

THE HIERARCHY AND THE NETWORK: RE-CASTING THE EU'S DEMOCRATIC DEFICIT DILEMMA BEYOND THE INTERGOVERNMENTALIST-INTEGRATIONIST DEBATE

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ABSTRACT

Theories of global governance have significant implications on how institutional design challenges are resolved in specific circumstances. This is particularly the case for supranational constitutionalising polities like the EU that attempt to develop some measure of direct democratic legitimacy above the sovereign state level. This paper focuses on how one's analysis of the EU's apparent democratic deficit varies depending on the analytical lens one chooses to employ. Focusing on the European Union's Direct Citizens' Initiative ('DCI') as an adaptive constitutional mechanism and using Michael Zürn's Global Order approach as an analytical lens, it will argue that strategic transnational democratic activism deployed across Europe can transcend the clashing perspectives of the democratic deficit dilemma emerging from the long-standing and iterative intergovernmentalist-integrationist debate. The first section of this paper will investigate what it describes as the double dialectics of the EU's legitimacy crisis debates, focusing on the explanatory theoretical lenses favoured by the historic participants in this controversy, which have shaped public perceptions of the EU at least since former British Prime Minister Margaret Thatcher's famous 1988 Eurosceptic Bruges speech. The second section will deploy the normative and practical power of what Kathleen McNamara calls the EU's "cultural infrastructure of governance" to substantiate the core of this paper's thesis regarding the immanent potential of grassroots participative transnational movements to accelerate a radical shift in the EU's paradigm of governance from today's Hierarchic Sovereignty model to tomorrow's Network Connexity design. .

The empirical evidence is provided by a process tracing approach to the case study of the Federal Union of European Nationalities' ('FUEN') Minority SafePack Initiative ('MSPI').

Key words: *ECJ, EU Commission, European Union, FUEN, Global politics, integrationism, intergovernmentalism, legitimacy crisis, minorities' rights, MSPI, Polycracy, Sovereignty.*

"The current crisis of the global governance system is due to a struggle over the substance and content of global governance. It is not an attempt to reinstall a Westphalian system with unconditional sovereignty by rising powers. Yet counter-institutionalization can lead to changes that may eventually lead to a system change as well. In terms of the theory of global governance, we see two causal mechanisms at work; both of them can lead to a deepening or a decline of the global governance system" (Zürn, 2018: 184).

"This [FUEN] initiative called on the EU to improve the protection of persons belonging to national and linguistic minorities and to strengthen cultural and linguistic diversity in the EU through the adoption of a series of legal acts." (ECJ Press Release 120/19, 2019: 1).

IS EUROPE BUST? FROM A CRISIS OF LEGITIMACY TO A LEGITIMATE CRISIS

Less than two decades ago, the Current Director of the European Council on Foreign Relations, Mark Leonard (2005), published, to great acclaim, a book entitled *Why Europe will Run the 21st century*. Today, the question being heard in chancelleries around the world sounds diametrically different: 'Is Europe BUST?' BUST (short-form for Brexit, Ukraine, Syria and Trump) is interpreted as the effect of an accumulation of recent unresolved crises that cut across traditional domestic-foreign and military-

civilian divides and continue to haunt the EU (Gehring, 2020: 225-34). These events – putting in question the EU's capacity to preserve its internal cohesion, determination to face external threats and willingness to live up to its professed moral values – as well as a desire to continue its symbiotic relationship with its 'shadow' founding partner, the United States, have significantly diminished the organisation's capacity to continue safeguarding the peace, prosperity, and pluralism of its more than half a billion citizens. These '3Ps' have provided, since the signature of the Treaty of Rome in 1957, the strategic legitimacy necessary to operate ever-larger transfers of sovereignty from Member States to shared institutions – the EU Commission, European Central Bank, European Parliament and European Court of Justice. The erosion of this legitimacy in the eyes of the citizens of Member States and of European politicians takes on increasing importance in light of the organisation's lacklustre efforts to build up its endogenous, performative, participatory legitimacy since the failure of the European Constitution ratification process, in 2005, aptly described by Markus Gehring in his important recent work entitled *Europe's Second Constitution: Crisis, Courts and Community* as an “elite-driven Constitutional Convention process [that] failed to deliver on the objectives of constitutional development for Europe and... triggered a constitutional crisis that to this day remains to be overcome” (Gehring, 2020: 22).

The ongoing Ukrainian conflict pitting the authoritarian worldview of Russian President Vladimir Putin, deeply rooted in the zero-sum game of 19th century Great Power politics, against the democratic, participatory, open-borders, positive-sum project of a Citizens' Europe to which the people of Ukraine already belong in spirit and in soul, has come to epitomise the EU's current crisis. This clash of arms unfolding at the heart of Europe between two of its largest states – a humanitarian disaster few still thought possible deep in the 21st century, has brought out in the open the true stakes of the real war engulfing the European continent, of which the Ukrainian conflict is only the most recent and most shocking manifestation: a war without mercy between the supporters of what US philosopher Thomas Kuhn (1958) would recognise as two

incommensurable paradigms about how we should now structure our systems of governance: the Hierarchy and the Network (Slaughter, 2017). What is remarkable about Europe today is that both paradigms coexist, cooperate, and confront each other at the same time across the continent at multiple levels of interaction and through a multitude of actors: state and non-state, territorial and non-territorial, private and public. What the Ukrainian conflict demonstrates is that this unstable polarity generated by the two paradigms is not sustainable over the long term: networks dismantle hierarchies and hierarchies destroy networks. In the end, one or the other has to give.

The case study this paper investigates demonstrates that EU citizens will ultimately decide the victor – that is, voters acting as EU citizens, and not as citizens of individual EU Member States (Gehring, 2020: 39). To do so, it illustrates the dynamics of adaptive mechanisms of constitutionalising polities like the EU (Gehring, 2020: 259-77) that enable them to progress along the path of transformational change from statist to post-statist systems of governance – that is, from hierarchic sovereignty (Graeber and Wengrow, 2021: 362-69) to networked connexity (Castells, 2009). A constitutionalizing polity is defined by Gehring (2020:30-32) as a dynamic polity that, having been founded as an international organization containing both intergovernmental and integrationist provisions, develops adaptive constitutional mechanisms that allow the new realities of its evolving sociopolitical ecosystem to be integrated into its constitutional practice. Gehring (2020: 259) explains that such an adaptive mechanism is “a legitimate measure for changing the existing constitutional order” of a polity by reallocating competencies between its central, regional and local levels of governance “and for enshrining popular democracy”. He goes on to state that, over time, these organic adaptive processes transform that polity's founding charter by means of both incremental and radical changes into some form of federalising constitution – which however must not be automatically equated with the inevitable creation of a federal sovereign state. This constitutional transformation is achieved partly through incremental, interactive, iterative dialogues

between the polity's political and judicial institutions (Stone Sweet, 2000) spanning all its levels of governance, that respect and pursue that polity's distinct values and principles. However, at critical conjunctural moments in the polity's existence, radical constitutional changes are triggered by means of what Gehring (2020: 262) calls "significant constitutional moments", when that polity's citizens' themselves directly intervene to take part in shaping and legitimating that constitutionalizing polity's new institutional order and future normative direction, thereby causing the polity's dissenting institutions to endorse the transformative constitutional changes supported by "a decisive electoral mandate". According to Gehring (2020: 263), in the case of the EU, such a moment

"must be built upon more than just abstract ideals or visionary political rhetoric. Such a development would require extraordinary public awareness and a popular movement across current national divides in order to fundamentally change the structure of the polity."

The case study analysed in this paper, that of the Federal Union of European Nationalities' Minorities Safepack Initiative, traces how FUEN developed organically an adaptive constitutional mechanism for the EU by taking advantage of the recently adopted European Citizens' Initiative – a unique form of direct democracy at the continental level – to assert itself as an important transnational democratic actor across Europe. In doing so, it provides a fascinating example of how a transnational participatory public political sphere can coalesce organically from the grass-roots up, in the interstices of the old order, and how emerging transnational actors can skillfully navigate it and strategically redeploy their statist adversaries' most powerful weapons – namely, their government institutions and their legal systems, against them to gain decisive leverage when none existed before (Gehring, 2020: 275-94). It is in no small measure in order to prevent the expansion and consolidation of such a transnational participatory public political sphere empowering the eventual emergence of a single constitutionalizing polity from Vancouver to Vladivostok that would signify the ultimate triumph of the democratic

Network paradigm over the authoritarian Hierarchy worldview that President Putin now wages war in Europe on a scale not seen since 1945.

The Ukrainian conflict is only the most recent and lethal example of the current struggle between Hierarchy and Network being fought across Europe. EU leaders have attempted, since the adoption of the 2007 Lisbon Treaty, to remedy the EU's much-debated 'democratic deficit' but only incrementally and hierarchically, from the top down (Gehring, 2020: 3). They expanded the range of topics subject to majority voting in the EU Council, increased the co-decision powers of the European Parliament, ratified the European Citizens' Initiative, and even attempted to engineer rudimentary trans-national political parties capable of rendering European elections more competitive and meaningful for its citizens. All these initiatives seem not only to have fallen flat but to have spectacularly backfired.

Today, the Old Continent's once emergent supranational political sphere (Weiler, 1999) is being increasingly re-fragmented into national and even subnational enclaves by hyper-nationalist, populist, 'post-functionalist' political movements that challenge the original ethos underlying the 1957 Treaty of Rome, structured around the inevitability of a spill-over-effect supposedly leading from an ever-widening continental economic integration to "an ever-closer union among the peoples of Europe." A brittle United Kingdom soon bound to face both a new Scottish independence referendum and a Northern Ireland vote on Irish unity stands at the edge of "Brexiternity" (Macshane, 2019): its citizens are now stranded on the EU's outside and looking in with no voice or vote regarding their continent's future. Meanwhile, the Franco-German integration dynamo still awaits to be re-set in motion whilst the re-elected French President, François Macron, and new German Chancellor, Olaf Scholz, learn how to work together in Brussels (Ladurner, 2022). As a result, the EU seems to be bereft of a clear vision for its future – and therefore of a coherent Grand strategy of how to get there. This is amplified by the unchecked expansion of the number of 'illiberal' EU Member States, such as the four members of the Visegrad Group (Hungary, Poland, Czechia, Slovakia), whose current leaders undermine the organisation

from within by cynically taking advantage of the community's cohesion funds (Marušiak, 2021: 52) whilst disregarding its foundational norms of democracy, human rights, rule of law, and freedom of expression in both public media and academic forums (Economist, 2021). It is also in this sense that "Is Europe BUST?" remains the most burning question haunting Europe today (Shekhovtsov, 2016).

The generally accepted view among the EU's leading political, academic, and business elites, as well as among a large cross-section of European citizens, has long been that the only normatively meaningful and practically effective way to avoid the decline and eventual demise of the Union is to somehow address the issue of its democratic deficit (Schmitter, 2000). Although there is great controversy about the nature, causes, consequences and potential solutions of this proclaimed democratic deficit (Hoskyns and Newman, 2000), most participants in this existential debate seem to agree on one critical point: namely, that this crisis of legitimacy has been caused by the increasing institutionalisation of EU-wide competencies without a corresponding deepening of democratic oversight over its processes and outcomes (Bellamy and Lacey, 2018). This paper shares the view of authors who dispute this perspective and attribute EU's democracy deficit to the fact that "the EU constitutional process is not yet driven by popular demand but rather by executive decisions of Member States" (Gehring, 2020: 50). It therefore claims that the key elites participating in this debate (be they first-generation functional integrationists and liberal intergovernmentalists or second-generation populists, post-functionalists and republican intergovernmentalists) have reversed – sometimes inadvertently, oftentimes on purpose – the critical causal relationship connecting the two key variables in play here. It will thus demonstrate that the supranational institutional changes implemented since the Lisbon Treaty did not cause a 'EU crisis of legitimacy'. It is rather the EU Member States' growing strategic and performative legitimacy crisis – individually as sovereign nation-states and collectively as both "guardians of the [EU] Treaties"

(Moravksic, 1998: 236) and "gate-keepers" to the Union (Weiler 1999: 326) — that is the determinative causal factor triggering the urgent need for transformational change in the dynamics of the EU's constitutionalizing system of governance, summed up by a successful transition from Hierarchic sovereignty to Network connexity.

The arguments substantiating this thesis are structured in three parts. The first section of this paper investigates what it describes as the double dialectics of the EU's legitimacy crisis debates, focusing on the explanatory theoretical lenses favoured by the historic participants in this European legitimacy gap controversy (Bellamy, 2019) that has been shaping public perceptions of the EU at least since former British Prime Minister Margaret Thatcher's famous 1988 Eurosceptic Bruges speech (Thatcher, 1988). The second section deploys the normative and practical power of what Kathleen McNamara (2015: 3-19) calls the EU's "cultural infrastructure of governance" to substantiate the core of this paper's thesis regarding the immanent potential of grassroots participative transnational movements to accelerate a radical shift in the EU's paradigm of governance from today's Hierarchic Sovereignty model to tomorrow's Network Connexity design. The empirical evidence is provided by applying a process tracing approach to a singular case study – that of FUEN's MSPI, a unique experiment in direct participatory democracy introduced by the Lisbon Treaty with the adoption of the ECI. The third section connects all threads of this paper, by re-examining them through the lens of Michael Zürn's (2018) Global Politics paradigm and arguing that the EU is now at a systemic bifurcation point (Wallerstein, 1995: 248-251) when it can rise above the inconclusive legitimacy arguments that haunt its citizens' futures by choosing to engage on a transformative path. This would lead to radical constitutional change (Gehring, 2020: 27) from a Europe composed of statist governments, rooted in the still-hegemonic Hierarchic Sovereignty paradigm, to what could be described as tomorrow's "realistic utopia" (Rawls, 1999: 11) of relational, polycratic multi-level governance across the EU, anchored in an emergent Network Connexity paradigm (Mulgan,

1998). The conclusion further highlights research pathways focusing on both the theoretical conceptualization and empirical substantiation of this transformative transition from an international system of sovereign states to a globally connected and self-governing community of fate that is being spearheaded by the ongoing post-World War II European Project (Linklater, 1998: 198-211).

STATIST AND RELATIONAL APPROACHES TO EUROPEAN GOVERNANCE

The history of Europe since 1945 has been punctuated by three profound legitimacy crises of the territorially defined, hierarchic, sovereign nation-state (TDHSNS): in the wake of the devastation wrought by the Second World War, in 1945; in the late 1970s, with the onset of globalisation and the ascendancy of a neo-liberal economic and political ideology; and over the past decade, since the eruption of the global financial crisis of 2008 up until to today's war in Ukraine. This section argues that, on the first two occasions, the TDHSNS — in the form it historically developed in Europe since the Westphalian Treaties of 1648 — was rescued by the creation and expansion of supra-national institutions of governance: the European Coal and Steel Community, (1951) and its de facto successor, the European Economic Community, (1957) (Milward, 2000), as well as NATO, the latter designed to provide for the common military security of all members of the emerging Transatlantic community of states (Sayle, 2019). NATO's relationship to the EEC/EU (Smith and Timmins, 2000; Schimmelfennig, 2003; Reichard, 2006) as well as its adaptations and crises over the past eight decades (Johnston, 2017; Webber, Sperling and Smith, 2021) are beyond the ambit of this essay and will be the subject of an upcoming paper.

Each of these two crises was followed by a dialectical debate zeroing in on the nature and purpose of the European Project. The first-generation European legitimacy debate pitted against each other functionalist integrationists like Jean Monnet, Robert Schuman and Walter Hallstein, who saw the emerging European supranational institutions as

constituting the embryo of a new and sui generis European federal state (Hesse and Wright, 1996), against liberal intergovernmentalists like Charles de Gaulle and Margaret Thatcher who firmly believed that the European Project constituted nothing more than an international organisation whose primary purpose was to assist nation-states to more effectively pursue and actualize their self-defined national interests in an increasingly complex world (Moravcsik, 1998). Whilst this debate continued to rage in political and academic circles well into the 1990s, three alternative visions of the European Project were slowly taking shape and coalescing into a coherent post-state-centric, relational paradigm of European governance. The first vision was that of the European Economic Community as a new type of multi-level governance embedding now only formally sovereign nation-states in ever-more interconnected and overlapping networks of governance (Wallace and Young, 1997). The second perspective envisioned the European Project as the driver of a "post-Westphalian international society" whose emergence was caused by an ongoing decline in "the level of consensus about the adequacy of sovereign states and the principles of international relations which have prevailed during the Westphalian era" (Linklater, 1998: 8). The third approach warned about the vanishing of the permissive consensus that had allowed national politicians to develop the European Project without the direct democratic input and supervision of their citizens and advocated as a radical remedy a qualitative transformation of the very nature of Europe. It proposed the diremption of citizenship and nationality – of *demos* and *ethnos* – so as to allow new "thinking of co-existing multiple *demos*" at both the level of the traditional Member States and at the level of the constitutionalizing European polity (Weiler, 1999: 344). All three theories agreed, despite differences in their approaches to the study of these various dynamic democratic processes, that in such a complex new relational system, governmental institutions could assert and multiply their overall systemic influence and effectiveness, not by demanding 'sovereignty', 'independence' and non-interference in the internal affairs of the state, but "only by combining presence, knowledge, and access at each level" of government,

throughout the entire self-governance network (Wessels, 1997).

The rise of Euro-scepticism across Europe in the early 2000s and the rejection in popular referendums in France and the Netherlands of the draft European constitution in 2005 signified the transition from the first-generation legitimacy debate to a second-generation legitimacy debate. The protagonists here were, on the one hand, the increasingly vocal and influential populist post-functionalists aiming to deconstruct the EU's *acquis communautaire* and strengthen the authority of its Member States, like the leaders of the Visegrad Four, and on the other, republican intergovernmentalists such as former UK Prime Minister David Cameron and British political scientist Richard Bellamy, who coined this term in his 2019 book entitled *A Republican Europe of States: Cosmopolitanism, Intergovernmentalism and Democracy in the EU*. Republican intergovernmentalists envisaged the EU as a purely international organisation combining the practical benefits of a system of cooperating states in a globalising world with the normative imperative of European diversity. In this context, democratic processes and citizenship rights remained strictly anchored within Member States, and no Member State or institution could dominate another state and its citizens. This "republican theory of freedom as non-domination" (Bellamy, 2019: xvi), embedded in purely national democratic processes of representation, constitutes for Bellamy the critical criterion of legitimacy for a more modest, reformed European Union capable of successfully withstanding the virulent assaults of post-functionalist hyper-nationalist forces now threatening the very existence of the European Project.

The double dialectics of the European Project can now be defined as consisting of a first-generation legitimacy debate between liberal intergovernmentalists and functionalist integrationists, resulting in the synthesis of the remarkable Delors Era of 1985 to 1995 during which European Commission President Jacques Delors spearheaded the completion of the European Single

Market and the signing of the Maastricht Treaty – foundational treaty of the European Union and of its single currency, the euro. Yet even during this period of wide-spread consensus about the shape and direction of the European Project the intergovernmentalist-integrationist debate never ceased, and eventually morphed, in the early 2000s, into a second-generation legitimacy debate between populist post-functionalists and republican intergovernmentalists. What the protagonists of both first- and second-generation legitimacy debates have in common is the fact that all four visions of Europe they represent are grounded in a hierarchic, statist paradigm of international order where the foundational inside/outside Sovereignty divide (Walker, 1993) remains fundamentally unquestioned and hegemonic. For liberal intergovernmentalists like UK Prime Minister Boris Johnson, post-functionalist nationalists like Polish President Andrzej Duda, and republican intergovernmentalists like German Chancellor Olaf Scholz alike, the territorially defined, hierarchic, centralised state is organically connected to the concept of the nation and to a community of juridically equal and politically sovereign States. For integrationists, the hierarchic, territorial state is re-configured at the continental level in a federal form, with sovereign boundaries redrawn at the external borders of the Member States. It is in essence, the project of a 'Fortress Europe', still-born with the 1952 Treaty of Paris that failed to establish a European Defence Community, then resuscitated during the Delors Era with the completion of the European Common Market, and now largely shared and promoted by French President Emmanuel Macron and by the new German Foreign Minister, Annalena Baerbock (Junemann et al., 2019). This is the vision of a Europe re-constituted as a supra-state capable of conducting its own foreign, defence, finance and trade policies and of authoritatively deciding on the normative and legal boundaries between those included within its walls and those excluded from its territory.

Therefore, none of these four statist visions of Europe, nationalist and federalist alike, adequately address what Andrew Linklater (1998) accurately described as the ever-more pronounced inadequacy

of territorially defined, hierarchic states to address issues normative legitimacy, practical effectiveness and institutional adaptability that have emerged in the actual practice of governance of Europe over the past three decades. Minority rights, migration and asylum challenges, financial and humanitarian crises, environmental concerns and democratic participatory processes, the decline of the welfare state combined with the revolutionary new environment of technological creativity and connexity we live in today, are all at core complex coordination challenges of juridical, political, and administrative practices that cannot be successfully and sustainably solved by either national Member States nor by a federal super-state in a manner that truly reflects the values of human rights, social cohesion and justice, democratic participation, and systemic sustainability that constitute today the accepted normative foundations of any legitimate European system of governance (Camillieri, Jarvis, and Paolini, 1995; Habermas 1996; Heuser, 2019). The ongoing crisis of the TDHSNS will be expanded on in an upcoming book (Olteanu, 2023). Just as importantly, as events from former Yugoslavia to Ukraine have shown over the past quarter-century, none of these four pathways can protect, preserve and promote peace, security, democracy and freedom in Europe outside the NATO framework. EU Member States' Sweden and Finland's decisions to join this self-defence organisation to ensure their security despite their long-standing neutral status in the wake of Russia's invasion of Ukraine (Emmott and Devranoglu, 2022) constitute together a vivid testament to the practical impossibility of developing an effective and resilient European security structure that does not include the United States of America (Speranza, 2021).

In stark contrast to various emanations of nationalist / intergovernmentalist and federal / integrationist perspectives discussed above, the three intersecting supranational perspectives of European order previously outlined – namely that of multi-level governance, of a post-Westphalian global community, and of a system of governance capable of dissociating citizenship and nationality and of engendering multiple overlapping *demoi* at local, state, and continental levels – have coalesced into a

third school of thought that, in true dialectical fashion, transcended the intergovernmentalist-integrationist debate by elevating the European Project to an entirely new level. This post-Sovereignty vision posits the relational nature of the EU, is highly critical of the still hegemonic statist paradigm, and re-presents the EU as a 'sui generis' constitutionalising polity containing elements of a federation, a constitution and an international organisation (Gehring, 2020: 31-51). These three perspectives each assert in their own unique ways that we are now facing a third existential legitimacy crisis of the TDHSNS and that it is this legitimacy crisis, rooted in national elites' refusal to countenance the emergence of "a strong and vibrant trans-European public sphere in which transparent, legitimate policy debates can occur" (Gehring, 2020: 10) and "significant constitutional moments" can be triggered leading to a citizens-mandated, democratically-legitimated redistribution of political competencies between existing and new levels of governance of the EU, that is the causal source of the institutional challenges faced by the EU. According to these perspectives, nothing short of what John Rawls (1999: 11-12) dubbed a "realistic utopia" of a transformed, participatory, citizens-driven EU rather than a technocratic, national elites-led European Project can enable Europe's citizens to escape the vicious iterative circles of the double dialectical legitimacy debates. This multi-level, polycratic theory of governance for Europe easily accomodates NATO as the natural, next-level, Transatlantic level of governance that fits in symbiotically with the dynamics of such a transformed European Union. It thus represents a vital institutional adaptation on the road to achieving Rawls' "realistic utopia", grounded in the reasonable "hope that all liberal and decent peoples may belong, as members in good standing, to a reasonable Society of Peoples" (Rawls, 1999: 126) capable of "preserving significant room for the idea of a people's self-determination and for some kind of loose or confederation form" (Ibid., 60).

Challenging the practical relevance of the static and repetitive dialectical legitimacy debates embedded in the statist paradigms, and building on the work of

Linklater (1998), Wallace and Young (1997) and Weiler (1999), Michael Zürn (2018) published an important monograph entitled *A Theory of Global Governance: Authority, Legitimacy, & Contestation*, where he puts forward an alternative causal model explaining the reflexive dynamics of the centrifugal and centripetal processes of transnational authority-building, contestation, and responses to legitimation struggles currently characterising European politics. The remainder of this section details this new causal model and briefly presents Zürn's emergent paradigm of global politics. It then illustrates this relational paradigm's capacity to more accurately describe the actual current practice of European constitutionalising politics by examining the case study of FUEN's MSPI.

Zürn's global politics paradigm can be mapped out in three principal moves that, in turn, outline its theoretical framework, describe its dynamic driver, and map out its relational causal model. These three elements are briefly summarised here in a simplified but not simplistic manner, by providing an outline of his approach sufficient to enframe this paper's own argument and ground its empirical case study. Zürn first posits that any normative model of global order must integrate and align three key dimensions: a set of coherent moral principles, a practical institutional design, and the actual empirical conditions in which the first two elements are embedded. He explains that the moral principles centred around a vision of "the global common good" justify the exercise of authority in a global governance system, and that governing authorities are accountable to both states and non-state actors (Zürn, 2018: 7). He goes on to assert that the specific institutions of that global order exercise reflexive, non-coercive authority across different issue areas both internationally and transnationally; and finally that the interactions between authorities in given empirical conditions "expose two fundamental legitimation problems: one arising out of the democratic insufficiency of technocratic justifications for supranational governance; and the other embedded in a weak separation of powers within existing institutional structures, resulting in exercises of authority that are not deemed impartial" (*ibid.*).

The dynamic driver of Zürn's global politics model is what he calls the "authority-legitimation link" holding that governance institutions endowed with decision-making authority require legitimation. The failure of such institutions to build up "sufficient stocks of legitimacy" results in growing resistance to the expansion of their prerogatives and to the implementation of their directives (*Ibid.*: 11). Although Zürn's driver refers specifically to international and transnational institutions, the same logic is also applicable to state and sub-state institutions of government.

Finally, the causal model proposed by Zürn starts from the premise that international and transnational authorities face the two types of legitimation problems outlined above – one related to technocratic rule, the other deriving from a weak or non-existent separation of powers. These give rise to both institutional and individual contestations, which in turn elicit some type of formal responses to such crises. This leads Zürn to arrive, like Wallerstein (1995: 248-251) at a critical bifurcation point or, like Gehring (2020:261-264) at a 'significant constitutional moment' for the supranational constitutionalising polity where the dynamic causal model described above can lead, from resistance and contestation to either deadlock, drift and decline of global governance, or "to institutional adaptation, re-legitimation, and a deepening of global governance" (*Ibid.*) – in other words, from the stasis of the Hierarchic Sovereignty paradigm to the exstasis of the Network Connexity paradigm. To illustrate how this conflict unfolds in practice, across Europe, combining military precision and intensity with an absence of virtually any political mediation, almost like a non-lethal mirror-image of the deadly clash of arms of the Ukrainian war, that echoes Michel Foucault's turning inside out Carl von Clausewitz's famous dictum that war is nothing but politics pursued by other means (Heuser, 2002: Ch. 2), into the contention that politics is nothing but war pursued other means (Hardt, 2021), this paper turns now to the analysis of the FUEN case study.

FUEN'S MSPI: MAPPING OUT THE DYNAMICS OF TRANSNATIONAL POLITICAL ACTIVISM

Main Arguments. The chosen case study, that of FUEN's MSPI, aims to illustrate three main arguments. First, it demonstrates empirically that a substantial disconnect exists between the four main statist models of European governance detailed above and the actual dynamics of European governance and institutional legitimation. Second, it shows that these dynamics correspond closely to Zürn's relational model of contested global governance expounded in the previous section. Third, it argues that these dynamics align with what Kathleen MacNamara (2015: 15-20) has described as a "cultural infrastructure of governance" capable of legitimating the EU's political authority from the bottom up. MacNamara further claims that there are several specific grassroots political technologies such as labelling, mapping and narrating that help European citizens "imagine" the EU and "naturalise" its existence, as well as create it in their eyes "as a social fact" (MacNamara, 2015: 16). This case study shows that the deployment of such political technologies closely mirrors FUEN's strategic approach to creating "cultural facts on the ground" to leverage its influence as it interacts with a variety of other state and non-state actors at local, national, transnational and supranational levels of governance.

It is important to note from the start that the FUEN MSPI case study is embedded in an emergent European Minority Rights Regime ('EMRR'). Following Zürn's tripartite model linking moral principles, institutional design, and empirical conditions, this paper briefly examines the universal rights norms underpinning the EMRR from which the case study emerges, then outlines the various state-building projects of EU Member States which largely determine their positionality towards the EMRR, and finally analyses the transnational grassroots activism that constitutes the core of the chosen case study.

Universal Human Rights Norms. From Metternich's 1815 Congress of Vienna to the 1919 Versailles Treaty of Wilson, Lloyd-George and Clemenceau, four multi-national empires with distinct national minority control policies dominated Central & Eastern Europe: the German Empire, the Austro-Hungarian Empire, the Ottoman Empire and the Russian Empire. The

nationalising projects of newly independent nation-states emerging from these empires after 1919 led to massive population exchanges and migrations across Europe, culminating in the Third Reich's atrocities of total war, ethnic cleansing and genocide, followed after 1945 by the expulsion of German minorities from Eastern Europe. The Cold War largely 'froze' ethnic conflicts in Europe between 1948 and 1990, but these returned with a vengeance after the fall of the Berlin Wall in 1989 (Kagan, 2009).

FUEN's MSPI is a timely example of transnational minority rights activism (Smith *et al.*, 2019) addressing a critical issue ensconced at the core of Europe's networks of governance – namely, who exactly is in charge of minority rights issues? Existent literature on the topic provides no less than six possible answers. Liberal intergovernmentalists (Moravcsik, 2000; 2018) assert that this field is the sole competence of sovereign states, whilst functionalist integrationists invoke the 1993 *Copenhagen Criteria* to assert the EU's jurisdiction (Mosser, 2015). International law supporters side with the OSCE and the influential role of the High Commissioner for National Minorities, inaugurated in 1992 as a conflict prevention mechanism (Jackson-Preece, 2013), whilst regional governance adepts endorse the key role of the Council of Europe (Djordjevic *et al.*, 2017) in protecting democracy and human rights and cite in particular its 1994 *Framework Convention for the Protection of National Minorities*. Finally, many advocate that the aforementioned levels and actors are involved either as part of an evolving European Minority Rights Regime (Galbreath and McEvoy, 2012) or as a complex multi-level governance system combining agency and structure in novel ways (Pop, 2013) and signifying a paradigm shift towards a post-Westphalian order where state and non-state actors interact and cooperate across various governance levels (Olteanu, 2016). FUEN's MSPI position is situated midway between the last two options: it asserts that the integrationist institutions of the EU – Commission, Parliament and Court of Justice – must counterbalance the intergovernmental position of its Member States (Longo, 2019) and assist in the process of desecuritizing and empowering the EU's

national minorities (Malloy, 2014).

Particularist state-building projects. FUEN was founded in 1949 to represent Europe's ethnic minorities. It achieved consultative status of the Council of Europe in 1989 and of the United Nations in 1995 (Smith et al., 2019: 525). Today it connects 90 organisations from 30 countries. Since 2016, its President is Loránt Vincze, a member of Romania's Hungarian community. During the Cold War, FUEN was one of the very few organisations militating in favour of collective rights for national minorities in Europe (Ibid.). This changed with the 1990 Charter of Paris for a New Europe, described by former President of the Soviet Union Mikhail Gorbachev as "a true manifesto, a commitment not only to the people of Europe, but to the whole world" (Gorbachev, 2020: 9), which marked the re-emergence of minority rights as a critical issue of European order, security and peace (Galbreath and McEvoy, 2012: 69-72). Many western European states continued to practise policies of apolitical desecuritization of national minorities' issues amounting to various forms of public, official denial of the existence or political relevance of national minorities. Meanwhile, the newly independent states of central and eastern Europe tended to adopt strategies of aggressive (Huysmans, 1998; 2008) or managed securitisation (Roe, 2004) as part of their nationalising (Brubaker, 1995; 2011) state-building projects, by limiting or outright denying national minorities and their members political agency. Generously pleading in public for the safety of all European cultures, European institutions – with the EU first and foremost amongst them – ended up creating an inward-looking, incongruous and self-defeating 'Culture of Safety' that reinforced such restrictive and conflictual securitization dynamics (Djolai, 2019) that clamoured for cultural diversity between states whilst resolutely rejecting protecting such diversity within them.

FUEN's MSPI inscribes itself at the forefront of the ongoing attempts by Europe's minority rights epistemic community (Galbreath and McEvoy, 2009) to bridge the ever-widening gap between liberal intergovernmentalist and functional integrationist theories of governance in general and national

minorities management in particular on the one hand, and the growing complexity and diversity of minority rights practices on the ground, throughout the entire European social ecosystem. Brubaker's 'Triadic Nexus' of the 1990s (Brubaker, 1995) detailing the relationship between nation-state, national minority and its kin state gave way to Smith's 'Quadratic Nexus' of the early 2000s (Smith, 2002), positing the critical influence of international organisations such as the EU in the evolution of minority rights and practice. It was itself followed by Germane's 'Fifth Element' focusing on the intra-state levels of coordination between the various minority groups of the same state (Germane, 2013), then evolved into a 'Hexagonal Cast' (Olteanu, 2021) of actors, including the impact of grassroots transnational social movements such as FUEN, thinking in terms of global minority rights norms and acting locally to create realities on the ground and to enshrine them into regional legislation at the EU level (Tsutsui and Whitlinger, 2012) with the assistance of favorable rulings issued by the European Court of Justice (Gehring 2020: 218-222). The picture that is slowly emerging is one of militarised minority rights practices where interests, power and knowledge (Galbreath and McEvoy, 2012: 27-29) are deployed by multiple state and non-state agents across various territorial and non-territorial levels of governance below, at, and above the level of the TDHSNS. Such actors pursue their objectives strategically in constantly shifting coalitions over the short-, medium-, and long-term, within a network-like relational structure of non-hierarchical multi-level governance pointing beyond even a European Minority Rights Regime, itself perhaps destined to become what Étienne Balibar calls a 'vanishing mediator': "... a figure that enables an imaginary of the new during the process of transformation of a society, as the old gradually fades away..." (Isin, 2013: 117).

McNamara (2015: 28) explains best the significance of re-casting national minority groups as autonomous political actors in their own right capable of pursuing their interests by navigating between and across political boundaries contained in a larger European ecosystem. For her, European identity is a dynamic, plural and non-hierarchical

social phenomenon that is experimental and contingent in time and place, that cannot be evaluated

“solely in terms of a self-declared sense of being European, definitely ranking higher or displacing a national identity... To do so locates European governance squarely in the model of the sovereign nation-state, a recent historical mode of politics that sits uncomfortably with the reality of the European experiment.”

National minority identities represent, in this acceptance, an additional ascriptive layer of belonging complementary to European identity and Member States' identities, that can only fully unfold when liberated from the nation-state centric label of 'minority' within the wider European “cultural infrastructure of governance” (McNamara, 2015: 172), where no single national community constitutes a 'majority' any longer (Malloy, 2010). FUEN's twin-track strategic objective is to transform this perspective into an accepted social fact across the EU through grassroots transnational activist initiatives, thereby contributing simultaneously to the consolidation of a truly pan-European public participatory political sphere.

Grassroots transnational activism. FUEN is the “civil society representative organisation” and “umbrella organisation” of the approximately 100 million Europeans members of autochthonous minorities and ethnic groups living in Europe's forty-seven states (Smith et al., 2019: 531-36) – a number larger than the entire population of EU's most populous Member State, Germany. Its main objective is to ensure that “minority protection remains a central topic of a political discourse at regional, national and European level, in which the autochthonous, national minorities are included” (FUEN, 2010: 5).

At its 2013 Congress in Brixen, Italy, FUEN adopted a Programmatic Declaration proclaiming that national minorities do not constitute a threat for Europe's cohesion but a source of enrichment for European states and societies (FUEN, 2013a: 2-3). The Congress also adopted a Minority Safepack Initiative advocating for eleven specific legislative

initiatives within the EU “multilevel system” of governance (FUEN, 2013b). In order to implement them, it decided to deploy the world's first transnational directly participative democratic agenda-setting tool (Greenwood, 2019: 4-6) activated in 2012 in the EU by the 2007 Lisbon Treaty, the Citizens' Direct Initiative (Longo, 2019), to create a grassroots movement capable of influencing EU legislation (Ibid.: 188). It thus acted like a transnational norms entrepreneur introducing international norms into the process of domestic norm construction from below (Wiener & Schwellnuss 2004: 8) in order to enable their successful diffusion at state and local levels.

After gathering more than the required one million signatures across a minimum of seven EU countries (Varga and Tarnok, 2018) and winning two pathbreaking victories at the European Court of Justice against the EU Commission (Tarnok, 2017; Athanasiadou, 2019) and a Member State opposing this Initiative (FUEN News, 9/2019), the MSPI was finally presented to the European Parliament on 28. November 2019 (FUEN News, 11/2019) and to the EU Commission on 5. February 2020 (FUEN News, 2/2020). The MSPI asked the EU:

“...to adopt a set of legal acts to improve the protection of persons belonging to national and linguistic minorities and strengthen cultural and linguistic diversity in the Union... [which] shall include policy actions in the areas of regional and minority languages, education and culture, regional policy, participation, equality, audiovisual and other media content, and also regional (state) support” (FUEN 2013b: 2).

It enjoined the EU Commission to draft seven main legislative proposals (FUEN 2019: 11-14), that closely mirror McNamara's (2015: 4) conception of labelling, mapping and narrating as political technologies designed to reinforce the EU's cultural infrastructure of governance and its legitimacy as an “emergent political authority” (2015: 5), whilst simultaneously weakening the securitizing moves of EU Member States deploying nationalising projects to degrade and marginalise their own national minorities. Most importantly, it first asked for the adoption, at the

European level, of effective language, education and cultural policies protecting and promoting national and linguistic minorities; it then proposed the creation of a 'European Language Diversity Centre' to sustain over the long term Europe's "still existing rich diversity of languages"; and finally, it called for simplified access to EU state aid for activities that support minority communities and their cultures and promote cultural and linguistic diversity.

FUEN's seven main legislative proposals aim to strengthen cultural and linguistic diversity in the EU. Since no agreed definition of National Minority Rights ('NMR') exists, these proposals frame this entire field (Jackson-Preece 2014: 12), defining it through actual practice. They cover policy areas such as regional and minority languages, education and culture, regional policy, participation, equality, audio-visual and media content, regional state support. They thus address all 'Four Ps' of national minorities' empowerment - Protection, Promotion, Participation, Pluralism - to ensure that the EU motto of 'Unity in Diversity' is applied not only between Member States, as Bellamy (2019) insistently demands with his principle of freedom as non-domination, but crucially, also within them. Their cornerstone is the establishment of a European Language Diversity Centre with fully funded offices in each Member State, tasked to collect, analyse and disseminate reliable data on regional and minority languages and to assist local and national governments to formulate policies in this area. Perhaps the greatest contribution of the MSPI to the potential consolidation and effectiveness of Europe's EMRR is to virtually embed, through its seven main legislative proposals, its own definition of national minorities (FUEN, 2010: 6) into a political ecosystem whose actors have to this day failed to achieve consensus on this matter (Jackson-Preece, 2014). The second achievement is that minority rights, until now a bundle of contested norms not enshrined in the *acquis communautaire* (Wiener and Schweltnuss, 2004) have been recognised by both the EU Commission and the ECJ as a field where the EU is competent to legislate in despite Member States'

strong objections thereto (Greenwood, 2019). A third achievement, should these legislative proposals be followed through and implemented in practice, will be to provide national minorities across Europe with the tools necessary for them to acquire knowledge, presence and access at various levels of European governance, to make their voices heard and to exercise a degree of influence in political and legislative processes as increasingly autonomous and accountable actors (Malloy, 2014).

The key drawback of the MSPI, as illustrated by Romania's opposition to the Commission's registration of this Direct Citizens' Initiative before the ECJ, is that it reinforces an already existent deep wave of ontological insecurity (Steele, 2005) generally among Member States containing irredentist national minorities, and particularly among those states with large ethnic Hungarian minority communities (Kinvall, Manners and Mitzen, eds, 2020). These states perceive therefore the MSPI primarily as the attempt of Hungarian 'post-imperial minorities' across Europe to allow their increasingly 'illiberal' kin state, Hungary, to achieve indirectly, via EU legislation, what it cannot do under international law - namely to directly interfere in the internal matters of neighbouring sovereign states and degrade their unity and security as nation-states (Mälksoo, 2019; Mutler, 2022). The second shortcoming is one it shares with the EMRR as a whole, namely the lack of specific and effective measures designed to ensure the actual implementation of such legislation in Member States and the monitoring of the ongoing application of its principles in practice (Galbreath and McEvoy, 2012: 162-165). In addition, as the European Commission's disappointing recent decision on the 15. January 2021 not to propose any legislation at all to implement any of FUEN's proposals clearly shows, the ECI remains "a very weak and unconvincing participatory instrument" of direct civic democracy, that is in need of significant reform (Longo, 2019: 198) if it is to become a truly effective adaptive mechanism for the EU's constitutionalising polity and to facilitate the sustainable emergence of a

legitimate and effective new European participatory public political sphere. Gehring (2020: 281) sets out how this could be realistically accomplished in practice by combining transnational activist organisations' determination to bring forward significant test cases, just like FUEN did with the MSPI, and a European Court of Justice more willing to fully exercise its constitutional prerogatives and interpret the jurisprudential *acquis communautaire* in a manner designed to facilitate the emergence of a pan-European political public sphere:

"If the Court forcefully defended the rights of the initiative authors and mandated the Commission to come up with a meaningful proposal, given that citizens from a significant number of Member States must participate, it would inevitably create trans-European discussions, which may, in turn, transcend this one particular matter."

RE-CASTING THE DEBATE: FROM HIERARCHIC RULE TO POLYCRATIC GOVERNANCE

Participative polycracy in praxis. European states' historical and institutional development over the past two centuries has resulted in political path-dependencies and embedded civic perspectives that still consider diversity within the boundaries of hierarchically structured EU Member States generally controlled by one hegemonic ethno-national community as a predominantly negative manner. In addition, the EU adopted an internal NMR standard based on the individualistic principle of non-discrimination but imposed externally a more onerous collective standard of minority protection to acceding states in Central and Eastern Europe (Wiener & Schweltnuss, 2014: 30). This has resulted in a 'decoupling' between EU institutions and post-accession central governments of new Member States, located primarily in Central and Eastern Europe, who now often resist implementing the EU's *acquis communautaire* in the NMR field, as well as one between Member States' central decision-makers and local administrators (Ibid., 2014: 104).

Therefore, each of FUEN's seven main proposals rightly asserts that what is needed now is more than moral persuasion (Galbreath & McEvoy, 2012: 182) and emphasises the vital importance of involving local authorities and civic communities in all Member States (Pop, 2013: 53) in the development, implementation and monitoring of these seven strategies.

In recent decades, the EU has adopted an increasingly intergovernmentalist decision-making process, where Member States have retained, both individually and collectively as the European Council, ultimate decision-making power as Guardians of the Treaties, with the Council providing, at best, technical guidance but exercising little real influence (Moravcsik, 2018: 1653-58). This type of "asymmetrical interdependence" between Member States and EU institutions has transformed any attempts at democratising the EU by creating a pan-European public political sphere into "a form of organised hypocrisy" disguising the dominance of the intergovernmentalist paradigm (Ibid.). As predicted by Zürn's causal model of contested global governance, transnational actors such as FUEN and grassroots civic initiatives such as its ECI-based MSPI challenge Member States' institutional dominance and simultaneously cause not only significant progressive democratic resistance, but increasingly also the emergence of intolerant national-populist backlashes misrepresenting any extension of NMR as potentially disruptive of peace, stability, and state integrity (Smith *et al.*, 2019: 537). To address this democracy vs. security dilemma, institutional transformation and constitutional adaptation via adequate adaptive mechanisms are vital for the EU's future cohesion (Longo, 2019: 182) and development as a *sui generis* constitutional polity (Gehring, 2020: 30).

The final section of this paper maps out the direction such EU institutional transformation must take so as to align with most Europeans' values and vision for our common future – namely, towards the

actualization of the participative polycracy paradigm emerging out of the intersection of Michael Zürn's substantive relational model and Kathleen McNamara's conceptualization of institutional legitimation through judicious cultural infrastructure governance. This approach aligns with Jan Aart Scholte's (2020: 11) timely comments on how Zürn's institutionalist model of global governance can be radicalised so as to act as catalyst for "a transformative reconstruction of global governance theory [beyond] the organisational dynamics of global-level agencies in a western-liberal mold":

"To underline, the program prescribed here is transformative. It is not realized by adding a few knobs to institutionalism: a bit more nonstate actors here, a bit of deeper structure there, an occasional study of BRICS, and so on. Instead, the best of existing institutionalist international theory would be integrated with the best of network analysis, critical geography, structural sociology, normative political theory, and global cultural studies. The result of this transdisciplinary synthesis would be something qualitative different from the global governance theories known so far."

Whilst this paper cannot do justice to such a wide-ranging programmatic agenda, it highlights four transformative key practices of global governance that represent particularly important steps on the path to implementing the polycratic paradigm across the European Union: deliberative democracy for individuals, accountable autonomy of social networks, multi-level citizenship for a radically reformed EU, all together resulting in participative polycracy as a networked system of governance. Each of them requires significant institutional innovations beyond the Euro-centric liberal representative democracy framework of the sovereign nation-state.

Deliberative democracy, rooted in the notion of communicative action as most notably developed by German philosopher Jürgen Habermas (1996b) overcomes strategic tools of political decision-

making that limit individuals' roles to that of casting a vote every four years - thus merely punctuating an otherwise continuous zero-sum militarised contest for power between political parties that now treat a solution can be quickly reached (de Waal, 2020: 155). This evaluation has made clear that a political resolution to the conflict remains deceptively simple on the surface. As long as the parties involved each other not just as adversaries, but as enemies. Deliberative democracy within the European Union, like FUEEN's MSPI initiative, is thus designed not to replace, but to complement and enhance representative democracy fora such as local and regional assemblies and national and European parliaments (Dryzek, 2000).

Accountable autonomy draws on the capacity of social groups to resist oppression and do the right thing even in difficult circumstances, in common acts of political self-empowerment and resistance (Haber, 1994). Accountable autonomy of each state's constituent communities would signify a move transcending false oppositions of majority and minority rights, individual freedoms and social order, governmental power over its subjects and citizens' power to govern themselves. Ukrainians' heroic resistance to invasion and territorial dismemberment, irrespective of ethno-cultural identities, despite a significant power imbalance between their country's armed forces and Russia's military resources, provides a vivid image of the ultimate sacrifice that accountable autonomy sometimes requires of its communities and citizens.

Multi-level citizenship addresses the relationship between ethnos, demos, and polis – between ethno-nationality, citizenship, and the state which has been at the center of our political discourse at least since Jean-Jacques Rousseau published *The Social Contract* two and a half centuries ago, in 1762. Reconciling the quest for an ethics of authenticity (Taylor, 1991) with the need for a cosmopolitan morality (Benhabib, 2006) is one of the central challenges of any system of governance. The late Franco-American jurist and diplomat Gidon Gottlieb

(1993: 36-39) has offered an innovative path forward to achieve this goal with his proposal to decouple nationality from territoriality and to develop a states-plus system of governance including non-territorial nations alongside territorial states. He has shown that:

"...it is possible to develop new forms of association between nations and states that need have no direct territorial implications... Constructing a new space for ethnic groups and for nations claiming self-determination requires an integrated set of constitutional, regional, and international arrangements. These questions must be addressed on the international as well as on the domestic plane."

Participative polycracy is thus a clear example of how the theoretical Network paradigm can be implemented in a specific spatio-temporal and cultural setting – that of the EU, of Europe as a whole and eventually, of the Transatlantic Community (Olteanu, 2023 - forthcoming). It is thus a system characterised by dynamic, collaborative processes of deliberative democracy, accountable autonomy, and multi-level citizenship. It is a multi-level system of governance, containing both territorial administrative levels, from neighbourhoods and cities, to regions, states and to the EU as a whole, and non-territorial levels representing individuals' primary identities such as religion or nationality – interconnected by flat, non-hierarchical networks of power. In such a system, European 'nation-states' would no longer be 'sovereign' and dominated by one ethno-national or religious group; whilst people sharing the same cultural characteristics could set common rules affecting their identity not only in their historical homeland but wherever people sharing that ascribed characteristic may live at any given moment in time. This disassociation of territoriality and ascribed primary identity would go a long way towards eliminating the dangerous misuse of identitarian markers and ontological insecurity claims by unscrupulous national leaders eager to reinforce their own power, positions, and privileges (Della Salla, 2018: 274-276); and thus remain true to

Nelson Mandela's (1994) belief that "...to be free is not merely to cast off one's chains, but to live in a way that respects and enhances the freedom of others". Above all, participative polycracy takes seriously Gehring's (2020: xii) admonition that "the most significant and potentially fatal remaining obstacle to EU constitutionalization [is] the absence of a strong and vibrant trans-European public sphere in which transparent, legitimate policy debates can occur" and actively encourages and promotes the emergence, institutionalization, sustainability and resilience of such a Europe-wide participatory public political sphere.

Theorising the paradigm shift. It is, of course, not possible to even summarily map out the theory and practice of participative polycracy within the bounds of this paper. However, by adopting John Rawls' (1999) approach of sketching out a "realistic utopia" for a Law of Peoples – a method that was also deployed by Richard Bellamy (1999: 15-19) as he elaborated his vision of republican intergovernmentalism, this paper can contribute to the important ongoing debate about the normative principles and the institutional design of a legitimate, effective, and accountable system of governance for the entire continent that would reflect and direct the empirical political realities and interactive dynamics that, as seen in the case study, are in the process of forming under our very eyes across the EU.

Fig. 1 below summarises the key features and differences between the statist Hierarchy and the networked Polycracy paradigms of governance, the former still firmly rooted in a politically traditional and historically contingent, Euro-centric Westphalian model of State sovereignty (Graeber and Wengrow, 2021: 362-69), the latter gazing deep into a post-Westphalian future of pan-European – and eventually global Connexity (Mulgan, 1998; Castells, 2009). The Hierarchy paradigm functions most efficiently in a relatively stable, simple, systematic social ecosystem requiring only incremental institutional changes. The Polycracy paradigm thrives in a social ecosystem characterised by volatility,

uncertainty, complexity, and ambiguity ('VUCA') where institutional adaptations must be rapid, fluid, and continuous. Whereas the Hierarchy paradigm focuses on two key variables – legitimacy and efficiency, and drives them forward by means of traditional, directive, personal models of heroic leadership, the Polycracy paradigm adds a third, critical value in the mix – namely that of adaptability, and drives the new normative trinity forward by means of a cooperative, collective,

distributed leadership model (Brooks and Kensler, 2011: 56-67). The Hierarchy paradigm is a mechanistic, linear, static model institutionalised by means of traditional TDHSNS; the Polycracy paradigm is an organic, networked model institutionalised through differentiated, territorial and non-territorial, public and private interconnected governance networks that coalesce into a coherent and cohesive yet flexible and adaptable system of multi-level governance.



Models		Hierarchy	Polycracy
Components	Characteristics		
Social ecosystem (environment)	Type	3S (stable, simple, systematic)	VUCA (volatility, uncertainty, complexity, ambiguity)
	Rate of change	Incremental, conjunctural	Rapid, fluid, continuous
Dynamics (independent variables)	Type	Binary	Trinity
	Connectivity		
Leadership (intervening variable)	Representation	Heroic	Post-heroic
	Nature	Personal	Collective
	Type	Directive	Cooperative
Institutionalization (dependent variable)	Nature	Mechanistic	Organic
	Type	Static	Networked
	Units of analysis	Territorially defined, centralised, hierarchical sovereign states	Differentiated territorial and non-territorial, public and private interconnected governance networks
	Praxis	Empire, Nation-State, supra-state	Multi-level governance
Paradigm (system)	Type	Westphalian – State Sovereignty	Post-Westphalian – Global Politics
	Ontology	Realism, liberalism, constructivism	Critical constructivist
	Epistemology	Postivist, neo-positivist	Contextual, positional, constructed, gendered

Fig. 1: Dynamics of Hierarchic and Polytratic Institutions of Governance

DA 'REALISTIC UTOPIAN' STRATEGIC VISION FOR A POST-WESTPHALIAN EUROPE

On 15. January 2021, European Commission Vice-President for Values and Transparency, Vera Jourva, published the long-awaited decision on whether the Commission would give course to FUEN's Minority SafePack Initiative, that had successfully met the conditions set out in the EU's innovative European Citizens' Initiative, and propose legislation enacting FUEN's nine substantive proposals designed to preserve, protect, and promote the rights of over 100 million EU citizens belonging to autochthonous national minorities. Despite a vote of support to this effect in the European Parliament on 14. December 2020, the endorsement of a number of national and regional legislatures, and two hard-fought legal cases won by FUEN before the ECJ, the Commission issued a blanket refusal to bring any such legislation on the

grounds that "the full implementation of legislation and policies already in place provides a powerful arsenal to support the Initiative's goals" (EU Commission, 2021). For the fifth time out of five in less than a decade, the Commission refused, at the behest of the EU's Member States, to give course to a civic demand for action endorsed by over a million EU citizens across a substantial number of countries (Tárnok, 2021: 3-4).

FUEN's Twitter feed exploded with indignation. Yet again, the EU's Member States and its Commission had shown a wanton disregard for the will of the Union's citizens and refused to give course to the very instrument they had drafted and enacted as part of the Treaty of Lisbon to narrow the EU's perceived legitimacy gap arising from its increasing democratic deficit and disconnect with its voters and civic society at large (Ibid.). On 24. March 2021, the Citizens' Committee of the 'Minority Safepack - One

million signatures for diversity in Europe' filed at the General Court of the European Union a request for annulment of the European Commission's decision on the initiative, based on the grounds that "the European Commission infringed its legal obligation to state reasons and committed manifest errors of assessment" (FUEN, 2021).

The outcome of this nine-year long sustained campaign by FUEN to make use of the Union's most recent democratic participatory procedure empowering EU citizens to participate directly in their own governance fully aligns with this paper's central thesis – namely, that the supranational institutional changes implemented in the European Union since the ratification of the Lisbon Treaty in 2007 did not cause a 'EU crisis of legitimacy'; but that to the contrary, it is the EU Member States' growing strategic and performative legitimacy crisis both as Sovereign states and as Guardians of the EU Treaties that is the main driver of demands for transformative change in the EU's current institutional system of governance. To substantiate this thesis, this paper first investigated the historical double dialectics of the EU's democratic deficit debates. It then examined by means of a process tracing approach the empirical evidence provided by FUEN's MSPI drive to persuade the Commission to bring legislation protecting the rights of EU citizens belonging to autochthonous national minorities. Finally, it deployed Michael Zürn's emerging paradigm of global politics to highlight the critical historical conjunctural bifurcation point the EU finds itself at present, between continuing on the same old path of preserving its hierarchic institutions of government deeply embedded in a Sovereignty paradigm increasingly disconnected from the realities on the ground in the EU, or daring to change course and sail towards what John Rawls once dubbed a "realistic utopia" – that of a participative polycratic system of continental multi-level governance arising out of the emerging Network connexity paradigm.

More research is needed before this paper's main thesis and its subsidiary arguments are fully

substantiated. For example, a better understanding is required of the interaction between Zürn's central causal model of legitimacy deficits leading to resistance by both state and non-state actors to EU institutions and ending up in either a decline or deepening of its current institutions of governance, and MacNamara's cultural infrastructure of governance that seems to legitimate the EU from below in the eyes of its citizens by rendering it an unremarkable 'fact of life'. Equally, the paradigm of participative polycracy briefly outlined here requires significant further theoretical elaboration and empirical research if it is to join the ranks of more established IR paradigms of governance. Another fruitful avenue for research is that of the emergent European Minority Rights Regime and its real capacity to preserve, protect and promote the rights of over 100 million EU citizens belonging to autochthonous national minorities against being 'managed' as objects of ontological securitization by their very own governments. For now, this paper agrees with the pessimistic perspective of a leading expert in questions of state-building and nationalism in Europe, Prof. David Smith (Smith et al., 2019: 537), who recently stated that

"...as the current [Minority Safepack] Initiative demonstrates the balance of power between state and minority actors remains firmly weighted in favour of the former, while the claims of the latter are still often viewed through the prism of security, as potentially disruptive to peace, stability and state integrity".

It is up to us, citizens of Europe, to fully commit ourselves to radically transform that balance of power in the critical years and decades ahead, as we strive to reconfigure our systems of governance from increasingly ineffective, illegitimate and inflexible statist liberal representative democracies to a model of multi-level participative polycracy – and thus to transition from a Hierarchy to a Network paradigm of global order capable of confronting the increasingly complex and urgent challenges we face in the 21st century. The courageous people of Ukraine are already literally manning the barricades in this supreme clash of arms between forces of

domination and struggles of emancipation. We owe it to ourselves as much as we owe it to them to stand in solidarity with them at this critical conjunctural historical moment and to carry on this existential struggle to ultimate victory, renewal, and hope for our continent and for the entire world.

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