellner's 'arbitrary historical inventions'[61] continue to inspire the identity politics of nationalist movements despite the nation state's weakening role and diminished power in global politics. In the global era, however, they are not being invented by elites, their identity building incorporates cultural communalities beyond ethnicity, and the

[56] E. Hobsbawm, *The Age of Extremes: The Short Twentieth Century, 1914–1991* (1994) 428.

[57] For the historical origins of this view, see especially, for instance, O. Spengler, *The Decline of the West, Volume II* (1928) 398–414.

[58] E. Gellner, *Nations and Nationalisms* (1983) 47–48.

[59] M. Castells, *The Information Age: Economy, Society and Culture, Volume 2: The Power of Identity* (1997) 30–31.

[60] B. Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (1983).

[61] Gellner, op. cit., n. 58, p. 56.

constitution of a sovereign nation state is not merely a matter of the modern rationalization of politics.[62]

Globalized politics is full of multiple and overlapping identities, and the continuing proliferation of nationalism is merely one form of the power of identity politics, which, rather than imagined communities, now constitutes the complex semantics of 'communal images'.[63] New codes of self-identification are being invented and the constitution of these communal images, according to Castells, 'works on raw materials from history, geography, language, and environment'.[64] Cultural communities and their self-images and imaginaries are constituted around reactions to global developments in their material and societal contexts. Collective identities are subsequently defensive in the sense that they function as resources of solidarity and protection against the increasingly hostile outside world. They also require a system of values to be shared and guarantee meaningful existence for members of those communities. According to Castells, the power of identity politics in the global era makes the symbols and imaginaries of modern nationalisms part of a much more complex symbolic universe of the global network society informed by local identities, religious beliefs, language specifications, environmental crises, and many other codes of self-identification. However, Castells also argues that these culturally constituted identities are reactions against the forces and changes of globalization. According to him, 'they do build havens, but not heavens'.[65]

Castells and others correctly argue that the return of nationalist politics in the era of globalization is merely one form of contemporary identity politics that invites other political mobilizations and imaginaries of the authentic polity, resisting global trends of depoliticization and disconnection. For instance, David Harvey claims that the accelerating process of globalization and the postmodernization of culture have established a mass audience consuming images and symbols, which has had a profound effect on political identity and communication.[66] Politics has changed and new charismatic leaders prefer the aesthetic power of the image to the ethics of common values and social justice, often with dangerous consequences.[67] Harvey subsequently calls for a renewal of the Enlightenment project and Marxist historical materialism to respond to the growing tensions between global geopolitics and nationalism, the global flow of capital and the absence of its regulation, the politics of interests and images, and so on.

9 | EXPLOSIVE COMMUNITIES IN GLOBAL SOCIETY

From these theoretical reflections on the globalization of society and the postmodernization of culture, it is clear that modern alliances between the state, the nation, political reason, and its legitimacy by the rule of law have been radically challenged in recent decades. Transnational economic, political, and legal settings require new approaches to political rights, nationality, and citizenship. Imaginaries of the nation state and its people are affected by the emigrant/immigrant dynamics, and the notion of ethnic and national minority rights stretches beyond the common

---

[62] Hobsbawm, op. cit., n. 56, pp. 171–202.

[63] Castells, op. cit., n. 59, p. 30.

[64] Id., p. 68.

[65] Id.

[66] D. Harvey, *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change* (1989).

[67] Id., pp. 357–360.

principles of territoriality and personality, leading to the reformulation of political identity, democratic participation, and social inclusion.

Dual and multiple citizenships are affected by identity politics and its calls for authenticity as much as any other aspect of contemporary politics. As witnessed in the EU, nationalist mobilization continues to thrive even in the post-national constellation. Transnational politics and citizenship laws can be the focus of both inclusive and exclusive political mobilization in minority diasporas as well as majoritarian societies.

Searching for sociological answers to these political and legal problems associated with the recent resurgence of populism, Zygmunt Bauman – in the spirit of the classic distinction between community and society – describes new forms of identity politics as communal responses to the process of societal globalization. Communitarian identity politics confronts the void of meaning created by globalization and constitutes specific globalized forms of affective tribalism labelled by Bauman as 'explosive communities'.[68]

In his classic study of the distinction between community and society, Ferdinand Tönnies famously contrasts communal bonds and their power to constitute strong affections of belonging, on the one hand, to the rational organization and functionality of modern society, on the other.[69] According to him, this contrast between the meaningful reality of community and the functional reality of society was successfully integrated into the nation state. National unity became the supreme communal bond preceding other communal loyalties and collective identities. The modern nation state's legitimacy, therefore, has been predicated on the successful organization and operationalization of the distinction between society and community.[70] The nation state's capacity to organize both rational social steering and affective communal bonds used to dominate politics. Specific imaginaries of shared histories and folkways were combined with the general imaginary of a rationally organized society. According to Bauman, however, the process of globalization has weakened this organization and operationalization and has therefore led to the legitimation crisis of the nation state.

Explosive communities then represent disruptive and even violent responses to the growing social insecurity and instability caused by global social and political developments. The world is imagined as out of control and suffering from chaos and decline that can be reversed only by a radical reassertion of commonly shared values and meaningful existence. Explosive communities are thus defensive mechanisms constituting shared identity as a shield against what Bauman describes as the 'terrors of the global' and the effects of 'negative globalization'.[71] Explosive communities re-imagine the reality of economy, politics, culture, and the media as commonly shared and meaningful beyond social functionality. They thus reinvent the images of regularity, controllability, and predictability in a world that is profoundly unpredictable and incalculable and full of unprecedented risks and dangers as much as profits and opportunities.

Bauman highlights the void of social justice and political peace in this global constellation, which is full of lawlessness, arbitrary power, and economic and social exploitation. No supranational and transnational organization, including the EU, has the modern state's capacity to coevally operate as a source of both politically democratic self-organization and cultural self-identification. The absence of positive alternatives at the transnational global and European levels

---

[68] Bauman, op. cit., n. 1, p. 197.

[69] F. Tönnies, *Community and Society* (1957).

[70] Id., p. 230.

[71] Z. Bauman, *Liquid Fear* (2006) 96.

subsequently makes the regression to the ethnically shaped identity politics and new forms of populist nationalisms confronting transnational law and politics even more popular. As Bauman comments, this 'globalization of harm and damage rebounds in the globalization of resentment and vengeance'.[72]

Indeed, these legal, political, and social developments are closely associated with the weakening power of the nation state in the post-national social condition. Its monopoly on political violence is challenged by much more powerful and transnationally evolving and operating forces of economic, scientific, technological, and other societal globalization. However, the weakening power of the state paradoxically leads to the deregulation of violence from state to local communal levels. This deregulation of violence from the state to explosive communities is part of a larger social development described as 'new tribalism'[73] or the 'retribalization'[74] of politics in the global era. Identity politics is then considered to be an authentic counterpoint to the globally free movement of capital, goods, services, people, and cultures.[75] As Castells argues, an appeal to authenticity can have different manifestations in identity politics, from local communities of free citizens and historical populations of Indigenous peoples to the global community of believers. However, all of these local movements are based on cultural specificity and the political goals of self-determination and self-rule.[76] They are 'reactive, and defensive, rather than purveyors of a societal project, even if they do propose visions of an alternative society'.[77]

10 | POST-NATIONAL CONSTITUTIONAL POLITICS, PUBLIC SPHERES, AND DEMOICRACY IN THE EU

The semantics of constitutional democracy and populism shows that the imaginary of the authentic polity is typically used as a counterpoint to the imaginary of the public sphere in contemporary politics. The authentic polity promises personal bonds and a feeling of communal togetherness that is all but ignored by societal structures of standardized public action. Richard Sennett summarizes this conflict by stating that 'community becomes a weapon against society'.[78] According to this view, democratic politics is tribalized and the public sphere is destroyed by mutually vengeful tribes fighting for their authentic self-determination.

Democracy may be associated with identity politics even in the global information age.[79] Democratic politics has to balance popular unity and societal plurality. The state organization of modern democratic politics neutralizes the potentially explosive effects of the politics of authenticity by transforming the problem of political identity into circular operations in which nations find their exclusive representation in state institutions while states are legitimate as far as they can be imagined as representing the will of these nations. The nation state has the capacity to contain the calls

---

[72] Id., p. 97.

[73] M. W. Hughey (ed.), *New Tribalisms: The Resurgence of Race and Ethnicity* (1998); M. Maffesoli, *The Time of the Tribes: The Decline of Individualism in Mass Society* (1996).

[74] R. J. Antonio, 'After Postmodernism: Reactionary Tribalism' (2000) 106 *Am. J. of Sociology* 40, at 55.

[75] See for instance H. G. Betz and S. Immerfall (eds), *The New Politics of the Right: Neo-Populist Parties and Movements in Established Democracies* (1998).

[76] Castells, op. cit., n. 59, pp. 160–166.

[77] Id., p. 162.

[78] R. Sennett, *The Fall of Public Man: On the Social Psychology of Capitalism* (1978) 339.

[79] See for instance A. Mellucci, *Challenging Codes: Collective Action in the Information Age* (1996).

for authenticity of mystical collective identity and transform them into imaginaries of the shared and pluralistic public sphere and popular sovereignty.[80]

However, this operative capacity of modern state organization also means that its structures and semantics are affected by the tension between the authentic popular will and its potentially alienating and corrupted representation by the state organization and any other political institutions and agents. If modern nation states are weakened in this respect, the question of political and societal responses to the negative globalization of explosive communities and new forms of constitutional operationalization of the imaginary of the authentic polity and democratic mobilization needs to be addressed beyond the nation state organization with respect to supranational and transnational constitutionalism in its European and global contexts.[81]

In the context of European transnational legal and political integration, imaginaries of the common market as an exchange of mutual benefits and the community of equally distributed legal rights have always been accompanied by more or less urgent calls to constitute another legitimizing imaginary – namely, the imaginary of democratically accountable political power conditioned by the non-political public sphere. The EU cannot match the levels of democratic legitimation of freely elected and publicly accountable and representative governments of its member states. However, it was expected that this democratic deficit and technocratic expertise-driven surplus of EU governance would be mitigated by the constitution of the public sphere and the transnational democratic mobilization of the European multi-level polity.[82] Historically, European integration used to be imagined as a politically and democratically appealing anti-explosive alternative to the modern history of explosive ethnonationalism and identity politics dominated by nation states. However, the post-national EU cannot avoid increasing conflicts with the growing variety of populist responses claiming to protect national or local democracy against transnational technocracy.

Transnational citizenship, social solidarity, and the plural identities of the EU drive the constitution of its polity.[83] The lack of a European public sphere and strong communal bonds leads to the rethinking of the possible constitution of European public opinion (*doxa*). A transnational European public sphere would not be symbolically shaped by the constituent power of a sovereign people and the sense of common political identity.[84] The diversity of political cultures, experiences, and interests make transnational normatively binding discussions channelled through civil society structures impossible. The legal constitution of the EU has failed as much as the constitution of civil society supported by the fundamental rights of citizens of the EU.[85]

In this constellation, the imaginary of a specific pluralistic structure of *public spheres* constituted as a heterarchical communication network of the public and private media[86] is considered

---

[80] L. Corrias, 'Populism in a Constitutional Key: Constituent Power, Popular Sovereignty and Constitutional Identity' (2016) 12 *European Constitutional Law Rev.* 6, at 16–18.

[81] H. Brunkhorst, 'Globalising Democracy without a State: Weak Public, Strong Public, Global Constitutionalism' (2002) 31 *Millennium: J. of International Studies* 675.

[82] See for instance N. Bolleyer and C. Reh, 'EU Legitimacy Revisited: The Normative Foundations of a Multilevel Polity' (2012) 19 *J. of European Public Policy* 472.

[83] F. S. Pérez, *Political Communication in Europe: The Cultural and Structural Limits of the European Public Sphere* (2013).

[84] E. O. Eriksen, 'An Emerging European Public Sphere' (2005) 8 *European J. of Social Theory* 341, at 344–346.

[85] O. De Schutter, 'Civil Society in the Constitution for Europe' in *The Chartering of Europe: The European Charter of Fundamental Rights and Its Constitutional Implications*, eds E. O. Eriksen et al. (2003) 133.

[86] R. Koopmans and P. Statham (eds), *The Making of a European Public Sphere: Media Discourse and Political Contention* (2010).

to be a transnational substitute for the public sphere of democratic statehood.[87] It opens up alternative forms of basic political communication between European governing institutions and the governed citizens of the EU.[88] Furthermore, it can critically observe and limit the power expansion of EU institutions. The imaginary of pluralistic European public spheres, therefore, can steer democratic conflictual politics and constitutes a legitimation alternative to the imaginary of the authentic polity.

The imaginary of pluralistic public spheres opens up a space for democratic mobilization[89] beyond the self-constitution of a sovereign European people.[90] Rather than imitating the state-building imaginary of one sovereign people, the constitutional imaginary of European demoicracy helps us to move beyond the failed project of the constitution of a European *demos*. Kalypso Nicolaïdis introduced the concept of demoicracy as a middle ground between the Eurofederalist hopes of constituting a sovereign European *demos* and the intergovernmentalist views of the EU as an association of states governed by their sovereign *demoi*.[91] The concept recognizes the EU's democratic deficit, yet offers an alternative means of controlling EU political institutions in the absence of the European *demos*. The union of self-governing *demoi* of Europe reformulates ideas of deliberative democracy in the pluralistic social and political constellation of the EU.

The concept of demoicracy addresses the same structural and semantic limitations as the concept of European public spheres. The EU's pluralistic structures are reinvented as a basic political value that recognizes national, regional, and local differences as much as the increasing powers of European institutions. Unlike universalist cosmopolitan criticisms of nationhood and statehood, European demoicracy builds on the interdependence of multiple polities in Europe and their constitutive role in the emergence of a multi-level European polity of 'mutually fertilized' democratic states and societies.[92] Its emphasis on the heterogeneity of political communication and legitimation of the EU represents a direct challenge to nationalist and other forms of populism.[93] Its incorporation of civic movements on public mobilization represents an equally important democratic challenge to technocratically shaped EU institutions.

Demoicracy, therefore, represents a specific form of communication of transnational public opinion, *doxa*, constituted by heterogeneous and horizontal networks of citizens and organizations beyond the institutional frameworks of both the EU and its member states. It recognizes the diversely self-constituted *demoi* within or without statehood and their legitimation potential for transnational European governance and polity.[94]

---

[87] T. Risse (ed.), *European Public Spheres: Politics Is Back* (2014).

[88] H. J. Trenz and K. Eder, 'Democratizing Dynamics of a European Public Sphere' (2004) 7 *European J. of Social Theory* 5.

[89] P. van Parijs, 'Should the European Union Become More Democratic?' in *Democracy and the European Union*, eds A. Follesdal and P. Koslowski (1998) 287.

[90] P. Eleftheriadis, *A Union of Peoples* (2020) 115–119.

[91] K. Nicolaïdis, 'European Demoicracy and Its Crisis' (2013) 51 *J. of Common Market Studies* 351.

[92] F. Cheneval and F. Schimmelfenning, 'The Case for Demoicracy in the European Union' (2013) 51 *J. of Common Market Studies* 334.

[93] J. W. Müller, 'The Promise of Demoi-Cracy: Diversity and Domination in the European Public Order' in *The Political Theory of the European Union*, eds J. Neyer and A. Wiener (2010) 187.

[94] J. Přibáň, 'Constitutional Imaginaries and Legitimation: On *Potentia*, *Potestas*, and *Auctoritas* in Societal Constitutionalism' (2018) 45 *J. of Law and Society* S30, at S45.

11 | CONCLUSION

Historically, the process of European integration has been perceived as an anti-explosive response to the negative imaginaries of nations as ethnically and racially explosive communities responsible for the worst crimes and atrocities of humanity. European imaginaries of public spheres and demoicracy continue to both further and challenge the constitutional imaginaries of the modern nation state. At the same time, they tackle structural and legitimation deficits at the European level. While the expansive power of expert knowledge legitimizing European technocracy cannot be challenged by democratic mobilization within one public sphere, pluralistic European public spheres constitute a democratic alternative to the EU's institutional decision making. Similarly, while the constitutional imaginary of European *demoi* cannot close the legitimacy deficit of the current EU, it does temper EU decision making based on the *episteme* of experts with the democratically constituted public opinion (*doxa*) of European peoples.

The imaginaries of European public spheres and demoicracy demonstrate that the EU continues to operate as an antidote to populist nationalism. However, they also show that transnational and supranational organizations, including the EU, have to address the basic political question: the question of commonality. This question, successfully exploited by populists through the politics of identity and the imaginary of the authentic polity, finds alternative responses and possible self-identification at the transnational European level. European demoicracy and public spheres represent the potential of self-identification without self-authentication because these heterogeneous societal communication networks operate without the need to recall an authentic voice of the people that would be legitimate because of speaking truth to power. While integrating the power of democratic mobilization and public opinion that challenges the power of experts and technocrats, these constitutional imaginaries of transnational Europe retain the critical attitude towards the imaginary of the authentic polity as a legitimation force for EU law and politics.