



Reflecting on the EU: the Good and the Bad Times, and Those That Are Yet to Come

Claudio Corradetti¹

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Today, as never before, the European Union (EU) is facing crucial challenges to its credibility. A double fracture has opened: one, between the Community's founding ideals and the dominant economic-driven model of integration motivating the adoption of a common currency in the absence of a common fiscal and economic policy and, another one, between the adopted governance tools and current dysfunctionalities of the market and the financial sector. A realigning of all these prongs appears inevitable to ensure coordination among Member States in the future.

In the inaugural speech of the European integration project of May 9, 1950, the French Foreign Minister Robert Schuman warned: "Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity."¹ This was the moment when France, the Netherlands, Italy, West Germany, Luxemburg, and Belgium founded the European Coal and Steel Community. Nothing more than Schuman's words capture the essence of recent European history and its current challenges.

So, one might wonder, what have 70 years of shared European history teach us today?

1 'Europe will not be made all at once'

Since its inception, the unification of Europe has been conceived as an open-ended project. After the project for a European Defence Community was abandoned, the EU Community rapidly moved from the European Coal and Steel Community (ECSC) with the Treaty of Paris of 1951 to the European Economic Community (EEC) and the European Atomic Energy Community (Euratom) under the Treaties of Rome of 1957. This was followed by an important shift to the common market with the Treaty on European Union (TEU) of the Maastricht Treaty in 1992. Along with the principle of subsidiarity, as a governance rationale for the political and legal aims of the Union, Maastricht also introduced the European citizenship.

¹R. Schuman 2011 [1950], 1.

✉ Claudio Corradetti
Claudio.Corradetti@uniroma2.it

¹ University of Rome Tor Vergata, Rome, Italy

Finally, following the Treaty of Amsterdam (1997) and the Treaty of Nice (2001), the Lisbon Treaty amended the two basic treaties of the Union (the Maastricht Treaty and the Treaty of Rome) and incorporated the EU Charter of Fundamental Rights as binding law.

More and more areas and responsibilities have been delegated by States to supranational EU institutions. Yet, no predefined design has informed the evolution of the Union.

Whereas, according to a standard vision of federal constitutionalism, the structural open-ended finality of the European Union appears as a weakness, if seen through the eyes of a Confederal Union, its undefined horizon acquires the peculiar virtue of expressing a capacity of adaptation to an ever evolving will of citizens and States.²

Yet, every fairytale hides its drama and the “drama of all dramas” of the European integration starts with the definition of its constituent power. Europe lacks a *de facto* single *demos*.³ Is this a sufficient impediment for resorting to radical alternatives?

How should we think of the interconnections between different European *demoi*? How should we combine a republican type of institutional representation with a so-called liberal form, one based on the maximization of State interests? How should we reconcile the peculiarity of the European constituent power with the idea of its open-ended finality?

These are questions for which we need to elaborate more accurate answers. A polity of European citizens should be conceived as grounded both on an irreducible plurality of national identities as well as on the projection into the future of a European identity that is never fully attainable.

2 “[...] or according to a single plan”

At the beginning it was a pure international organization subjected to the international law principle of *pacta sunt servanda*.⁴ It was only from the 1980s onward, after the case *Les Verts*, that Treaties started to be regarded as the constitutional charter of the Union.⁵ For some, this is reminiscent of the biblical story of Moses and his people who accepted a constitution without discussing it.⁶ Problems of legitimacy arouse, but the structure of legal justification had already been changed.

In *Van Gend en Loos*, the then Court of Justice of the European Communities affirmed that Community law not only conferred duties on European individuals, but it also conferred rights. The doctrine of direct effects reintroduced the question concerning “in whose name” the Community was legitimated to assign rights and duties applicable to the European citizens, once these were no longer traceable back to States.

² On the notion of “Federal Union” and its properties, see S. Fabbrini 2015, XIX.

³ “[...] imagine an *Anschluss* between Germany and Denmark. Try and tell the Danes that they should not worry, since they will have full representation in the Bundestag. Their screams of grief will be shrill not simply because they will be condemned, as Danes, to permanent minority ship (that may be true for the German Greens too), but because the way nationality, in this way of thinking, enmeshes with democracy is that even majority rule is only legitimate within a *Demos*, when Danes rule Danes. Turning to Europe, it is argued as a matter of empirical observation that there is no European *Demos* - not a people not a nation. Neither the subjective elements (the sense of shared collective identity and loyalty) nor the objective conditions which could produce them (the kind of homogeneity of the organic national-cultural conditions on which peoplehood in the European tradition depend such as shared culture, a shared sense of history, a shared means of communication) exist.” J. Weiler 1996, 523.

⁴ J. Weiler 1996, 517–533.

⁵ J. Weiler 1996, 520.

⁶ *Ibid.*

The answer was: well, to the European citizens! Yet, the problem remained regarding which overall conceptualization of citizenship to embrace, whether of State citizenship or of abstract cosmopolitanism. Additionally, there followed the problem of defining the transmission chain of the constituent wills into the European institutions.

The multiplicity of plans for Europe is visible today when the multifaceted EU crisis demands a shift from market integration to an integration of core State powers.⁷

Are we on the right track when deciding on a governance for the current EU agenda? More generally, has the EU governance and its integration process diminished its original liberal constitutional project and contributed, inadvertently, to the rise of the present crisis in all of its most significant dimension?⁸

Here are four major challenges.

First, if one considers only the EU contemporary regulatory governance adopted to contrast the financial crisis, there emerges a clear and progressive stabilization of emergency mechanisms of control which contravene several democratic standards and escape human rights checks. The reference is to the shift from the temporary measures adopted through the European Fiscal Stability Mechanism (EFSM) in 2010, to the Six-Pack in 2011, and to the stabilization of crisis management by the European Stability Mechanism (ESM) in 2012, together with the Fiscal Compact and the Two-Pack in 2013.

Second, linked to the former, is the recent populist turn of some EU national Constitutional Courts who have started replacing standards once based on “common constitutional traditions” with the promotion of a “constitutional identity.”⁹ The result has been a retreat from a shared European constitutional pattern based on liberal values of freedom and fundamental rights to self-referential legitimations of national autocracies.

Thirdly, with the outbreak of the refugee crisis, EU governance has tackled problems of relocation, border control, and registration with a fairly modest budget of 2.4 million euros for the years 2014–2020.¹⁰ Both Schengen and the Dublin Regulation of 2013 have left individual States to decide on asylum requests. National expenditure on the refugee crisis has proved to be inadequate.¹¹ It followed that relocation plans have remained unrealized and the hope of a distributive burden-sharing for the refugee crisis within the EU States has yet to occur.

Finally, following the COVID-19 pandemic, the IMF has currently foreseen a contraction of the gross world product (GWP) by 3%. There will not be winners and losers but only more or less damaged economies. Within the European area, the loss will be of approximately 7.5%, with the result of further harshening the dichotomy between virtuous economies of the North and struggling economies of the South. If no agreeable common solution is found, each State will act individually. The price for safeguarding the unity of the EU will be unbearable.

For now, the European Commission has reached a *pro tempore* compromise deal which combines different limited resources for a total of 540 billion of euros. The instruments under debate by the Ministries of Finance include, again, a partial resort to the ESM, as well as to the European Investment Bank (EIB). They also foresee the use of the Commission President Ursula von der Leyen’s sponsored measure SURE (Support to Mitigate Unemployment Risks in Emergency) and a Recovery Fund to sustain the economies of the most economically burdened States.

⁷ On this topic see P. Genschel and M. Jachtenfuchs 2018, 178–196.

⁸ See G. De Búrca 2018, 352.

⁹ See O. Pollicino 27 February 2019.

¹⁰ See P. Genschel and M. Jachtenfuchs 2018, 189–190.

¹¹ Ivi.

Will these measures be enough to push back the upcoming crisis? Almost certainly not, but they will at least prevent a stalemate in national economies. The rest will have to be worked out together.

Indeed, one of the problems is that for all these types of crises, the EU has relied either too often on Community external support as with the recourse to the International Monetary Fund (IMF), the World Bank (WB), and the United Nations High Commissioner for Refugees (UNHCR)¹² or it has fallen prey of States' nationalisms and populist parties.

The governance strategy currently adopted by the EU, while appearing more effective in the short period, has often replaced and slowed down the construction of a Community internal process, exposing the EU to external control (an example being the agreement with Turkey for the containment of refugees in 2016).

All in all, the current EU crisis has been accompanied by a deficit in the form of shared governance among the EU Members. Stagnation of political vision at the EU level has resurfaced deeper questions concerning the type of Europe we envision either as a more integrated federalist model or as an improved form of quasi-confederal league.

In this respect, the Commission's "White Paper on the Future of Europe" suggests interesting options to consider. It discusses five possible scenarios concerning what is open to future political choice. These consist of the following: (1) the basic option of an unreformed Union (considering a "carry on" strategy or a contingent tackling of problems), (2) the abandoning of a political integration and a strengthening of the single market, and (3) the possibility of higher integration only among those States that ask for it (a sort of coalition of the willing). The final two scenarios include the following: (4) an increase of efficiency measures on a restricted number of policy areas (higher integration on core State powers) and (5) a higher extent of integration of a larger number of policy areas pointing to a more federal Europe.

Where will the EU position itself?

3 'It will be built through concrete achievements which first create a de facto solidarity'

Solidarity is a concept that we Europeans have inherited from the Jacobin motto of the French revolution: "*liberté, égalité, fraternité*."¹³ The term was also reaffirmed by Marxist philosophy and worker's movements, until its present codification in human rights charters, the Maastricht Treaty as well as in the clause 222 of the Treaty on the Functioning of the European Union.

Since the inception of the European project, the Preamble of the Treaty Establishing the European Coal and Steel Community (1951), echoing Schuman's Declaration, stated that "Europe can be built only through real practical achievements which will first of all create real solidarity [...]"¹⁴ Similarly, in the Treaty of Maastricht, the mandate of the EU was said to be one "to organize, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples (Par.3, Cl.2)."¹⁵

¹² Ivi.

¹³ An explicit reference to the concept was made by Mirabeau at the French National Assembly of October 28, 1789, when he presented the word "solidarité" as one of the crucial new moral pillars. See H. Brunhorst 2005, 1.

¹⁴ *Treaty Establishing the European Coal and Steel Community* (ECSC Treaty).

¹⁵ Ivi.

These references leave us with the problem of how to accommodate solidarity in the regional context of the EU once this has undergone an extensive elaboration at the national level for over 200 years.

The political and philosophical question then turns to how to define the normative principle of solidarity in the EU. How should we frame legitimate relations of mutual cooperation in a multilevel regional polity? A host of candidates promise to fulfill such task, starting from the very popular idea of “constitutional patriotism” (*Verfassungspatriotismus*), a concept originally connected to Jaspers and Sternberger and, more recently, to Habermas.¹⁶

The creation of a *de facto* solidarity not only embraces a direct relation of mutual support among European citizens. It rather incorporates a scheme of horizontal burden-sharing also involving the relation of States among themselves and in their relation to EU institutions. Certainly, the notion of solidarity cannot be left out of the game when attempting to understand the connection between foreign nationals and hosting States (as in case of internal EU migration due to working reasons, etc.).¹⁷ If a sound moral and political principle can be reconstructed from such value, this has to be one matching solidarity with a number of fiscal and economic reforms within the EU by capturing an ideal type of reciprocity.¹⁸

4 Conclusion

The problem of the EU integration in the wake of the present multiple crises is one which demands new critical understanding. This is not just a matter of choosing whether it is more desirable to go for supra-state cosmopolitanism or for a federative turn. None of these options are desirable *per se* when conceived in the absence of an overall process of democratic legitimation (currently lacking). The EU is and should remain a distinctive project. One where the political imagination of the peoples of Europe will find institutional expression through forms of representation mediated by States, citizens, and European supranational values. In this respect, the EU should progress and expand the consolidation of its double constitution—a supranational and an intergovernmental one—regulating the single market and the monetary Union.¹⁹

The path is still long and winded, but as Jean Monnet affirmed: “I have always believed that Europe would be built through crises and that it would be the sum of their solutions.”²⁰

Hopefully solutions, rather than divisions, will appear.

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¹⁶ As advocated by J. Habermas 2001; W. Mussler 1995; E. J. Mestmäcker 2003; G. Majone 1998; N. MacCormick 1999. Examples of globalist cosmopolitanism include C. R. Beitz 1983; D. Parfit 2000; K.-C. Tan 2004.

¹⁷ See A. Sangiovanni 2013, 213–241.

¹⁸ A. Sangiovanni 2013, 217.

¹⁹ S. Fabbrini 2015

²⁰ J. Monnet 1978, 46

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⁰ J. Monnet 1978, 46