

# The Triple Democratic Crisis of the European Union

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**The European Union is facing a triple democratic crisis: a constitutional crisis resulting from the way in which the ratification failure of the Constitutional Treaty was taken as an occasion for the European Council to appropriate constitution-making powers; a long-term socio-economic crisis which has been put in full evidence by the incapacity of the Union to handle the structural shock of the financial crisis and the explosion of the neo-liberal growth strategies of peripheric Eurozone states; and a foreign policy crisis, resulting from the failure to act as a counterweight to the imperialistic proclivities of the United States, heightened by the imperial presidencies of Bush II and Obama. The European Union is at a crossroads, but the choice is not what kind of democratic European Union we will have in the coming years, but *whether* we will have a democratic European Union at all in ten years time.**



## I.

The European Union (EU) has constituted a beacon of hope for half a century. The very existence of a supranational institutional setup, decision-making processes and common policies played a fundamental role in creating the conditions under which Europe could stabilize itself and reach the highest levels of economic welfare and social equality in history. The little Community of six grew and

became an anchor of stability for the new democracies in the 1980s, and became quickly regarded as such by the new democracies to the east of the Iron Curtain when the latter fell.

The European Union, however, has been a deeply ambivalent and contradictory project from its very beginning. Lack of political willingness in the *stunde null* of Europe in 1945 combined with fundamental structural difficulties prevented the building of the European Union along federal lines. The *synthetic* path toward integration was instead based on slowly, but steadily, growing a supranational

political order through the knitting-together of national orders. This allowed for the proper grounding of the Communities on the democratic legitimacy of the European nation-states – a legitimacy the nation-states increasingly enjoyed due to their development as *Sozialer Rechtsstaats*, something which, in its turn, was rendered possible by European integration. This was the virtuous circle of the European Communities. But the price to be paid was a muddle and complex political structure, prone to (1) run into *identity crises* once what was implicit in its functioning became politically visible (i.e., once *integration* actually succeeded or was on the verge of succeeding, thereby resulting in a visible transfer of power to the supranational level), and (2) fragility when external crises challenged the affinity between the socio-economic policies of the Member States (the oil crises of the 1970s, the fall of the Berlin Wall and the re-organization of the world economy, which came with the great depression of 2007).

The European Union's long, yet unfinished, constitutional season (started in earnest after the direct election of the Members of the European Parliament in 1979, and closed *en faux* by the Lisbon Treaty in 2007) is the immediate result of the unsolved tensions at the core of the European project. For a time in the 1990s to the early 2000s, the naïve optimists could still expect that a constitution-making process could result in the European Union coming closer to a *constitutional democratic polity* or, what is the same, solving the existential crisis of the *Union* by means of transcending it through a *constitutional moment* of one kind or another. That was a hollow hope. The idleness should have been evident when the ratification failure of the Constitutional Treaty in France and the Netherlands did not result in a serious reconsideration of the reform path, but was used by the European Council as the linchpin of a project of executive constitutionalism, openly regressive from a democratic and socio-economic point of view.

Indeed, the European Union has mutated and moved in an undemocratic, unprogressive and imperialistic direction during the last five years. But the roots of this transformation can be traced back to the Single European Act on the socio-economic side, to the ambivalent nature of the debate around Laeken in the early years of the new millennium, and to the lack of a coordinated response against the imperialistic and unilateral policies of the regime of Bush II after 11 September 2001.

In constitutional terms, the Lisbon *route* to fundamental reform in the European Union implied an open and visible disregard of the democratically formed will of European citizens. This will had been expressed in the French and Dutch deliberations preceding the referenda, and was also seen in the vote itself. In positive terms, the Lisbon route is characterized by the endorsement of a fully secretive (cutting away even the IGC), incoherent (as characterized by the opt-outs) process of fundamental reform, expressly intended to cut away not only *We the people* but also parliaments from decision-making. National publics and representatives were presented with a *fait accompli* largely justified by a highly incoherent argument on the need of urgent action (widely contradicted by the ineffectual character of the reforms, as the economic crisis has widely proved by now, and by the many concessions that rendered the reforms ineffective in the short run; in fact, postponed *ad calendas polonias* on terms of decision-making). The Lisbon process has by now become *the new normal* in fundamental reform, as the decisions on the reform of European economic governance prove beyond doubt. The European Union has been pushed from the democratic track into the monarchical track, with the Heads of State and Government self-nominating themselves as new kings.

In socio-economic terms, the *neo-liberal* transformation of the European Union had been in the wings since the Single European Act consecrated the transformation of fundamental freedoms into the meta-constitutional standards of Community law, and since the Maastricht Treaty gave way to an asymmetric form of monetary union. Now it has been fully endorsed by the grave constitutional decisions taken in March 2011 by the European Council on the main lines of the wrongly called economic governance of the European Union (why not government given the degree to which national fiscal discretionality is curtailed?). The structural crisis of the asymmetric monetary Union is to be overcome by means of draconian processes of internal deflation in the Eurozone periphery, thus amplifying in a brutal manner the previously managed internal deflation adopted by Gerhard Schroeder's government in the early 2000s. The Greek, Irish, Portuguese, Spanish and Italian economies will be tilted even more in favour of capital holders, thereby reversing in a spectacular fashion the historical contribution of the European Union to the transformation of these countries into *Sozialer Rechtsstaats*. The rather odd austerity packages, regardless of degree of effectiveness, are unlikely to avoid the default of many of these states, and indeed they seem to only be intended to distribute the economic consequences of such defaults from capital holders to taxpayers.

In foreign policy, the lack of a common policy response to the imperial presidency of Bush II, and the subsequent obsession with 'rebuilding the bridges' to the US Administration has resulted in the undermining of the *acquis* of European foreign policy in the last decades, and in the case of France and Germany, the political capital resulting from their opposition to the Iraq invasion. This has clearly been at work in the U-turn of the European policy on the Palestine conflict and in the obvious *Americanization* of the response to Hamas. This has been spectacularly confirmed by the French and British led intervention in Libya (in which international law has been used as 'clothes for naked power', and to transform the right to protect into the right to target assassination). Not only is this military action wrapped in serious violations of international law (indeed, in turning international law into a charade, as the process leading to Resolution 1973 and the use of the latter as a coverup of action clearly in contradiction with it, the EU is emulating the legal rethorics of Bush II), but it can be regarded as a reverse Suez – a return of European countries to an explicit structural colonial approach.

The constitutional, the socio-economic and the foreign policy *regressions* are directly associated with the undermining of democratic political processes. The Lisbon path to fundamental reform represents an explicit rejection of democracy. The socio-economic policies are expressly intended to prevent the formation of democratic political alternatives to neo-liberal shock policies. And the foreign policy colonial adventures fly in the face of democratic public opinion (indeed, the discourse of pundits criticizing the German position revolved around the lack of courage of German politicians, incapable of doing the right thing and going *against* the democratic will of their citizens).

The European Union is at a crossroads. But the crossroads has not much to do with the *kind of democratic European Union* we will have, but with *whether* we will have a democratic European Union at all (which in turn prompts the question whether the European Union can be a durable construction if it becomes a non-democratic polity). To be more precise, democrats should focus on whether (and eventually how) we can reverse the fundamental regressive changes or whether we should simply abandon all hope and bury the democratic corpse of this European Union and engage ourselves in a different supranational project. The challenge is no longer an *unfinished democratization process* – the challenge is an advanced process of *de-democratisation*.

## II.

Although already problematic when first formulated, the great regression of the European project during these last five years has revealed that formalistic politico-theoretical and legal analysis are narrow and unidimensional projects, prone to take too seriously purely instrumental democratic discourses, and structurally incapable of making distinctions along the political right-left axis. In a status quo which takes too seriously the discourse of European institutions, political scientists and lawyers run a serious risk of becoming 'useful idiots', unintentionally defending reactionary socio-economic policies under lofty names and labels.

Firstly, the very terms in which research is designed exclude proper consideration of the non-democratic conceptions of the European Union. Because the lenses were tailored exclusively to a *democratic conception* of political legitimacy, political scientists and lawyers have tended to neglect the study of the non-democratic policy discourses, institutional setups and policy options. This has resulted in a *bias* in favour of characterizing policy discourses and policies as *pro-democratic*, even if a full consideration should have led to a very different conclusion (otherwise, policy proposals should be neglected and left outside the map of research). In particular, the lack of attention to the *dark side* of European politics rendered political science and law rather blind to *instrumental uses of democratic rethorics*. One clear example of that can be found in the approach to the Open Method of Coordination as a major *discursive achievement*, which collapses any form of deliberation into a higher form of *democratic practice*, and fails to take seriously not only representative democracy, but also deliberative democracy as a sophisticated conception of representative democracy. Another example is found in the positive bias toward cosmopolitan political theories, without any attention being paid to their distributive implications, which tend to be very regressive (if only by ignoring or bracketing the key redistributive policy, namely, taxation). This lack of attention toward non-democratic conceptions explains the major difficulties in coming to terms with both the highly regressive design and implications of the Lisbon process, and with the proliferation of governance arrangements which contribute to the undermining of the rule of law, and with it, the forms of law without which democratic decision-making is simply non-existent.

Secondly, research has tended to be highly unidimensional, exclusively focused on the 'integration' dimension of European integration and to neglect the ideological axis of policies. Research is thus by its design blind to the values and implications that different policy discourses and policies have on the distribution of economic resources within society. This is confirmed once and again when the question of the need of adding an 'ideological' axis is explicitly raised. Such a possibility is either discarded or confined as a 'peculiarity' of the economy (unduly downplaying the transversal character of the left-right axis, and indeed the essential nature of socio-economic conceptions in all work packages). This explains why what is in essence a project to revert the socio-economic gains of the whole post-war period through the generalization of domestic deflation (the March package as approved by the Council) has not been perceived as a major democratic challenge.

As a consequence, research has become disconnected from the reality of European politics. The basic elements of its normative political framework have been preserved only at the price of either marginalizing or misreading the massive transformation of the empirical reality. And as a result, the usual inflation of theoretical labels and complicated discourses has ensued.

### III.

It is imperative that law and political science come to terms with the actual – triple – democratic *problematique* of the European Union. There are very good *political* reasons to do that, because what is at stake is the European political project itself. It is unlikely that the European Union will collapse tomorrow. However, everyday it becomes more likely that the *great regression* it has experienced in the last five years will become constitutionally entrenched, rendering the Union a totally different project than it used to be, and forcing democrats to jump the ship and think about alternatives. This is, contrary to what *euro-sceptics* have constantly argued, a tragic prospect, as it would imply that several battles which were already fought and won in the process of European integration would have to be fought again. *The European Union can still be turned around and relocated in democratic tracks.* But this cannot be done without properly recognizing the pledge of European democrats after the Lisbon regression, the Euro regression and the return to an imperialistic frame-of-mind in foreign policy. And there are very good *scholarly* reasons to do that. Previous research has laid fundamental ground and made major contributions to the reconstruction and analysis of European integration from a democratic perspective. But a triumphalistic blindness toward the dark side of European integration and its frivolous unidimensional character has disconnected the normative impulse from the empirical reality of European integration. As the Union itself, research *can be still turned around* and transformed into a productive force in the democratic refoundation of the European Union.

In constitutional terms, it is imperative to denounce the democratic regression implicit in the Lisbon process, aggravated by the handling of the Eurozone crisis. Researchers should propose democratic constitutional alternatives that are feasible. This implies excluding empty appeals to vague constitution-making processes, and requires a consideration of how European integration can be relaunched by a core federal alternative in compliance with Union law (on that regard, it is not a coincidence that Montebourg and Todd's European protectionism starts precisely from there). This alternative has to combine the strategic use of majority voting to fight distortions of the common market (significantly, the British, Irish, Cypriot and Luxembourgish tax havens) with massive political mobilization, especially where this is both easier and more urgent (the Eurozone periphery), turning the growing Euro-scepticism into a force for European constitutional change. At the same time, it is imperative to offer a reconstructive framework within which the *democratic impulse* behind the reaffirmation of the primacy of national law and politics is channeled into a constructive use, and not into a victory for reactionary nationalism. This should start by reconsidering the Lisbon judgment of the German Constitutional Court, but also the grassroot appeal to disobey Community law in France and the British European Union Bill pending before the UK Parliament. Instead of demonizing these initiatives, they should be regarded as revealing of the depth of the crisis we are in.

In socio-economic terms, it is imperative to properly map the left-right cleavage, rendered incomprehensible by the neo-liberal turn of the European Christian-democratic and social-democratic parties. In particular, stress should be placed on denouncing the distributive consequences of the nationalization of financial losses, and on defending rectification by means not of haircuts of rentiers, but by the euthanasia of the rentiers, especially when speculators. This implies defending an organized default of the Eurozone periphery, coupled with the building of economic pulls and levers at the supranational level to cushion the structural transformation of all the economies of the Euroarea, and the end of free movement of capital to third countries. Special attention should be paid to tax harmonization, and to the companion theme of tax havens, as the key to the proper funding and distributive

justice within the Union. The silly doctrine of the European Court of Justice on tax avoidance (which narrows illegal behavior to 'fully artificial economic arrangements') should be reversed through secondary European legislation.

In foreign policy terms, it is imperative to demand the respect of the rule of law, which would require a thorough and proper investigation of the involvement of European states and their leaders into the war on terrorism (starting from a proper inquiry into the role that the present President of the European Commission played as Prime Minister of Portugal in the CIA renditions). Research should develop an argument on the need of a full respect of the international rule of law and the abandonment of the hubristic will to reconfigure the world implicit in the reformulation of Bush II's strategy by the present Obama administration. Given the present circumstances, there is no chance this would be effected unless the European Union starts developing its defence policy *on the side* of NATO and not within it.