

Two Faces of the European Union

DALIBOR ROHAC
American Enterprise Institute

Abstract: This paper outlines two distinct conceptions of European integration. One, the EU can be understood as a forward-oriented project seeking to dramatically reshape political realities in Europe and in the world. Two, it can be seen, more modestly, as an effort to structure interactions between states and other actors through general rules and the creation of formal and informal platforms for intergovernmental cooperation. While both approaches have respectable intellectual pedigrees, the European project has been long tilted in the former direction, resulting in frequent cycles of overreach and underdelivery. To get the EU out of its present blind alley, the latter approach needs to be reinvigorated and translated into a practical agenda for institutional and policy reform.

Keywords: European integration, liberalism, pluralism, subsidiarity

1. INTRODUCTION

The European Union (EU) can be looked at through two distinct sets of intellectual lenses. Seen through the first one, the EU's institutional architecture, past evolution, and its legitimacy are all derived from the promise of the project's future, ushering in not only a qualitatively new form of governance in Europe, overcoming Europe's atavistic divides in favor of the *Treaty of Rome's* vision of an 'ever-closer union,' but also serving as a vehicle of universal progress. The latter set of lenses, in contrast, focuses one's attention on the EU's present as a nexus of institutions, rules, and relationships linking together and constraining national governments, creating a space for economic competition and political cooperation.

Both of these perspectives can be illuminating. Yet, the two are in tension. To look at the EU's present is to be oblivious to the underlying teleology of the European *project*, and to the intentions of its founders and its current movers and shakers. Focusing on the EU's direction, on the other hand, makes one interested in where the integration project is supposedly headed, at the risk of ignoring the EU's current state. Whatever the EU's current flaws, they are merely temporary obstacles on the road toward fuller integration, bringing about greater harmony, peace, and human progress.

This paper argues that since its inception, the EU's self-understanding has been tilted heavily toward the latter, te-

leological view of European integration. As the legal scholar Joseph Weiler notes, the EU has rarely been justified through traditional means of input/output, or process/result legitimacy. The EU's deficiencies as a democratic polity have long been apparent, as has the bloc's failure to deliver some essential Europe-wide public goods. Yet, "the justification for action and its mobilizing force derive [...] from the ideal pursued, the destiny to be achieved, the promised land waiting at the end of the road" (Weiler 2011, p. 683). Moreover, this paper shows, this teleological paradigm, in which the tools at the EU's disposal have rarely matched its stated ambitions, has finally become unsustainable in the crises of the 2010s. Contrary to the view of integration as an engine moving forward thanks to bargains struck in crises, the EU's operation over the past decade has become increasingly intergovernmental, ad hoc, and untethered from both the European Parliament and, to some extent, the European Commission (Puetter and Fabbrini 2016; Smeets and Zaun 2021). The initial response to the COVID-19 pandemic, for example, involved unilateral border closures contravening the spirit and letter of EU treaties, superseded in the summer of 2020 with bilateral travel corridors (Opilowska 2021). Tackling the refugee crisis required a deal struck effectively between Germany's chancellor Angela Merkel and Turkey's president Recep Tayyip Erdoğan (Okuy and Zaragoza-Christiani 2016; Szabo 2018). Even the Eurozone's muddling through its debt crisis in the early 2010s was facilitated not by some grand Hamiltonian bargain but by the creation of an emergency fund and a system of surveillance outside of the scope of the EU's treaties (Mody 2018).

For a long time, the EU's self-understanding as a vehicle of irreversible political integration, associated with a sense of historic progress, has long distinguished it from other examples of international economic integration and federalism. Unlike in any other international organization, the EU's governing institutions have shaped to mimic the functioning of a federal state, featuring an executive (European Commission), a directly elected lower chamber (European Parliament), a Senate-like form of representation for states (European Council), and an apex court charged with interpreting and enforcing EU law (European Court of Justice). The EU has also its own currency and a central bank, pan-European political parties, and a flag. Political leaders such as France's president Emmanuel Macron make frequent allusions to "European sovereignty." The term is particularly arresting, as sovereignty has traditionally referred to forms of political power that are "indivisible, supreme and absolute"—and not to federal arrangements that involve an association of self-governing political units (Reho 2018).

In important ways, the European project represents a revival of federal systems of governance seen in Europe for over a millennium since the collapse of the Roman Empire. The continent's smorgasbord of fiefdoms, kingdoms, duchies, and city-states was tied through intricate feudal relations and the common bonds of Christendom. Arguably, those "somewhat ragged and untidy" (Jones 1987, p. 110) governance structures, as the historian Eric Jones characterized them, served Europe well. The shared frameworks enabled goods, ideas, and capital to travel relatively freely, while decentralization and competition kept local rulers from overreaching and forced them to cater to local needs and preferences. Cities formed leagues, either for defense (Lombard League) or for the advancement of shared economic interests (Hanseatic League). For over a millennium, much of Central Europe had been part of the Holy Roman Empire, a loose quasi-federal entity comprising hundreds of state-like units with different degrees of representation in the shared central institutions. Europe's cultural, political and institutional pluralism have been instrumental to the discovery and diffusion not only of technological innovations, but also innovations in governance—most prominently accountability, democracy, rule of law, and limited government (Bergh and Höijer 2008).

However, the main difference between the EU today and those earlier forms of federal, or covenantal, governance is the EU's commitment to a continual deepening of political unity and the shared sense of direction—a feature that instead came to characterize the period of consolidation of nation states in the 19th century, together with their efforts at cultural homogenization. In the same vein, there is nothing inevitable about the future deepening of other existing projects of economic integration existing around the world, such as ASEAN, MERCOSUR or USMCA/NAFTA, or within existing federal and confederal states around the world. In fact, with some notable exceptions (Switzerland, United States), a majority of federally admin-

istered countries are results of a decentralization of previously unitary forms of governance where devolution of power proved necessary to accommodate local diversity.

The commitment to ‘ever-closer union’ has brought the EU into a blind alley, in which a continuing deepening of political integration and a pooling of competencies in Brussels is a political impossibility. The most obvious, though unappealing, alternative to the dominant paradigm is a return, advocated by the nationalist right, to a Europe of sovereign nation states. This paper can be seen as part of an effort to move the EU beyond this false dichotomy. Without any doubt, a thin federal or quasifederal form of governance reflects Europe’s pluralist realities in ways that centralized nation states do not. It also enables it to exploit economies of scale through its single market, foster institutional competition and learning, as well as cooperation in addressing challenges transcending national borders. For those reasons, the best response to the current crisis of the integration project is not its abandonment but rather its reinvigoration, along classical federalist lines.

This paper proceeds by exploring the intellectual origins of the notion of the EU as a state in the making (Section 2) and of an alternative, more restrained vision that seeks to build common European institutions with the narrow purpose of managing Europe’s underlying diversity (Section 3). Section 4 examines the practical ramifications of the EU’s tilt toward a teleological view of itself in the form of various practical policy decisions that were meant to propel the project forward but have largely failed to do so. Finally, Section 5 explores what a rebalancing of the EU toward a more horizontal and thinner polity, better geared to accommodate Europe’s diversity, means within the context of existing European treaties.

2. EUROPE AS A PROJECT OF PROGRESS

Many of the intellectual precursors of the European project, starting with the French utopian thinker Henri de Saint-Simon saw Europe as a vehicle of historic progress. Saint-Simon articulated the idea in effectively messianic, religious terms—as the continent’s chance of redemption from the sins of the past (Swedberg 1994). For France’s maverick philosopher Alexandre Kojève, in turn, Europe’s integration was a corollary of unstoppable historic forces transcending the nation state and leading humankind toward an inclusive global government—the effective ‘end of history.’ A Marxist and Hegelian thinker, he not only trained a generation of French thinkers, but also worked in various high-level positions at France’s ministry of the economy, participating directly in negotiations leading to the formation of the European Coal and Steel Community (ECSC) and later worked to block the UK’s application to join the European Economic Community. “[I]t is impossible to jump from the Nation to Humanity without going through Empire” (Kletzer 2006, p. 146), Kojève argued, conceptualizing the future European project as a “Latin Empire,” encompassing the culturally, linguistically and politically likeminded nations of France, Spain, Italy, and Portugal, which would join an economic union in order to “create and inspire” a new “specifically political ideology,” which would be geared toward securing not so much power or ‘greatness’ but rather autonomy. “A will to autonomy” is not necessarily imperialist or militarist, as “militarism’ and ‘imperialism’ are outgrowths of a fundamentally underdeveloped will to autonomy and do not use truly powerful means of execution.”

For socialists among the European project’s founding fathers, integration was emphatically not meant to restore the decentralized, covenantal political order Europe had experienced in the past. Rather, the EU was meant to represent a radical break with everything Europe had seen. As the wartime *Ventotene Manifesto*, co-authored by Altiero Spinelli, who would play a key role in the integration effort well into the 1980s, put it, “[w]e must know how to discard old burdens, how to be ready for the new world that is coming, that will be so different from what we have imagined. Among the old, the inept must be put aside; and among the young, new energies are to be stimulated” (Spinelli and Rossi 1941). Spinelli and his disciples stressed the need to immediately create “a secure and strong European power based on a democratic consensus among Europeans” as a vital institutional prerequisite to establishing an ‘effective economic, military and diplomatic unit’ in Europe (Spinelli 1985). In fact, the argument went, common European po-

litical institutions ought to be built *before* the post-war reconstruction of Europe's nation states takes place (Majone 2013, p. 296).

The progressive approach to European federalism relied on a unitary view of sovereignty and stressed the hierarchical and vertical nature of the relationship between federal power and states. Centralist federalists sought to set up “an efficient centralized government” in much the same way as unifications of Europe's nation-states took place in the 19th century—presumably to be accompanied by similar efforts at cultural and social homogenization.

This intellectual tendency was further bolstered by the technocratic functionalism of Jean Monnet. Monnet's toolbox was different from Spinelli's, who was transparent about the need to “organize power at the European level” (Burgess 1996, p. 4) through discrete political moves. Monnet's method eschewed direct challenges to national sovereignty in favor of a gradual pooling of competencies, which was supposed to open the way to gradual political unification—“the [European] Community is only a step towards organizational forms of tomorrow” (Monnet 1985, p. 617). Growing economic ties will feed an ongoing cycle of political integration, “establishing de facto solidarity, from which a federation would gradually emerge” (Burgess 2000, p. 35). The common state would thus emerge out of necessity, not out of a discrete political choice. While his strategy was different, Monnet concurred with the progressives on the obvious desirability and indeed inevitability of the ultimate goal—of ‘ever-closer union.’ “The realities will themselves allow to create a political union,” Monnet wrote in his memoirs. “The idea is clear: Europe will be built by men, at the right moment, from the reality that is available to them” (Monnet 1985, p. 506). “Europe is late on a path on which it has already embarked deeply” (Ibid., p. 617).

The teleological outlook has made generations of European officials, politicians, and judges more than just fair-minded guardians of existing European institutions. It has provided them with an ideological imperative to push the project constantly forward, and never look back. The messianic zeal is already apparent in the pathos of the 1950 *Schuman Declaration*, which does far more than just articulate the now-uncontroversial idea of pooling of coal and steel production as a precondition for making war between France and Germany “not merely unthinkable, but materially impossible.” Echoing Kojève's universalist understanding of its mission, economic union between European states was a first step to a global goal of “raising living standards and to promoting peaceful achievements. With increased resources Europe will be able to pursue the achievement of one of its essential tasks, namely, the development of the African continent. In this way, there will be realized simply and speedily that fusion of interest which is indispensable to the establishment of a common economic system; it may be the leaven from which may grow a wider and deeper community between countries long opposed to one another by sanguinary divisions” (Schuman 1950).

3. EUROPE AS A PLURALISM-SUSTAINING ORDER

The notion of the European project as a one-way ticket to a historically unavoidable terminus, a European if not a global superstate, has not been shared by every supporter of European integration. Prominent classical liberals and ordoliberalists, as well as many Christian democrats saw Europe's post-war challenge not as a project of self-evidently desirable political unification but rather as a program of restructuring and constraining Europe's nation states to prevent the excesses of their unchecked and destructive behavior observed in the first decades of the 20th century. A European *federation*, a term used by these thinkers in its original meaning (the Latin root of the word, *foedus*, meaning covenant), was to provide a two-prong, self-reinforcing solution to Europe's political instability and resurgence of interventionist and protectionist policies that followed the advent of nation states in the 19th century.

Firstly, an international authority ought to enforce a plethora of rules constraining the nation state, particularly its economic policies. The Austrian economist and later Nobel Laureate Friedrich August von Hayek would delegate to this authority the power to “[prevent] individual states from interfering with economic activity in certain ways” without necessarily holding also the “positive power of acting in their stead” (Hayek 1948, p. 267). Likewise, the German ‘ordoliberal’ economist Wilhelm Röpke thus rejected the sug-

gestions that Europe ought to be organized politically by moving sovereign power from the nation states to a European federation. Instead, Röpke argued, “the excess of sovereignty should be abolished instead of being transferred to a higher political and geographical unit” (Majone 2013, p. 298).

Hayek argues that policies of economic protectionism or the extension of special privileges to domestic industries would be impossible in an international setting—precisely because the pluralistic nature of a federation would hamper the sense of national solidarity that makes it politically feasible, in a nation-state, to urge voters to make:

[s]acrifices that benefit] compatriots whose position is familiar to them. Will the same motives operate in favor of other members of the Union? Is it likely that the French peasant will be willing to pay more for his fertilizer to help the British chemical industry? Will the Swedish workman be ready to pay more for his oranges to assist the Californian grower? Or the clerk in the city of London be ready to pay more for his shoes or his bicycle to help American or Belgian workmen? (Hayek 1948, pp. 262-263).

Secondly, this group of thinkers argued, constraining the nation-state required the devolution of existing unitary states in Europe. Hayek, for example, saw Nazism not as a one-off aberration. Rather, it was an extension of the much earlier project of Germany’s political consolidation and militarization. Accordingly, he argued in 1944, “the victors should not regard Bismarck’s creation of a highly centralized Germany as an irreversible fact, and that, if Germany is ever to fit as a peaceful member into the European family of nations, it will be necessary partly to undo Bismarck’s work and to reconstruct Germany with a decentralized and truly federal structure” (Hayek 1945, p. 12). Such policy of domestic decentralization had to “be supplement[ed] by the enforcement of complete free trade, external and internal, for all these German states” (Ibid., p. 13).

There is another, distinctly European and Christian, perspective on European federalism, based on papal encyclicals and pronouncements starting with the *Rerum Novarum* (Leo XIII 1891). Although the Church did not explicitly discuss federalism in those documents, it espoused a peculiarly organic view of society, together with distinct institutional implications (Burgess 2000, p. 11). In addition to Catholic social teaching, which exercised strong influence on the European vision of the Christian democratic founding fathers, much of the relevant philosophical machinery was provided by the personalist philosophical movement (Kinsky 1979). Personalism, which was grounded in the personal nature of God in Christianity and the resulting centrality of the individual as the *Imago Dei*, advocated decentralization. This was due to its emphasis on the covenantal nature of human society as based on the “cooperation between independent decision-making centers and restructuring of the whole of society, both based on freely entered into contracts” (Ibid., p. 152). In contrast, personalism saw the unitary, consolidated nation states of the era as Jacobinic, centralist and oppressive.

Such voices have not been inconsequential.¹ Röpke, for example, was a prominent participant in German center right debates over domestic economic policy² as well as over the early direction taken by the European project, of which he was highly critical (Gregg 2010, p. 156). Yet, among the founding generation of the EU’s statesmen on the center right, few sought to create a European superstate. France’s towering post-war figure of Charles de Gaulle saw the European project primarily as an extension of France’s stature in the world. Christian Democrats among the EU’s founding fathers, such as Italy’s Prime Minister Alcide De Gasperi or Germany’s Adenauer, tended to be well-versed in personalist philosophy, (Kaiser 2007) which held an organic, covenantal view of society and emphasized the importance of subsidiarity, the principle that social and political issues should be dealt with at the most immediate level consistent with their effective resolution. Ludwig Erhard, Germany’s Ordoliberal chancellor (1963-1966) shared Röpke’s intellectual pedigree though the latter’s actual influence on Erhard remains contested (Mierzejewski 2006). The second post-war president of Italy, Luigi Einaudi, maintained a distinctly classical liberal view of European integration as “the opposite of subjugating the various states and the various regions to a single center” (Einaudi

1945). Instead, it simply meant “assigning to the federal authority certain economic tasks strictly defined in the constitutional document of the federation [...] it is necessary to reduce to a minimum absolutely necessary the number of tasks assigned to the federation from the beginning” (Ibid.).

4. HUBRIS AND NEMESIS

The history of the European Union has always involved uneasy compromises between its two basic understandings: one, as a forward-oriented vehicle of progress and state-building, and two, as a stable rules-based system constraining national governments.

On the one hand, the integration efforts led to a gradual disappearance of both tariff and non-tariff barriers to commerce in the EU, with last tariffs phased out by the end of the 1960s. Classical liberals and conservatives were also instrumental in the gradual emergence of the European Commission as a guardian of a level playing field. Its role in competition policy dates to the 1950s and grew gradually stronger through legal cases such as *Dassonville*, which curbed the ability of governments to impose arbitrary trading restrictions. “All trading rules,” the European Court of Justice decided, “enacted by Member States, which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions” (European Court of Justice 1974).

Later, the Single European Act, a highly complex piece of legislation going far beyond just issues of economic integration (e.g. covering questions of voting procedures, the European Commission’s powers in areas of environmental, social, and regional policy), entrenched the principle of free movement of goods, people, services, and capital (Gillingham 2003, pp. 228-258). Since then, the Commission has successfully curbed state aid to national champions, broke up numerous publicly owned monopolies in network industries, deregulated the airline industry, and dismantled barriers to the integration of financial markets.³ The relative rigidity in the enforcement of state aid rules in the past few decades has been a primary ingredient in the creation of the single market, reflecting a distinctly ‘ordoliberal’ view of the world. With a few exceptions, they ban any discretionary intervention from member states that may result in a distortion of the commerce between or within the member states themselves. As a result of the EU’s commitment to the single market, a number of product and service markets in Europe, most prominently airlines and telecom, are more competitive than in the United States (Gutiérrez and Philippon 2019).

The distinctly Christian-democratic idea of subsidiarity, furthermore, has made it into European treaties. Article 5(3) of the Treaty on European Union (*Maastricht Treaty*) states that:

[u]nder the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level” (*Treaty on European Union*)

Yet, unlike traditional federations, which feature a clear division of powers, a vast majority of the Union’s competencies are exercised jointly by the EU and member states. Subsidiarity is thus a “dynamic concept that should be applied in the light of the objectives set out in the Treaty [on European Union]” rather than a directly binding constraint on policymaking (European Council 1992, p. 17).⁴

Two avenues exist to challenge undesired infringement of subsidiarity and of the related principle of proportionality by European institutions. The first is a political one, known as the ‘early warning system’ (EWS), consisting of yellow and orange cards issued by national parliaments. A third of all national parliaments can force the European Commission to review the proposal on subsidiarity grounds (‘yellow card’ procedure). If more than a half of national parliaments flag the proposal, the Commission has to justify to the European Parliament and the European Council why the proposal does not infringe on subsidiarity—or to withdraw the legislation (‘orange card’ procedure). The second avenue is a legal challenge with the

European Court of Justice (ECJ), which can be brought about by member states or by the Committee of the Regions.

In reality, only a small number of subsidiarity-related cases have been brought to the ECJ in over twenty years. While the ECJ used the principle of proportionality to strike down European legislation in *Digital Rights Ireland* (European Court of Justice 2014), it has never struck down European legislation on subsidiarity grounds, neither has it cited the Edinburgh Guidelines explicitly. If some boundaries to the EU's jurisdiction were set, as in *Keck* (European Court of Justice 1993) or in *Tobacco Advertising* (European Court of Justice 2000) they did not provide a binding check on the EU's powers. In *Tobacco Advertising*, the Court did not base its reasoning on conferral grounds, arguing that the EU's power to regulate the EU's internal markets, conferred to it by member states, had its limits. Yet, it took only three years since the latter case, which struck down EU legislation banning tobacco advertising, to introduce a new, substantively similar, directive into EU law (*Directive 2003/33/EC*). In the *Spain v Council* case, the ECJ established a purely procedural yardstick for assessing the EU's decisions, which simply requires EU institutions to apply "adequate" reasoning and "relevant" evidence in order to justify a piece of legislation (European Court of Justice 2006). In short, as judicial review principles, subsidiarity and proportionality requirements "have been rendered essentially meaningless platitudes," as Moens and Trone (2015) conclude.

Similarly, EWS has not placed effective constraints on the EU's actions. 'Yellow' cards have been raised by national parliaments only three times, and an 'orange' card has never been raised. Only once has a piece of legislation been stopped as a result of the 'yellow' card—and even then, the withdrawal was not a direct result of the EWS procedure but rather of the understanding that it would not find sufficient support in the Council (European Commission 2021). Strikingly, the European Commission's own Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently concluded that the EU adds value in every policy area in which it is present—and there are, therefore, no "competencies or policy areas that should be re-delegated definitively, in whole or in part, to the Member States" (Reho 2019).

The EU's institutional set-up and its policies have thus been biased heavily in favor of a teleological view of the European project as a state-building exercise. Very early on in its history, the notion of the direct effect of European law and its supremacy over national law was articulated in ECJ's jurisprudence, most prominently in *Van Gend & Loos* (European Court of Justice 1963) and *Costa v. ENEL* (European Court of Justice 1964). Yet, it has never been quite recognized as such by all member states' judiciaries, resulting in frequent tensions between national and European sources of law—most prominently the *Kompetenz-Kompetenz* problem,⁵ manifested in the decisions of the constitutional courts of Germany and Poland in recent years (Federal Constitutional Court of Germany 2020, Constitutional Tribunal of the Republic of Poland 2021).

In the 1970s, the decision was made to hold direct elections to the European Parliament (EP)—previously known as the European Parliamentary Assembly, which played a largely consultative role. Endowed with new powers over the EC's budget and deliberately organized along ideological, not partisan lines, it was seen as a step toward a democratic pan-European legislature, with newly institutionalized European political parties, though largely without the normal contestation that occurs in democracies between the government and the opposition. However, contrary to the early hopes, the legislature has never taken on the role of a normal legislature—in part because the Commission has preserved its monopoly on new legislation—nor has it contributed to the emergence of a pan-European public square, as illustrated by the extremely low turnouts in European elections.⁶

It even failed to usher a European superstate, much less an effective blueprint for global governance. The notion of the European *project* as an unbounded forward-looking instrument had consequences. For one, it has fueled a gradual expansion of the EU's reach and powers, much of it taking place away from public scrutiny. While at the time of the UK's accession to the European Communities the 'acquis communautaire' was merely 2800-pages long, today it encompasses over 90 thousand pages of legislation (Anderson 2021). Even the Single Market has been used to expand the powers of European institutions—the application of the principle of mutual recognition has gone hand in hand with a degree of harmonization of legal

rules, and there have been pressures both from big-government member states and from the Commission to move in the direction of corporate tax harmonization, labeling low tax regimes in countries such as Luxembourg as a form of illegal and unfair state aid.⁷ However, few examples illustrate the EU's proclivity to overreach as well as the introduction of the common currency and the EU's post-communist enlargements which, successful as they were in many respects, also dramatically increased the EU's internal heterogeneity, placing thus the ambition of 'ever-closer union' further out of reach.

4.1 The Euro

Following unsuccessful attempts at establishing a system of fixed exchange rates between European currencies in the 1970s ('snake in the tunnel') and the 1980s (European Monetary System), economists across the ideological spectrum warned against the commitment made through the Treaty of Maastricht to proceed with the introduction of a single European currency.⁸

Still, the imperative of moving the integration machine forward, illustrated by the official slogan of "One Market, One Money," trumped any evidence that efforts at exchange rate coordination were neither stable nor contributed to economic convergence. Whatever benefits to cross-border trade could be generated by a single currency, the theory of optimum currency areas (Mundell 1961) suggested that the move was highly problematic. Introducing a common European currency into vastly different economies, without a much higher degree of labor market integration, price and wage flexibility, and fiscal transfers would be a source of macroeconomic instability. Yet, according to the logic of 'ever-closer union,' that only meant that the introduction of the common currency would create a pressure to complement it with appropriate fiscal and structural reforms in order to make it viable. The same optimism led to the admission of poorer countries such as Greece into the Eurozone in spite of not meeting the fiscal and financial stability criteria for membership (Hanreich 2004). From the perspective of Greek or Spanish governments—and their voting publics—the common currency meant not only lower inflation but also much lower borrowing costs, a feature that eventually turned out to be a double-edged sword (Tkačevs and Vilerts 2019). Meanwhile, to placate the Euro's critics, particularly in Germany, where there was little popular support for abandoning the German mark, the architects of the Euro sought to prevent the predictable moral hazard by including an explicit no-bailout clause into the Maastricht Treaty (Article 125, *Treaty on European Union*) and laying down explicit criteria for sound administration of public finances at the national level (Article 126, *Treaty on European Union*). The set-up of the European Central Bank, furthermore, emulated the example of the Bundesbank by heavily prioritizing price stability over employment and growth, remaining detached from politics, and setting up its headquarters in Frankfurt.⁹

In reality, the common currency amplified interdependency between European economies and the downside risks of financial shocks without creating an institutional framework for managing such risks in an effective and democratic way. The fiscal rules created to curb moral hazard in the Eurozone were vague and also economically dangerous since they encouraged a pro-cyclical fiscal policy, running larger deficits in good economic times and resorting to painful budget consolidations only in recessions—thus amplifying the size of economic downturns (Bilbiie, Monacelli and Perotti 2021).¹⁰ And soon after the 2008 crisis hit Europe's shores, the prescience of the common currency's critics became obvious as the Eurozone spent a good part of the past decade mired in a deep economic crisis with no obvious, politically feasible solutions (Mody 2018).

The issue was not simply one of economic adjustment in the absence of the exchange rate channel, but also one of intensified political conflicts between European nations (Losada 2016). Harvard University's Martin Feldstein warned in 1997 that the Euro, which would lead to "a much more centralized determination of what are currently nationally determined economic and social policies," is "often advocated as a way to reduce conflict within Europe." In reality, "it may well have the opposite effect. Uniform monetary policy and inflexible exchange rates will create conflicts whenever cyclical conditions differ among the member

countries. Imposing a single foreign and military policy on countries with very different national traditions and geographic circumstances will exacerbate these economic conflicts” (Feldstein 1997, p. 41).

4.2 Enlargements

A similar degree of historic optimism was reflected in the decision to proceed with enlargements through which the number of the EU’s members more than doubled in less than two decades—from 12 at the beginning of 1994 to 28 in the latter half of 2013. First and foremost, the post-communist enlargements—jointly with enlargements of the NATO—were seen by Central and Eastern European governments as a historic opportunity to embed their countries in Europe’s community of Western liberal democracies, securing the outcome of post-communist transitions and fostering catch-up growth with the West. And from that perspective, the enlargements were a resounding success, notwithstanding current concerns about de-democratization in countries such as Hungary and Poland.

At the same time, enlargements put a strain on the EU’s institutional architecture. Increasing the number of entrants meant diluting the power ‘old’ governments held in the Council and making consensual bargains more difficult. Moreover, many of the economic gains from trade associated with membership could have been realized through trade agreements or forms of economic integration that would fall short of full membership (Schimmelfennig 1999).

Neither did ‘old’ member states see robust domestic debates about the merits of enlargement, which was not an obviously popular political proposition. In 1999, for example, only 42 percent of EU citizens were in favor of enlargement, including just 35 percent in Germany and 34 percent in France (Annex 2 to European Parliament 1999). In fact, French political elites first actively opposed enlargement, and then supported it only very reluctantly (Silke 2007). The enlargement agenda had its strongest advocates in Berlin, in part because of Germany’s doctrine of the *Primat der Aussenpolitik*, and on the eve of the first large enlargement wave only 34 percent of Germans were against enlargement while 46 percent were in favor (Dimitrova and Kortenska 2017). The enlargement represented a challenge for the EU in part because there appeared to be a tension between admitting new members to the EU (‘widening’) and the ambition of ‘deepening’ it through institutional reforms, not least the introduction of a common currency. One prominent response to the dilemma was provided by the leader of the CDU/CSU group in the Bundestag, Wolfgang Schäuble and its foreign policy spokesman, Karl Lamers. In a joint policy paper, they argued that enlargements were in the EU’s and German interests but needed to be handled carefully, relying on long periods of transition and ‘variable geometry.’ In fact, the proposal suggested that the new members would not be required to adopt the full *acquis communautaire* upon their accession, and that the EU would effectively become a two-tier structure featuring a tightly integrated core of its five or six founding members and a looser periphery (Tewes 1998).

However, the successive waves of enlargements followed a far more ambitious template, admitting post-communist countries as full members in 2004, 2007, and 2013. Those have not simply made the EU bigger but also dramatically more diverse in terms of its economic performance, quality of institutions, or cultural and social attitudes, with implications for its ability to respond to shocks and crises in real time, as illustrated by the behavior of some of the ‘new’ member states both during the debt and the refugee crises (Auer 2019). Yet disagreements were to be expected. At the time of Austria’s, Finland’s and Sweden’s accession in 1995, for example, average income in the EU’s poorest member state (Greece) was at almost 40 percent of the income in the EU’s wealthiest state (Luxembourg). When Bulgaria joined the EU in 2007 as its poorest member state, that ratio dropped to 15 percent. Since then, the gap between the wealthiest and poorest member state has narrowed only slightly, to 20 percent in 2020 (World Bank 2021). Whether or not the ambitious pattern of enlargements was wise and whether or not it can be replicated in the future given the lack of appetite for further enlargements in key European capitals such as Paris, it reflected an ideological outlook that saw the main instrument of the EU’s outside engagement the projection of its model on the rest of

the world—a deliberate effort to turn its neighborhood, if not the rest of the world, into a version of Europe itself (Nicolaidis and Howse 2002),

5. CONCLUSION: BREAKING OUT OF A DEAD END

Following a decade of internal crises and an intellectual exhaustion of the paradigm of ‘ever-closer union’,¹¹ the EU has reached a dead end. For classical liberals, the good news is that mindless nationalism and nostalgia for unfettered national sovereignty peddled by the continent’s far-right populists is not the only alternative to the status quo.

In addition to classical liberal and personalist forms of federalism, the contemporary spectrum of sober thinking about the complexities of Europe’s political organization, “between the extremes of teleological Euro-idealism and chauvinist Euroscepticism,” is vast and united, as the British-German sociologist and former European Commissioner for Trade, Ralf Dahrendorf, put it, by an understanding of the European project as:

an untidy but effective combination of a core of (for the most part single-market related) policy decisions within the framework of the Treaty of Rome, a range of common actions by some though not all members of the European Union, a dense network of intergovernmental co-operation, and throughout [...] the advancement of ‘those habits of permanent, institutionalized co-operation and compromise which ensure that conflicts of interest which exist, and will continue to exist, between the member-states and nations are never resolved by force.’ Some call this ‘flexible integration; others speak of the values of ‘hybrid institutions,’ one day, this Euro-realist vision may simply be called the European model (Dahrendorf 1996, p. 10),

Examples include the multilevel governance theory of Hooghe and Marks (2001) and constitutional pluralism (Bobić 2017). The latter focuses on the implications of a simultaneous existence of a variety of actors plausibly claiming constitutional authority, which results in clashes of different sources of law—European and national ones—which often go unresolved. In the eyes of critics, this is an untenable situation, which has furthermore facilitated the defiance of EU law by the likes of Hungary and Poland (Kelemen 2016). However, to claim that one single European court should “enjoy unconditional supremacy” is antithetical to the traditional idea of federalism, where political and judicial power is dispersed, not concentrated—even at the cost of potential stand-offs between different sources of law. Moreover, national apex courts oftentimes disagree with the European Court of Justice in good faith by prioritizing national constitutional law over EU law. Rather than railroading national courts, legitimate disagreements must be addressed and negotiated through political means if the EU is to exist as a free association of states (Flynn 2021). Similarly, political theorists Francis Cheneval (2011) and Kalypso Nicolaidis (2013) have advanced the idea of the EU as a ‘demoicracy’—a polity governed not by *the people* (as in a unitary democracy) but jointly by a plurality of *peoples*, each living in a democracy organized at the level of a nation-state. Understood thusly, the EU needs to rely much more heavily on coordination between member states rather than on delegation to the European institutions. Similarly, the Italian political scientist Giandomenico Majone articulated a disaggregated vision of the EU most systematically in the wake of the 2008 financial crisis (Majone 2013). The EU, he argues, ought to function primarily as a “club of clubs,” referring to the economic theory of club goods, which are non-rivalrous in consumption (like public goods) but excludable (like private goods). If collective attempts at providing club goods at the EU level tend to fail, it is preferable to allow for a pluralism of such efforts to proliferate, involving different coalitions of EU members and non-members, embedded of course within a shared framework of basic rules—particularly those underpinning the single market.

While there are important variations in these conceptions of European integration, they all share an understanding of the EU as a pluralistic, rambling assemblage with many moving parts, rather than a neat monolith, amenable to simple top-down solutions. Somewhat surprisingly, a more flexible, disaggregated,

or horizontal approach to integration can successfully proceed even within the existing institutional framework. In Article 20, the *Treaty on European Union* allows for ‘enhanced cooperation’ between nine or more member states, allowing them to exercise the Union’s non-exclusive competences, which are not being exercised by the EU as a whole. As a result, the path for those who “want more to do more,” as the Commission’s White Paper (European Commission 2017) puts it, is open to those member states who decide to pursue it. The procedure has already been used by groups of member states a number of times. All countries other than Spain have agreed on a European unitary patent and a common patent court, in order to end the practice of costly patent litigation in numerous EU countries in parallel. 17 member states have agreed to common rules guiding the divorce and separation of international couples. 22 member states have agreed to the creation of a European Public Prosecutor Office for cases of suspected fraud against the EU budget. Likewise, there is a discussion about a possible financial transaction tax (Tobin tax, whose implementation will likely involve the use of enhanced cooperation, as opposed to joint action by the EU as a whole).

Similarly, in its legal provisions for the EU’s common defense, the Lisbon Treaty envisages that its establishment will involve only “those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area” (Article 42(6), *Treaty on European Union*). That is exactly what has happened with the Permanent Structured Cooperation in the Area of Defence and Security (PESCO), in which Denmark has chosen not to participate. Moreover, if PESCO is to become a meaningful defense arrangement in the future, it will have to find ways to engage with European countries outside of the EU, most notably the United Kingdom.

The recent past offers many examples of moves toward tighter cooperation that eschewed revisions to treaties. Probably the most consequential among those is the governance architecture of the Eurozone, built during the crisis years of 2010-2012. Not all EU finance ministers, only those from countries within the Eurozone (Eurogroup), have a final say about the fiscal and structural reforms required of member countries—though common European institutions, most notably the Commission, play a role in monitoring, reviewing, and supplying technical expertise. Aid that is made available to countries in financial distress does not come from the EU’s common budget—the loans and guarantees are provided by Eurozone member states through the European Stability Mechanism (ESM), an entity created by an intergovernmental treaty between Eurozone members, outside of the scope of EU law. Moreover, Eurozone members—as well as several member states outside of the Eurozone—decided to abide to the so-called Fiscal Compact, an intergovernmental treaty tightening the provisions of the Stability and Growth Pact. Again, the arrangement exists outside of the EU’s law, is intergovernmental in nature—even if it assigns a significant role of surveillance and monitoring to the European Commission.

Some of these arrangements, particularly in the context of the Eurozone, have been criticized for undermining the “prerequisites of the EU as a project oriented towards democratic constitutionalism” (Chiti and Teixeira 2013). Yet it is precisely the point of this paper that that particular project has brought the EU to a blind alley. Doubling down on the project of creating a European polity existing independently of its constituent units will not only not work, further overreach and underdelivery will provide ammunition to nationalists who are seeking the EU’s demise. Neither does a differentiated approach to integration obviate the need for an overarching system of rules, most of those upholding the EU’s four freedoms of movement: of goods, services, capital and labor.

The Eurozone’s financial stability, for example, can be further bolstered without completing the elusive ‘fiscal union,’ by breaking instead the nexus between national banking systems and sovereign borrowing. That would be a corollary of single market in banking services, which would allow for a much healthier management of the risks facing financial institutions and governments, while allowing for an autonomy of member states in their conduct of fiscal and economic policies—and indeed also in being or not a part of the Eurozone.¹² Similarly, the EU’s single market offers tools to align the vastly different priorities of member states in the area of energy policy: climate change, far more salient in Western Europe, and energy security which continues to pre-occupy policymakers in post-communist Central and Eastern Europe. A more competitive European market in energy not only makes energy policies of individual countries—including con-

troversial projects such as Nordstream 2—of far less concern to other member states, it is key to the diffusion of energy innovation needed to decarbonize the EU’s energy supply.

Without any doubt, there are complexities and grey areas. Can, for example, the existing diversity of national asylum policies and a free movement of people within the EU be reconciled without leading to a recurrence of the refugee crisis of 2015? And what implications would a disaggregated approach to integration have in areas where common action appears necessary for its effectiveness, such as in foreign and defense policy? Allowing instead national governments to pursue the ‘art of association’ in the pursuit of common goals is no guarantee of outcomes that are in any way *optimal*. The main assumption undergirding this paper, in contrast to more technocratic discussions of these subjects, is that policymaking in pluralist societies is primarily an art featuring political leadership, bargaining and experimentation, rather than a technical discipline.

Utopias of European unity and wishful thinking are no substitute for a political strategy that enables one to navigate a divided, quarrelling and pluralistic continent. A differentiated approach to integration offers precisely that: mechanisms of bargaining and ad hoc collaboration between member states, provisional solutions, and muddling through. It is not a panacea, nor history’s final station. It is simply a path along which groups of EU members and their partners outside of the EU can work around the constraints posed by the imperfections of the EU’s institutional design and by the continent’s inherent diversity. And that is no small feat.

NOTES

- 1 For a more detailed discussion of particularly classical liberal voices behind the European project see Rohac and Mingardi (2021).
- 2 In the 1950s, for example, he was invited by Chancellor Adenauer to assess the effectiveness of economic reforms undertaken by then-economy minister Ludwig Erhard. See Spicka (2018, p. 97).
- 3 To be sure, the Commission has also played other roles within the EU’s architecture. For a discussion see e.g. Wonka (2015).
- 4 For an early discussion of the pitfalls of subsidiarity within the context of the EU’s legitimacy, see de Noriega (2002).
- 5 In a nutshell, the challenge consists of determining whether the ECJ and/or national apex courts have the power to define their own jurisdictions – and what happens if those jurisdictions overlap.
- 6 The existing system of pan-European political parties has also had unintended consequences, e.g. facilitating democratization in countries such as Hungary. For a discussion of the mechanism, see Kelemen (2020).
- 7 This argument was largely rejected by European Court of Justice (2021).
- 8 Compare, e.g., Krugman (1990) and the interview with Milton Friedman by Levy (1992).
- 9 On the tension between the eurozone’s founding rules and the discretion and improvisation involved in managing the crisis post-2008, see Auer (2019).
- 10 For an early critique of the EU’s fiscal rules, see also Eichengreen, Wyplosz, Bean, and Gerlach (1998).
- 11 “We should stop talking about the United States of Europe [...] because the peoples of Europe do not want them,” the European Commission’s former Jean-Claude Juncker said in a speech in October. (Juncker 2016) Likewise, the rhetoric of the current president, Ursula von der Leyen, emphasizes ‘unity in diversity,’ as opposed to the notion of ‘ever closer-union.’ See Nicolaïdis (2020, p. 1319).
- 12 See, e.g., Wyplosz (2018).

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