European Integration: Between Micro-Regionalism and Globalism*

MICHAEL LONGO
Victoria University

Abstract

With the Convention on the Future of the European Union (EU) now in progress, it is opportune to examine the processes and forces currently shaping the EU’s constitutional development and impacting on governmental arrangements. For some time, debate on the constitutionalization of the EU has focused on whether the EU needs a constitution and, if so, what kind of constitution. It is argued that analysis of these core issues cannot be conducted in isolation from the processes and forces currently shaping the EU, chief among which are micro-regionalization, Europeanization and globalization. Moreover, a comprehensive understanding of the nature and degree of interaction between these processes and forces is required to inform theory and guide constitutional practice.

Introduction

The European Union (EU) is witness to a booming debate on constitutionalism, which finds practical expression in the call for a European constitution. In the absence of a clear, Ackerman-type constitutional moment (Ackerman, 1992)1 to indicate when a European constitution should be adopted, the on-

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1 The author expounds the thesis that ‘the aftermath of revolution provides liberals with a special political opportunity. For a short time, successful revolutions characteristically generate a political constellation that allows for the mobilization of deep and broad support for a liberal constitution. If a postrevolutionary leadership takes advantage of this opportunity, its new constitution can shape the terms of political development for a long time to come. Without decisive leadership, the constitutional moment passes in vain’ (Ackerman, 1992, p. 3). Ackerman acknowledges, however, that ‘[n]ot all big changes come through revolutions. Many, perhaps most, come through evolution. … But accepting the reality of evolutionary change does not diminish the impact of revolutionary mobilizations upon modern life’ (Ackerman, 1992, pp. 6–7). Revolution is defined as ‘a successful effort to transform the governing principles and practices of a basic aspect of life through an act of collective and self-conscious mobilization’ (Ackerman, 1992, pp. 5–6).
going constitutionalization of the EU must be ‘pursued within a framework of continuity’ (Bogdanor, 1988, p. 381). Viewed as a ‘pragmatic process of growth and development’ (Morgan, 1988, p. 377), constitutional change is thus perceived as incremental ‘rather than as a dramatic step brought about by some new Treaty of Rome’ (Morgan, 1988, p. 377). This article is primarily concerned with the question ‘when should a constitution be drafted?’, but does not assume a positive answer to the preliminary question of whether the EU needs a documentary constitution at all. The latter question has been the subject of considerable debate since Joschka Fischer’s now famous speech at the Humboldt University in Berlin on 12 May 2000 (Fischer, 2000). Many scholars have joined the debate with contributions as varied as they are confronting (e.g. Joerges et al., 2000; Schmitter, 2000a, b; Börzel and Risse, 2000b). With Laeken now behind us and the Convention on the Future of the EU now in train, it may be opportune to examine the processes and forces currently shaping the EU’s constitutional development and impacting on current governmental arrangements, in recognition that a decision to adopt a formal constitution should fully comprehend and account for these processes and forces. This article views the process of constitution-building as much broader than the probable outcome – a Constitutional Treaty – of the Convention on the Future of Europe.

The constitutionalization of EU governance involves and relies upon more than legal rules, norms and procedures, important as these may be. It relies on more than the consolidation of the treaties or on judicious institutional/constitutional design (with which lawyers are generally concerned), important as these may be. It depends on more than a programme of civil education through which European publics may understand the present constitutional arrangements and be involved in shaping future developments, important as this may be. Constitutionalization is as much about process and timing as content. Thus, constitutionalization also requires an understanding of the interactions of the EU constitutional order with the dynamic processes of European integration, both internal and external, which give shape to that constitutional order. To the extent that such processes are incomplete, and their impacts uncertain or contested, this article questions whether a constitution should be adopted now or in the immediate future.

A constructivist or sociological institutionalist approach enables one to theorize on the profound transformative effects that European interactions have on the processes of preference and identity formation in the EU. According to these approaches, institutions are understood in the light of their capacity to socialize and constitute actors, through ideas, formal and informal norm-making. Scholars have systematically described the resulting transformation of Member State systems and governance (Shaw and Wiener, 1999;
Moreover, the constructivist perspective recognizes the constitutive role that norms play ‘in the formation of actors’ identities and interests and in the structure of the . . . system itself’ (Slaughter et al., 1998, p. 381). Thus, it is argued in this article that the normative effects of European integration and Europeanization impact on EU constitution-building in two distinct ways: by virtue of their formative role in the institution-building process and because of their influence on the domestic political and social processes of the Member States.

There is considerable doubt at present as to whether the supranational, national or subnational units of organization should be dominant within the European polity. This uncertainty may be attributed to the multitudinal identities that make up the European political space – European, national, regional and local – all of which compete for power. Each, to varying degrees gains strength from one or more of three, at times conflicting, processes which are currently shaping the EU. The first, the process of ‘micro’-regionalization (Holmes and Murray, 1999, p. 5), sees subnational actors competing or standing side-by-side with national actors for a role in EU decision-making. The second is the process of Europeanization, through which more and more policy areas have fallen within the competence of the EU. The third process, globalization, is now beginning to impact upon the autonomy of states as well as European organizations in certain sectors, such as world trade (von Beyme, 2000, p. 82). These processes have had, and will continue to have, profound effects on the constitutionalization of the EU. Both macro- and micro-regional dynamics threaten to bypass the nation-state and, as such, they must be understood and accounted for. A new theory is required that takes these processes into account in order to inform constitutional practice and policy.

I. The Politics of Centralization and Decentralization

The power relationships between national, regional or local actors have been in evidence throughout much of recent European history although, as Majone points out, the rise of nationalism, central institutions and state-run education leading up to the Second World War had the effect of homogenizing the cultural space to the detriment of regional diversity (Majone, 1990, p. 67). The 2 From the viewpoint of sociological institutionalism, ‘Europeanization’ may be understood as ‘the emergence of new rules, norms, practices, and structures of meaning to which member states are exposed and which they have to incorporate into their domestic structures’ (Börzel and Risse, 2000a, p. 10). 3 On the relationship between European integration and globalization discourse or the question of whether European integration is best seen as a facilitator of or as a response to globalization, see Jørgensen (2000) and Rosamond (2001). It is by no means certain that globalization is an external factor ‘to which actors within the EU respond’ (Rosamond, 2001, p.173). Rosamond insightfully presents a constructivist position that ‘external’ factors such as globalization ‘are likely to be social constructions of “internal” actors (Rosamond, 2001, p.173).
resurgence of regionalism in Europe over the last half a century or so can only be understood against the background of the ‘creation of the EC and its institutions and by an expanding network of bilateral and multilateral agreements of cooperation and policy coordination’ (Majone, 1990, p. 72). However, the possibility of decentralization and fragmentation of political power ultimately raises the question of how the political space might be reconfigured to accommodate divergent interests.

Börzel and Risse observe that what is required to ‘foster the integration of European societies and increase the legitimacy of European institutions’ is the ‘comprehensive redistribution of social welfare at the European level’ which could only be realized by the grant of ‘real legislative and executive powers’ (i.e. more direct powers of taxation and spending) to the EU (Börzel and Risse, 2000b). This approach, in keeping with the egalitarian traditions of Europe, not only seems to contemplate and require a federal solution to the constitutional question, but also a sufficiently centralized model of federalism with a clear capacity for redistribution. In contrast, the EU is subject to significant budgetary restrictions and Member State restrictions on EU competencies. The EU has, as noted by von Beyme, ‘only 4% of the expenditure of all the national governments, and less than 1.3% of the EU gross social product available to it’ (von Beyme, 2000, p. 82). At the same time, there appears to be little will among the Member States to do anything about the EU’s ‘shortage of means for redistributive policies’ (von Beyme, 2000, p. 82). Implicit in this statement is the idea that diversity, the capacity for regional differences, should be quashed, at least in the sphere of social welfare. This is, of course, a matter of opinion, and on this issue opinions do not always follow ideological divisions between left and right. Territorial politics, national and subnational, can weigh in to complicate the issue. Opposition to structural and cohesion funding has occasionally been observed within the net ‘contributing’ Member States.

Most federations have experienced creeping centralization – the so-called centrist drift – in pursuit of the illusive goal of national unity. A heavily centralized version of federalism could guard against fragmentation of political power and multiple autonomous actors in the EU. However, this model appears unlikely in the light of the widely divergent interests that currently characterize the European political landscape. More likely, and already long apparent, is the move towards functional centralization and decentralization according to the issue, of which subsidiarity is an expression. The following discussion will demonstrate that the power relationships between each of the EU actors are anything but static.
II. The Forces Currently Shaping the EU

*Micro-Regionalism: Sword or Sheath?*

Contemporary micro-regionalism as a movement tends to be associated with greater autonomy (self-rule) in decision-making; thus more effective protection of distinctive cultural features and greater democracy through enhanced capacity of communities to choose the form of government to represent them. However, micro-regionalism ‘may aim in several directions’ (Keating, 1998, p. 2), with less than positive effects. The increasing autonomistic, micro-regionalization of Europe for which the EU is largely responsible, as a consequence of the adoption of policies that promote cultural diversity and the involvement of subnational actors in EU decision-making processes, raises the possibility of the emergence of an inward-looking, competitive, xenophobic and culturally protectionist bloc, as foreshadowed by Majone, ‘more exclusive and bigoted’ (Majone, 1990, p. 75) in practice than the nation-states. Micro-regionalism in its populist form may replicate the excesses of nationalism, dependent as they both are on ethnic or cultural magnification in the face of ‘otherness’ through historical manipulation, and mythologizing of local cultural forms.

A trend towards micro-regionalism not ‘bounded by the nation state’ (Keating, 1998, p. 15) may be discerned. The capacity for co-operation between micro-regions, across national boundaries, is amply demonstrated by the forms of co-operation entered into between adjacent regions in pursuit of environmental and other imperatives. Borders appear to be losing some of the meaning traditionally ascribed to them, facilitating cross-border and inter-regional co-operation on matters of local or common concern and prompting a change in long-established conceptions of ‘territory’ and ‘territoriality’. A possible consequence of increased regional autonomy is the consensual weakening or dilution of state power or, more likely, the creation of a contiguous site of authority in competition with the state. The latter foreshadows expanded potential for discord. If, for instance, future autonomous subnational administrations were able to exercise jurisdiction over immigration and foreign policy, a future European polity’s ability to protect civil rights could be severely impaired. Foreign policy and immigration are two policy areas in

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4 Chiti refers to the bonds that already unite the regions of Languedoc-Roussillon and Cataluña, the Rhône-Alps-Côte d’Azur and Valle d’Aosta, Piemonte and Liguria as examples of the irreversible progress that regions have made in this direction in recent years (Chiti, 1998, p. 30).

5 The Canadian federal experience of increasing power to the provinces may be seen as having strengthened the separatist movement in Quebec. Perhaps more than any other federal nation-state, Canada exhibits a decentralized form of federalism whereby the provinces have primary competence in policy areas usually assigned to the central administration, e.g. ethnic affairs and education.

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which the issues of human rights commonly arise. A reconfiguration of the political space which favoured subnational or local units of authority over the Member States would, therefore, hold some risk. The fragmentation of authority between numerous and diverse seats of power would render the task of policy co-ordination infinitely more difficult than is currently the case.

Therefore, the ‘new regionalism’ presents unprecedented challenges. The Europeanization of domestic structures through regional development plans and policies (including structural funds policy) creates pressures on regional or local authorities to seek engagement, representation and participation in the very decision-making structures and processes that shape their interests. The prospect of multiple actors in the decision-making process gives rise to the danger of deadlock and the ‘joint decision trap’ expounded and ‘denounced’ by Scharpf (Scharpf, 1988). It also evokes the unwelcome spectre of Schmitter’s European ‘condominio’ ‘based on variation in both territorial and functional constituencies’ (Schmitter, 1996, p. 136). However, as regards the danger of deadlock, Benz and Eberlein, drawing on their empirical study of the regional and territorial dimension of multi-level interactions in Germany (a federation) and France (a decentralized though still unitary state), argue that this danger can be ‘successfully circumvented’ (Benz and Eberlein, 1998, p. 2) by way of ‘successful integration and adjustment of the European framework’ (Benz and Eberlein, 1998, p. 17). They explain that:

[A] certain separation of intraregional from European policy-making reduces the likelihood of overloaded coordination processes. City-regions, even in the infrastructural policy areas with a direct impact on their competitive position (roads, railways, etc.), are decoupled from vertical arena integration. Vertical, intergovernmental policy coordination does not reach down all the way to the city-regional level, but normally stops at the upper subnational level, with the German Land government or the French mayors of large cities, who occupy multiple positions in the intergovernmental system, mediating between both arenas. This can alleviate dangers of deadlock or incompatibility of interaction logics, while reducing the scope of regional participation. (Benz and Eberlein, 1998, p. 17)

Benz and Eberlein conclude that the ascent of the regions as ‘new actors in European policy-making’ and the consequential pressures for regional participation were responsible for ‘novel elements of interlacing and interlocking politics’. Simultaneously, the ‘interaction of Europeanization and regionalization’ triggered processes of regional adjustment and differentiation of intergovernmental decision-making structures, the latter process emerging as the ‘precondition for the successful management of the multi-level system’ (Benz and Eberlein, 1998, p. 18).

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6 Structural policies seek to remove socio-economic and other disparities within and between territories.

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Regionalization of EU structures and processes therefore presents a challenge to EU Member State-oriented governance, though manifestly ‘[c]ompetition between different units and levels of government is a source of innovation’ (Benz and Eberlein, 1998, p. 20). Regional adjustment, restructuring or transformation of modes of governance ‘to manage the adaptational pressures and tensions arising from the double process of Europeanization and regionalization’ (Benz and Eberlein, 1998, p. 21) illustrates the capacity of the EU multi-level polity to bring about domestic change pragmatically.

Given the propulsion of the region into the European political space, it would be tempting to assert that the policy-making capacity of regional governments has been improved under the theoretical framework of multi-level governance, which envisages the reallocation of competencies between the EU, national and subnational levels of authority. However, recent research would support the contrary finding that the EU has a differential impact on each region and may, in fact, reinforce regional economic differences (Dudek, 2000). This differential impact is accentuated by divergent capacities and interests and lack of similarity between regional structures among the Member States and even within Member States. In Spain, for instance, some regions are more autonomous than others (e.g. Catalunya, Pais Vasco). In Italy five regions have a special, ‘autonomous’ status (Valle d’Aosta, Trentino-Alto Adige, Friuli-Venezia Giulia, Sardegna and Sicilia). In Germany and Belgium, subnational units have a broad range of competencies within their respective federal systems. Across the EU, politically autonomous regions or regions with a strong regional identity are ‘driven to Brussels to secure independent representation’ (Marks et al., 1996a, p. 60) ‘thus [exacerbating] … the role of territorial factors in politics’ (Marks et al., 1996a, p. 63). Even greater regional mobilization in Europe would be expected to flow from a form of political integration resulting in the expansion of EU-level spending and taxing power and a commensurate shift in resource control from Member

7 Dudek asserts that ‘EU regulatory policy has constrained the ability of some regional governments to create and implement development policies most appropriate for their respective region’ (Dudek, 2000, p. 3). This necessitates further research on the ‘territorial implication of EU regulatory policy upon regional governments’ policymaking ability’ (Dudek, 2000, p. 28). Keating makes the point that ‘[h]opes that the development of a European political space would create new possibilities for autonomous regional action have been disappointed’ (Keating, 1996b, p. 16).

8 With budgetary constraints and a low capacity for resource redistribution, it is unlikely that regions are setting up offices in Brussels in order to attract funding from the EU. Member State executives and the European Commission, to a lesser extent, determine the allocation of funding in the EU (Marks et al., 1996a, p. 56). Research indicates that ‘the most entrenched subnational governments with the broadest range of competencies’ and regions with ‘a strong sense of separate identity… [or those with] a durable party-political orientation that is not represented in the national government’ are more likely to mobilize in Europe either because they ‘have an intense need for information concerning upcoming legislation or regulation’ or ‘because they have political demands which conflict with those of their national governments’ (Marks et al., 1996a, p. 61).
State executives to the EU executive. Conditions that favoured the EU’s capacity to allocate resources and the ability of subnational governments to influence spending would conceivably trigger mass mobilization of regions in Brussels as subnational governments (powerful, weak, rich, poor, large, small) scrambled to get more money from the EU. Perhaps paradoxically, the impulse towards integration and the possibility of greater central control over finances could generate the conditions that precipitate fragmentation.

Notwithstanding contrary predictions, the notion of a ‘Europe of the regions’ or ‘Europe with the regions’ (Marks et al., 1996a, p. 61) does not necessarily run counter to Fischer’s vision of a European federation, with its main axis the relationship between the federation and the nation-state (Fischer, 2000, p. 27). Regional authority and representation need not compete with national authority and representation. A federation can exhibit a three or more tiered governmental system without impinging on the primary relationship between the centre and nation-state. Indeed, micro-regionalism or, specifically, the dynamics between this level and the centre holds significant interest and potential for those concerned with the reconceptualization of democracy beyond the state and with theorizing about democratic governance in a post-nation-state era. Laffan et al. confirm the need ‘to give consideration to the “new regionalism” in any attempt to derive new conceptualisations of the contemporary state and integration’ (Laffan et al., 2000, p. 21).

The Several Dimensions of Europeanization

Börzel and Risse have commented that ‘[f]or decades, European studies have mostly been concerned with explaining European integration and Europeanization processes themselves’ (Börzel and Risse, 2000a, p. 1) with a view to accounting for the emerging European polity from diverse perspectives, viz. neofunctionalism, liberal intergovernmentalism and multi-level governance (Börzel and Risse, 2000a, p. 1). Such research adopted a ‘bottom-up’ approach ‘in which the dynamics and the outcome of the European institution-building process are the main dependent variable’ (Börzel and Risse, 2000a, p. 1). Among the many writers in this field, this ‘institution-centred’ approach is perhaps best represented by Wallace and Wallace (Wallace and Wallace, 1996). Notwithstanding the undoubted value of such an approach, Börzel and Risse foreshadow the need for further research ‘analysing the impact of European integration and Europeanization on domestic political and social proc-

9 The authors indicate that ‘[o]ne may explain regional representation in Brussels without referring at all to the notion of a Europe of the Regions. A more suggestive term is that proposed by Liesbet Hooghe (1996): “a Europe with the Regions”, which refers to the demand on the part of regional governments for influence alongside, rather than in place of, state executives’ (Marks et al., 1996a, p. 61, emphasis in original). See also Laffan et al. (2000, p. 21) for a discussion of the different forms of regionalism.
esses of the member states and beyond’ (Börzel and Risse, 2000a, p. 1). Accordingly, the move towards a ‘top-down’ or non-institutionalist perspective is required to determine how ‘European integration and Europeanization generally affect domestic policies, politics, and polities of the member states … ’ (Börzel and Risse, 2000a, p. 1). This approach is justifiable on the basis that the nature and extent of Europeanization can be ascertained only through the comprehensive, integrated study of the impact of European institutions, processes, laws and policies on the polities of the Member States, in recognition of the often ignored fact that the EU constitutes, simultaneously, an autonomous structure of governance perpetuated through the institution-building process with which the Member States are directly concerned (bottom-up or institutionalist perspective), and a structure designed to transform the political and legal systems of its constituent states through the various processes of Europeanization, including harmonization (top-down perspective). The tendency of the Europeanization process to effect change upwards and downwards in the European multi-level governance structure shows the necessity of taking into account the various dimensions of the Europeanization process in the related, though broader, process of EU constitution-building.

More and more policy decisions are being made at the EC level within an expanding policy arena. Already, the EU makes approximately 500 policy decisions per year, while the current armoury of Community legislation comprises in excess of 5,000 directives and regulations (Börzel and Risse, 2000a, p. 4). In Table 6.1 of his work ‘Imagining the Future of the Euro-Polity’ (reproduced here as Table 1), Schmitter undertook to ‘describe the dynamics of the expansion of EC authority across the full range of issue arenas’, using the measurement device developed by Lindberg and Scheingold for the foundational period between 1950 and 1970, to which were added projections of the likely impacts on those policy areas produced by the Single European Act (SEA) and the Treaty on European Union (TEU) (Schmitter, 1996, p. 124).

Schmitter indicates, based on estimates of the impact of the SEA as at the end of 1992 and the probable effect of the Maastricht Treaty by 2001, that ‘most’ or ‘all’ policy decisions in respect of 11 out of 28 issue arenas, including the key economic policy areas of goods/services, agriculture and capital flows would be made at the EC level, with all but five policy areas demonstrating (or projecting) a degree of Europeanization at or above a ‘3’ (policy decisions at both national and EC level) (Schmitter, 1996, pp. 125–6). Europeanization is, however, subject to varying rates of implementation within the domestic legal systems, which threaten and retard the process.

Europeanization may be understood as ‘the most explicit and advanced example of the process of continental unification’ (Smith, 1997, p. 321). It
Table 1: Issue Arenas and Levels of Authority in Europe, 1950–2001

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Source of Table 1: Schmitter (1996), pp. 125–6.

Key to Table 1:
1= All policy decisions at national level
2= Only some policy decisions at EC level
4= Mostly policy decisions at EC level
3= Policy decisions at both national and EC level
5= All policy decisions at EC level

Notes:


(Notes a–f not used in original table.)

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traces ‘the emergence of new rules, norms, practices, and structures of meaning . . . which [Member States] have to incorporate into their domestic structures’ (Börzel and Risse, 2000a, p. 10). Börzel and Risse test the general proposition that whether the focus is on policies, politics or polity, Europeanization brings about substantial changes in the Member States and conclude that ‘a misfit between European-level and domestic processes, policies, or institutions constitutes the necessary condition for expecting any change’ (Börzel and Risse, 2000a, p. 18). The domestic impact may, however, be differential, demonstrating that adaptational pressures alone are insufficient to produce such change. 10

Thus, ‘[t]here must be mediating factors enabling or prohibiting domestic change and accounting for the empirically observable differential impact of Europe’ (Börzel and Risse, 2000a, p. 18). 11 Börzel and Risse go on to say that one such mediating factor is the existence of ‘multiple veto points in a country’s institutional structure’ (Börzel and Risse, 2000a, p. 9). They explain that:

The more power is dispersed across the political system and the more actors have a say in political decision-making, the more difficult it is to foster the domestic consensus or ‘winning coalition’ necessary to introduce changes in response to Europeanization pressures. A large number of institutional or factual veto players thus impinges on the capacity of domestic actors to achieve policy changes and qualifies their empowerment. (Börzel and Risse, 2000a, p. 9)

A second mediating factor is the existence of formal facilitating institutions, which can provide actors with the resources necessary to exploit European opportunities and thus promote domestic change (Börzel and Risse, 2000a, p. 9). Falkner had earlier hypothesized along similar lines that the encounter between adverse-type European and national policy networks had the greatest potential to generate destabilization or change (Falkner, 1999, p. 16). However, mediating factors such as institutions and agency at the national level in practice determine whether changes actually take place or not (Falkner, 1999, note 23, p. 16).

Hence, Europeanization exerts adaptational pressures on domestic systems providing new opportunities and constraints, which may lead to domestic change to some degree. However, ‘domestic actors must have the capabilities to exploit new opportunities and avoid constraints’ (Börzel and Risse, 2000a, p. 9). Europeanization has the dual potential to reinforce the emerging

10 For example, it has been shown that equal pay and equal treatment directives empowered women’s groups in the UK (where public agencies and related institutions provided women’s organizations with the means to use these directives to further gender equality) but had virtually no effect in France (where no such assistance was available) (Börzel and Risse, 2000a, pp. 9–10, citing Caporaso and Jupille, 2001).

11 It may also be said that the so-called ‘differential impact of Europe’ finds legal equivalence in the differing rates of implementation of Community law within domestic legal systems.
European polity and to transform the constituent states and regions. The process of Europeanization is therefore transformational, though its effects are differential and therefore difficult to predict. Ultimately, the process underpins the demand for the constitutionalization of EU decision-making, but at the same time undercuts the process of constitution-building by virtue of the uneven development of political, economic, legal and social mechanisms, networks and alliances which might otherwise encourage the constitutionalization of the EU. Nevertheless, Europeanization foreshadows a degree of convergence or ‘adaptation towards similarity’ between the Member States and the ‘geographic layers of the European Union’ in the longer term, since the EC model is ‘the point of reference for all national networks’ (Falkner, 1999, pp. 25–6).

The Impact of Globalization

The processes of globalization and Europeanization have in common a single justification. They demonstrate the inability of the nation-state to attain desired outcomes through independent action. Both processes provide external pressure to integrate and counter the nation states’ desire to retain sovereignty. Much has been written about the exportability of the EU model and whether the global polity can benefit from research on European integration (Longo, 1998; Jørgensen, 2000; Longo, 2002), a much-lauded proposition advanced by neofunctionalists and federalists during the 1960s and early 1970s. The new theoretical frame of multi-level governance (MLG) provides fresh opportunities for wide-ranging research of similar dimensions, though from a different perspective. Marks et al. have described MLG in the following terms:

The point of departure for this multi-level governance (MLG) approach is the existence of overlapping competencies among multiple levels of governments and the interaction of political actors across those levels. Member state executives, while powerful, are only one set among a variety of actors in the European polity. States are not an exclusive link between domestic politics and intergovernmental bargaining in the EU. Instead of the two level game assumptions adopted by state centrists, MLG theorists posit a set of overarching, multi-level policy networks. The structure of political control is variable, not constant, across policy areas. (Marks et al., 1996a, p. 41)

Mayntz observes that the ‘complex multi-level system’ that describes the EU ‘cannot well be understood in the conceptual frame developed for the analysis of political governance in nation states’ (Mayntz, 1998, p. 14). By placing the emphasis on EU political governance, Mayntz correctly highlights the need for a theory of governance that extends to the supranational level. She postulates that ‘[n]ew categories are needed for the analysis of European policy-
making and implementation’ (Mayntz, 1998, p. 14). Similarly, Laffan et al. posit that ‘the standard of classical statehood is inappropriate in assessing the economic role of the EU’ (Laffan et al., 2000, p. 106). In contrast, others have advocated an analytical approach to governance capacity that highlights ‘the state-centric perspective’ rather than the ‘more amorphous perspective … [of] global systems, networks, or the market’ (Peters, 1998, p. 8).12

On the one hand MLG has come to be used as a hallmark of the EU polity; ‘as a metaphor for the non-state-centric, multi-actor and rather fluid system of governance characterised by multiple loci of public and private authority currently evolving in Europe’ (Jørgensen, 2000, p. 7). However, this very description ‘draws on a … pluralistic and organisational conception of the state’ (Jørgensen, 2000, p. 7), inviting comparison with the modern state beyond the EU in the context of globalization. Questions arise as to whether globalization is a parallel process to European integration or whether European integration is one illustration, among many, of globalization. Recent studies have thrown doubt on the tendency to ‘exogenize’ global change as something to which EU actors respond, preferring to view ‘external’ factors as ‘social constructions’ of ‘internal’ actors, according to a constructivist approach (Rosamond, 2001, p. 173). A chicken and egg approach to the question posed about the relationship between globalization and European integration obscures the fundamental nature of Europeanization and globalization as ‘complementary, partly overlapping, mutually reinforcing, but also competing processes’ (Snyder, 1999, p. 4). Such an approach should therefore be resisted, though proper consideration needs to be given to the impact of globalization on Europeanization.13 As noted by Snyder, the ‘demand for the constitutionalisation of governance in the EU stems partly from the impact and implications of globalisation, [which] is exemplified by economic and monetary union’ (Snyder, 1999, pp. 57–8).

12 Addressing the contemporary issue of who governs, Peters advances the argument that the state remains a ‘useful analytic concept’ and ‘a viable actor in the governance of society’ (Peters, 1998, p. 26). Even if the emphasis he gives to the role of the state differs from that of an emerging, fashionable (though valid and important) literature that doubts the capacity of conventional nation-state institutions to govern, Peters’ standpoint offers a practical counterbalance to that literature. He calls for a constructive alternative, namely, ‘a more contingent and nuanced understanding of the relative contributions which all these types of actors now make to the governance of society’ (Peters, 1998, p. 26).

13 There is a growing body of literature addressing the evolving World Trade Organization (WTO) system and the applicability of its rulings within domestic legal orders and the European Community (EC) legal order itself. Legal analysts have detected ‘a degree of convergence’ or at least ‘some degree of mutual influence’ between the EC and the WTO, which is perhaps not surprising given that both organizations were ‘established primarily to promote trade between states’ (de Búrca and Scott, 2000, pp. 2–3). Greater convergence is envisaged as the WTO appellate body develops its jurisprudence through the disputes coming before it (de Búrca and Scott, 2000, p. 2).
As frequently noted, globalization has wide-ranging legal, political, economic, social and cultural dimensions. Whatever globalization may mean and whatever its effects (which are generally contested), it promotes interdependence as the primary form of communication between world-wide networks over the full range of public and personal relations, at once dispersing powers between various governmental and non-governmental actors, shifting the locus and, in sum, changing the nature of decision-making and government. Accordingly, there is an emerging view that governance in the future will not predominantly be the product of traditional nation-state institutions (see, e.g., Archibugi et al., 1998). In consequence, globalization is likely in the future to render redundant the issue of nation-state sovereignty and its retention, as nation-states increasingly withdraw from traditional sites of decision-making. Such a development would provide space for the reconception of governance in ways never before imagined. Zielonka suggests that:

…globalisation has eroded the capacity of any integrated political unit to maintain a discrete political, cultural or economic space within its administrative boundary. Economic sovereignty, in particular has been eroded by massive international labour and capital flows that constrain individual abilities of governments to defend the economic interests of their units. Territorial defence along border lines has been made largely obsolete by modern weapons technology. Migration and other forms of cross-border movements are on the rise, despite all the efforts of border guards and surveillance technology to seal the frontiers. Normative models and cultural habits are spreading via satellite television and the internet in a largely uncontrolled manner. Both the Union and its Member States are losing control over the legal and administrative regimes within their respective borders because they are increasingly being defined by supranational bodies such as the WTO. (Zielonka, 2000, p. 160)

Zielonka concludes that ‘the instruments of a Westphalian type state are no longer available to contemporary territorial units’ (Zielonka, 2000, p. 160). Nor would they be available, by extension, to a fully or partly sovereign EU state, even if it were able to complete a transformation in this direction. Globalization may be seen as presenting a threat to the continuation of the concept of the ‘sovereign’ nation-state to the extent that governmental authority in matters of administration that traditionally signalled the locus of sovereignty is being eroded and replaced by non-indigenous forms. The notion of undiluted sovereignty in the Westphalian sense has passed its sell by date,

14 It is generally accepted that globalization puts states in competition with each other for investment capital. States attract capital by providing the most attractive inducements, which often take the form of low taxes and limited governmental intervention in the market place. While the process of globalization is said to generate wealth, opinion is divided as to its economic and sociological merit and its value as a normative model.
leading some to question whether it is still a requirement of governance. At the same time the meaning of sovereignty itself is undergoing semantic shift from ‘state-based sovereignty’ to a ‘human rights-based conception of popular sovereignty’ (Reisman, 2000, p. 244). If it is accepted that ‘only highly diversified and pluralistic societies acting in a complex web of institutional arrangements are able to succeed in conditions of modern competition’ (Zielonka, 2000, p. 161), then a multi-layered, pluralistic EU, with a sophisticated understanding of complex, interactive decision-making, and in which sovereignty is pooled, has a distinct advantage over other units of governmental organization. The search for new perspectives of governance detached from statehood, often thought of as elective and somewhat radical, acquires a new compelling force in light of the seemingly irresistible pull of globalization.

Conclusion

The impact of competing forces and processes currently shaping the EU is neither complete nor fully understood. It follows that the substantive issues relating to the ‘constitutional’ question are open ended and will remain so for some time yet. Specifically, four questions arise. Which institutions should be retained and in what form? What powers should be ascribed to which institutions? Should macro or micro-regionalism be promoted, or both? Do we constitutionalize a strong notion of subsidiarity (thereby encouraging the organic development of power allocation along functional lines) or a clear division of powers in the interest of clarity? A serious debate on these issues may suggest solutions, but extensive analysis, simulation and, finally, public acceptance should precede their adoption. Therefore, while current conditions, uncertainties and partial understandings do not appear to support the enactment of a documentary constitution at this point in time, it is essential to set the process towards a solution in train so as to give direction and focus to current developments. The unlikely arrival on the EU scene of a ‘constitutional moment’ that punctuates constitutional change, suggests that we are compelled to contemplate constitutional change in evolutionary terms. In this light, the outcomes of the Convention on the Future of Europe (including a probable ‘constitutional treaty’) may be viewed as a single episode within the broader process of constitution-building.

If European publics did eventually agree that a constitution (as traditionally understood) should be drafted, it would be incumbent upon politicians,

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15 A democratic constitution, as traditionally defined, refers to the scheme of government that has been deliberately adopted by the people pursuant to a political process. Whilst opinion may be divided as to the specific characteristics of a constitution, legal purists and formalists would maintain that a constitution
constitutional lawyers, scholars and citizens to come up with a distinctive EU constitution which takes into account the processes currently impacting on constitutionalization, offering synthesis between the traditional nation-state model of democracy, micro-regionalism and supranationalism. Bogdanor insightfully remarked that:

constitutions cannot be understood without looking at what lies behind them – at the political processes which gave them birth, and at the historical experience which conditioned the thinking of their founders. (Bogdanor, 1988, p. 10)

In the same way, constitutions cannot be imagined without looking at what lies ahead and making sense of the processes that are transforming governance, interests and preferences. Ultimately, the changes transforming Europe will condition political and public responses to constitution-building. The better these changes are understood, the more likely will policy-making be effective in accommodating these changes and influencing outcomes. This then, specifically, is where theoretical advance can guide constitutional development. To this end, the need to build on existing theories and develop new theories is becoming increasingly clear. Greven asserts that if the EU is ‘to continue to develop as a regime of legitimate governance, it urgently requires a new model of democracy that will be acceptable beyond the limits of national political space’ (Greven, 2000, p. 55). ‘A simple expansion of the model of representative democracy is not likely to be adequate to this task of legitimation’ (Greven, 2000, pp. 55–6). Traditional theories of constitutional law and political science may prove of limited use in guiding an ensuing debate. This inadequacy is exacerbated by a pragmatic approach to European integration that has, drawing on the findings of Laffan et al, ‘given rise to a system that uses experimentalism and decentralisation as ongoing principles of policy-making and implementation’ (Laffan, et al., 2000, p. 219). Failure to achieve a comprehensive understanding of governing principles; indeed the failure to achieve a paradigm shift, will militate against the adoption of a ‘meaningful’ formal constitution.

must: (1) follow a recognizable form and content, including the institutional framework and inter-institutional relations; (2) entrench rules of amendment which wrests the issue of amendment away from control by politicians. Normally, democratic constitutions take the issue of political reform beyond the subject of intergovernmental bargaining and treaty-making, and bring it within the compass of constitutional revision; (3) be subject to fully-fledged judicial review (i.e. the exercise of constitutional powers by Community institutions should be subject to judicial review); (4) must incorporate some statement of morality common to the people represented (such as the Charter of Fundamental Rights).
Proposals to date that seek to realize this patently ambitious task (such as the Fischer model\textsuperscript{16}), of which there is a growing number, generally end up looking like nation-state constitutions, giving credence to the view that a ‘European federation’ is ‘after all … just a euphemistic expression for what is really meant, namely, the European federal state’ (Lepsius, 2000, pp. 218–19). This cynical, but widely held view, will only be dismissed, if at all, when a workable, ‘synthetic’ constitution is finally developed. For the time being, greater attention should be devoted to understanding what kind of polity or system the EU currently exemplifies. To this end, a comprehensive understanding of the nature and degree of interaction between the forces shaping European integration is required to inform theory and guide constitutional practice.

Correspondence:
Michael Longo
School of Law, Faculty of Business and Law
Victoria University
PO Box 14428
Melbourne City MC VIC 8001, Australia
Tel: 00 61 3 9688 4634 Fax: 00 61 3 9688 5066
e-mail: michael.longo@vu.edu.au

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\textsuperscript{16} Fischer outlined the formation of a ‘centre of gravity’ as a possible interim step towards completing political integration in the following terms: ‘[s]uch a group of states would conclude a new European framework treaty, the nucleus of a constitution of the Federation. On the basis of this treaty, the Federation would develop its own institutions, establish a government which within the EU would speak with one voice on behalf of the members of the group on as many issues as possible, a strong parliament and a directly elected president. Such a centre of gravity would have to be the avant-garde, the driving force for the completion of political integration and should, from the start, comprise all the elements of the future federation’ (Fischer, 2000, p. 29). This vision has variously attracted criticism and praise from politicians and scholars alike. Those who would fall outside the centre of gravity either by choice or through inability to meet the criteria for membership see the grouping as an unnecessary division giving rise to a second-class membership of the EU. Those within the centre of gravity see it as a means of making progress on political integration. This approach is, of course, not new. It reflects the ‘two-speed Europe’ and ‘variable geometry’ debates of the 1970s onwards.


