



European Politics and Society


ISSN: 2374-5118 (Print) 2374-5126 (Online) Journal homepage: <http://www.tandfonline.com/loi/rpep21>

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To cite this article: Gabriele De Angelis (2016): Political legitimacy and the European crisis: analysis of a faltering project, *European Politics and Society*, DOI: [10.1080/23745118.2016.1229383](https://doi.org/10.1080/23745118.2016.1229383)

To link to this article: <http://dx.doi.org/10.1080/23745118.2016.1229383>

 Published online: 30 Sep 2016.

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INTRODUCTION

Political legitimacy and the European crisis: analysis of a faltering project

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ABSTRACT

The European Union is facing multiple crises: the euro and sovereign debt crisis puts into question its economic and social cohesion as well as the rules of coexistence within the Economic and Monetary Union; the refugee crisis brought to the fore a high degree of disagreement among member states as to the duties of mutual solidarity and assistance; Brexit highlighted the need to continuously justify EU membership (Britain being the most evident, but not at all the only case in which public opinion sees membership with deep scepticism), and to address the social and economic roots of dissatisfaction with the EU – inasmuch as EU-internal, economically motivated migration has been one of the key issues of the ‘leave’ campaign; the security crisis put into question the Schengen agreement and the mutual trust between member states in security issues. The political conundrum currently challenging the EU calls for reflection on what went wrong with the process of European integration in the first place. The essay offers a possible diagnosis and traces a number of scenarios for the future development of the European Union.

KEYWORDS

European crisis; euro crisis; refugee crisis; political integration; EU governance

Multiple crises, a single diagnosis

The euro and sovereign debt crisis jeopardized the cohesion of the Economic and Monetary Union; the migratory wave through Northern Africa and the Middle East continues to threaten the Schengen Agreement, which the Paris terror attacks of November 2015 had already endangered. Regardless of its political, financial, and economic consequences (which are not yet to be fully estimated at the time of writing), Brexit shows that participation in the European Union is reversible and depends on expectations and results. The first two cases in particular reveal the extent to which global events are putting the European edifice through a difficult stress test. In both cases, member states have found it difficult to reach agreement on the necessary steps; they postpone decisions, play for time, and provide responses (where responses are given) that are both delayed and of doubtful effectiveness. The overall degree of mutual disagreement and ever-growing reciprocal irritation continues to spread profound scepticism about members states’ political good will and communality of intent, to the extent that the very resilience of the Union as a *political* project has become doubtful. The political conundrum currently challenging the EU calls

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for reflection on what went wrong with the process of European integration in the first place. What makes Europe so fragile in the face of events the disruptive potential of which the European integration process was meant to mitigate? The following offers a possible diagnosis.

In the EMU and according to the Schengen Agreement and the Dublin Regulation, member states (i.e. national authorities) are entrusted with common (i.e. supranational) responsibilities. However, the European 'system of incentives' is insufficient when it comes to ensuring that member states will effectively fulfil their obligations, comply with the rules, or be in a position to do so in the first place. This has resulted in a climate of widely acknowledged mutual distrust, which a substantially intergovernmental mode of governance only perpetuates. Indeed, intergovernmentalism motivates member states to deal with the distribution of the burdens of common responsibilities in a way that minimizes their own costs (and maximizes the costs of others). This is particularly evident when symptoms of crisis set in. The accountability of decision-makers to their own nations does nothing to ease the burden continually faced by those member states most exposed to global threats. Far from being motivated to exert solidarity with one another, member states often face waves of crisis as competitors for their share of financial or trade benefits, welfare, security, etc. Their representatives are thus compelled to pursue opposing economic and political interests. This diagnosis is supported by key elements in both the euro and sovereign debt crisis and the subsequent security, migration, and Schengen crises.

In the Economic and Monetary Union, member states' public finances may expose the Eurozone as a whole to obvious externalities, which repeatedly broken common rules have been unable to keep under control (Wyplosz, 2011). As long as the rules were only laxly enforced, free riding remained an ongoing temptation – a temptation to which even leading member states such as France and Germany yielded in 2003 when they violated the deficit-to-GDP rule and managed to avoid sanctions. Other kinds of externality, such as those considered in the Macroeconomic Imbalance Procedure, were only added to the architecture of the Eurozone once the crisis had already hit. The social costs of the convergence process and of mechanisms to smooth out economic cycles and help the less competitive catch up with the better off have hardly been addressed at all. As the Commission has repeatedly acknowledged (European Commission, 2012; Junker, 2015), there is still a long way to go in the achievement of an effective EMU, a way that leads through all the specific 'unions' member states have thus far resisted: economic union, fiscal union, and (yet unrealized) banking union (social and labour market union is being less enthusiastically discussed). Alongside the recalcitrant attitudes of member states, there is a key question concerning legitimacy and the democratic mechanisms to which such an enhanced Union ought to be subject if it is to safeguard the political rights and values that European citizens enjoy in their respective countries.

The Schengen Agreement suffers from similar flaws. Despite Frontex, the free movement of persons within the area has not been balanced by common responsibility at the level of control over its external borders, which remains firmly in the hands of national authorities. Moreover, diminished control over internal borders requires that members trust the operative capacity of the national security authorities of neighbouring countries. When security issues arise, trust is bound to diminish. Since no overarching authority is present to ensure that security is mutually guaranteed, the temptation to react by closing national borders is strong.

The situation becomes acute with significant increases to migration. The Dublin Regulation places the burden of assisting refugees onto member states that are geographically more exposed to these increases – independently of the refugees' intended destinations. When flows grow, the assistance capacity and willingness of the countries in question decline. Migrants and refugees travel across Europe to their chosen destinations. Member states with more generous assistance standards (another factor yet to be harmonized) begin to fear the rising costs, and everyone laments the possibly negative social, economic, and cultural impact of the newcomers. A redistribution of the burden of assistance requires a new, unanimous agreement between member states, each of which has an interest in minimizing its own political and economic costs.

It is reasonable to assume that this state of affairs can be overcome with further political integration: these critical developments all hinge on the absence of a central authority (be it a fiscal, welfare, or law enforcement authority) to oversee shared responsibilities and functions. They are also grounded in the absence of a decision-making mechanism that extends beyond unanimous international agreement between member states – a cumbersome option when swift action is needed. After a promising start in the 2000s, however, political integration has become the shore on which the European ship has run aground.

The failed 'constitutional moment' and its consequences

In the early 2000s, political integration seemed to be about to take important steps forward. Just how far the symbolism of political union (as embodied in the so-called Constitution for Europe) might have been followed effectively by a substantially more supranational mode of governance remains questionable; it is a fact, however, that following the rejection of the constitution by the French and Dutch voters in 2005, the whole European construction was re-entrenched at a more fundamentally intergovernmental level.

With respect to the classical federalist project, the constitutional project was a half-heard attempt to increase political integration. The project of a Constitution for Europe aimed to give new impetus to political integration while achieving a broader legitimacy basis by means of the greater inclusion of representatives of European civil society. It also addressed the old complaint about the absence of a 'European people' by establishing symbols that were meant to entice citizens to develop a common political identity. Contrary to these expectations, the slow pace of political integration is rooted in member states' reluctance to establish more decisive transfers of sovereignty and in increasing divergence at the level of national public opinion regarding the goals of European integration. Governments thus feel authorized to consider European affairs from a tighter national perspective. A system of governance in which the intergovernmental level is paramount solidifies the dominance of national sources of legitimacy and justifies the trend according to which decision-making on European affairs occurs from the point of view of national political cycles.

The limits of intergovernmentalism

As Mario Telò (*infra*) convincingly remarks, what remains following the failure of the constitutional moment is a mixed kind of legitimation that results from the peculiar interaction between input legitimacy (through the European and national parliaments, member

states' governments that sit in the Council, social dialogue, and periodic consultation with civil society organizations), output legitimacy (through the several ways in which EU citizens benefit from European integration), and the rule of law (as secured by the European Court of Justice).

This is exactly the kind of piecemeal engineering that the constitutional moment was meant to overcome. Typically federal elements in the European system of governance were introduced by (i) the self-empowerment of the ECJ (which imposed the extension of the legal 'direct effect' of EU law, its supremacy over national legislation, and the 'pre-emption' of policy areas) (Maduro, 2013), (ii) the upgrading of the EP to a proper legislative organ (largely due to the widespread perception that a more properly integrated Parliament was indeed needed to increase legitimacy), and (iii) the Council voting system (which resulted from a compromise between the equal dignity of all member states and wide disparities in their demographic weights). Decisive policy areas were left firmly in the hands of the Council. Key competencies therefore depended on the formation of grand coalitions of member states under the remaining option of a minority veto on the part of dissenters (De Angelis, 2013, pp. 11–13).

Indeed, what scholars have traditionally referred to as the European democratic deficit resulted both from the impression of paternalism that the federalist elite – with its 'progressive' ideal of a united Europe – gave to the European integration process and from the realist *raison d'état* of member states' governments.¹ The often lamented 'technocratic' character of the European decision-making process reflects the lack of consensus among these governments, as well as their resistance to properly supranational political processes: governments had to find hyper-complex and over-regulated agreements to make a collectively binding decision viable. This technocratic character also results from the patronizing intentions of the federalist elite inasmuch as European institutions were constructed in a way that engendered mechanisms of self-empowerment – initially on the side of the Commission, which tended to extend European legislation to ever new policy areas, and then also on the side of the ECJ and the EP – which were meant to overcome the insufficient political will of national governments and citizens when it came to progressing on the path to integration. The piecemeal engineering of the European system of governance and the consequent lack of a clear chain of authorization and accountability were the inherent consequences of this web of diverging political wills, the flip-side of which was the 'market mentality' held by European citizens toward European policies insofar as they 'became consumers of political outcomes rather than active participants in the political process' (Weiler, 2001, p. 41), limiting their approval to occasional referenda (wherever national constitutions made them inescapable) or even indirectly, through their national representatives.

Legitimacy as a 'functional requirement' of European governance

The mixed, supranational, intergovernmental, paternalistic model has now indeed been brought into question. 'Classic' narratives that aim to justify European integration by reminding European peoples of their common historical experience of war and nationalistic conflict are ostensibly no longer sufficient to secure allegiance. Claims that European integration would itself foster welfare and well-being clash increasingly with a more fearful perception of economic and social reality. Global threats such as the 2007–2008

financial crisis and the migratory increase that has driven up costs in southern Europe undermine output legitimacy.

Indeed, the more EU-led policies impinge on citizens' lives, the more controversial their effects, and the more serious the democratic deficit. Moreover, the national accountability of decision-makers exacerbates competition between member states for the (diminishing) returns of the European integration process; national political elites are motivated to step into EU decision-making arenas with the intention of exhibiting to their national electorates their ability to drive home the best result for their constituency. Widespread dissatisfaction with the results of EU-led policies therefore also undermines the legitimacy of national governments: the worse their trade-offs at the European bargaining table, the more this occurs.

This problematic outcome results from a paradox inherent in the current mode of governance: member states aim for further integration in those policy areas that deal with global threats they fear facing alone, but those same governments also resist the kind of political integration (and the corresponding transfer of sovereignty) that could make the whole system work smoothly. The choice between the alternatives of a politically tighter or looser Europe is not merely a matter of political ideals: it does not only depend, in other words, on whether we see Europe as a chance to further common political principles in a post-national political identity (Habermas, 1998) or as a means to promote national goals while sharing the fewest possible responsibilities and avoiding solidarity.² When integration impacts on key national competencies such as police, welfare, and public finance, insufficient political integration is a weakness at best and a threat to national self-determination at worst. Externalities weigh on all participants, while conflicts between national interests and competition between member states for the revenues of the process (in the absence of any solidarity mechanisms worth mentioning) threaten to devastate the worst off. Incongruence throughout the whole edifice generally undermines public support.

As Fabbrini (*infra*) remarks, the gaps between member states with regards to power and influence, the unequal burdens that European obligations place on partners, and the lack of crisis management legitimacy in domestic public opinion undermine overall trust in the Union. Moreover, national decision-makers in the EMU face the peculiar dilemma of having to answer both to their national constituencies and to their partners in key policy areas, such as expenditure and structural reform. To the extent that international and national obligations conflict with one another, the national source of democratic legitimacy is also threatened (Weale, *infra*; De Angelis, *infra*). These multifarious threats to legitimacy lead invariably to the question of what is actually gained now that, after the failure of the constitutional moment of 2001–2005, the topic of deeper political integration has been taken off the table.

Legitimacy in a two-level game

It is a commonplace that crises also bring opportunities. The spreading of the integration process into the monetary sphere – with its multi-level impact on (national) economics in general – reveals the shortcomings of a conception of the EU as a union of peoples. In truth, it is a union of citizens and therefore requires European legitimation in addition to legitimacy at the domestic level (Fabbrini, *infra*). If the current level of integration is

to be maintained, it will be crucial to revisit the motivations that lie at the basis of the integration process. European citizens need to discuss what kind of European polity they want to live in and what they want from it. Justification of the aims must go along with a justification of the means of European integration (Ackerman, 1992, p. 40). European citizens have a chance to produce, discuss and assess public justifications, that is, justifications that appeal to all who are subject to European institutions (Morgan, 2005, p. 33). This is perhaps the primary lesson, if any, that European citizens have to learn from Brexit. Against the background of the current multifaceted crisis facing the European integration process, the primary task of scholars in this area consists in indicating the legitimacy requirements of the European polity.

As Albert Weale remarks (*infra*), as a compound polity, the EU requires its members to make credible commitments to complying with the terms of the inter-state contract. However, since member states make their commitments as representatives of their peoples, those same commitments must also be acceptable at the domestic level. The domestic political accountability of collective agents calls into question the extent to which inter-state commitments can be made. Since domestic legitimacy is tied up with the overall advantages of the international contract, and since no government can irrevocably bind its successors, the level of inter-state commitment required by any agreement might be unsustainable. The central problem of political legitimacy for the EU therefore arises from the conflict between inter-state commitment and the principle that political authority derives from the people, which can at best justify a delegated (rather than transferred) form of authority when it comes to supranational institutions.

From a purely theoretical point of view, this dilemma can be overcome in two ways: by means of a decisive step towards a federal polity or by means of mixed legitimation, in which both European and national sources of authorization play a role. José André (*infra*) offers some interesting insights into the former, De Angelis (*infra*) into the latter.

Forms of supranational legitimacy: classic federalism and two-level legitimation

André reaffirms the importance and viability of the federalist option for a united Europe by means of a comparison between contemporary Europe and the establishment of the US as a federal state. As André effectively shows, what the American people experienced at the time of the founding of their federation is similar to what today's Europeans might experience if they were to decide to commit to a truly federal union. Like the Americans of the time, there are more social and cultural differences than similarities between Europeans; they too experience dissent among their respective political elites regarding the 'terms of trade' of the integration process and suffer from a largely ineffective constitutional framework. In the American case, these differences were settled by means of institutional and political mechanisms that established a *reasonable consensus*, led by a small political elite. Contrary to the (once widespread) fear of a European super-state, federalism does not imply that all members of the federation must converge into a homogenizing political structure. Instead, it allows for the binding of different political entities into a common whole. Such a union must have a centre of gravity to hold it together, but it also implies a wide set of complementary powers. Accordingly, the peoples of Europe might be able to understand this federation as a common system of joint political action that

is achievable so long as a simple set of institutions representing the peoples' fundamental political interests and cultures is combined with a common, supranational mechanism of popular legitimation: a concise and brief constitution stating common values and purposes and a method of ratification similar to that adopted by the US (such as special ratifying conventions at the member-state level). This would allow the EU to overcome the shortcomings of the two systems between which European legislators and negotiators have thus far been divided: popular referendum and ratification by national parliament. A truly federal system would ultimately allow Europe to mediate its social and cultural diversity in a system of political procedures with full popular legitimation.

De Angelis identifies the political misstep that lies behind the widely discussed technical deficiencies in the construction of the common currency: the EMU intentionally lacks a mechanism apt for smoothing out the process of economic and fiscal convergence both because the political will for Europe-wide welfare redistribution was missing and because the common currency was supposed to leave unaltered the relative economic power, and therefore also the relative political weight, of member states. In a Europe in which political relations are tied up with market mechanisms, it is only natural that the EMU has acquired a combative rather than a cooperative character. Moreover, current decision-making is fraught with all the inconveniences associated with intergovernmental management of supranational obligations: the prevention of free riding in the absence of a central rule-enforcement authority and the domestic accountability of decision-makers with their national priorities encourage 'technocratic', rule-based management of the EMU. The *de facto* transfer of sovereignty in key national competencies already required by the EMU (which is patent both in countries that receive financial assistance and in those that are having a hard time complying with the rules, but which ultimately effects all Eurozone countries) urges scholars and citizens to bring political legitimacy again to the fore as an unavoidable future topic. De Angelis analyses a possible (although politically unlikely) scenario of EMU reform that combines avoidance of free riding with the sharing of political and economic responsibility for one another's well-being. The model he suggests is based on a two-level form of legitimation where supranational obligations are combined with a supranational system of governance on which national sources of legitimation exert a balancing effect.

Future perspectives

Despite the current dangers, Telò (*infra*) brings to our attention how much the EU is still delivering. Its legitimacy deficit never substantially endangered its ability to keep countries together in a common project (Brexit being a significant exception). Telò identifies the deep roots of its resilience as lying in its 'mixed constitution', that is, its combination of democratic will (as embodied in the Parliament), technical expertise (as embodied in the Commission), and 'monarchical' will (as embodied in the Council), with its precarious but ultimately effective web of political mediations. The EU's institutional complexity simply reflects the complexity of the political interests and cultures of which it is composed. The current management – although controversial – confirms the trend towards further economic integration.

In Telò's opinion, the crisis-ridden European project seems open to different possible developments: it might assume the character of an unlikely new version of the federal

dream or instead involve the strengthening of informal, inclusive governance as a further implementation of the path inaugurated with the Lisbon Treaty. The informal, mixed, but mainly intergovernmental strengthening of economic governance is still the most realistic path out of the crisis and towards an enhanced political union. This is a view with which Fabbrini (*infra*) concurs.

Although the unwinding of the common currency – and therefore re-adjustment at a lower level of integration – does not currently stand as a solution (and is therefore not given special attention in the following concluding remarks), and a disintegration of the EU (a scenario that Telò does take into account) is also unlikely, scholars and citizens ought not to forget that a euro breakup was a widely discussed option (and for many a daunting spectre) at the beginning of the euro and sovereign debt crisis. Both its costs and its possible political, financial, and economic consequences for all countries involved resulted in its being swiftly taken off the table. The fact that it was apparently favoured as an option at a high political level in the heyday of the Greek bailout makes it worth mentioning, despite its decline as a live political option. Indeed, it might reappear as a possible development in the Eurozone if Eurosceptic temptations gain the upper hand in core countries.

The future of European governance (1): continuity

Indeed, the continuation of the present system of governance seems to be the likeliest option. In light of the increasing disaffection of European citizens with the integration project, continuity is more politically marketable than innovation. It also seems to be a more sensible response to Eurosceptic and populist threats to integration. Euro-crisis management has indeed been conducted in such a way as to avoid measures that would require major treaty changes. More radical measures (some of which are of far-reaching import for national democracies and European integration) such as the banking union, the insertion of budget equilibrium in several member states' constitutional charters, the enhanced supervision of national economic (not merely fiscal) policies far into national core competencies such as pension systems and the labour market, and the *de facto* abandonment of the no-bailout clause, ex-Art. 125, have been passed without great objection and are now commonplace in all Eurozone countries (except for Germany, where opposition to the latter measure in particular has had no major political consequences thus far).

As some of the following contributions illustrate (see in particular Weale and De Angelis), continuation of the current mode of governance nonetheless carries potential negative consequences: from a moral point of view, it threatens political legitimation; from a practical point of view, it risks undermining national democracies and self-determination, and thus stands as a key motivation behind recent Eurosceptic, populist, and even nationalist temptations. It is not by chance that this very Commission (albeit one of the leading bodies of the financial assistance programmes so fiercely opposed by popular movements in the benefiting countries in the name of legitimacy and self-determination) has pointed out the necessity of pairing deepening economic integration with a stepping up of the mechanisms of legitimation (a necessity that the European Parliament – perhaps less surprisingly – also underscores).³

In the absence of a credible supranational legitimizing mechanism, the 'conflict of redistribution' that pits Eurozone member states against each other as regards the

implementation and further development of fiscal rules (De Angelis, *infra*) will remain unaltered. Considering the prominent role played by ‘culturalist’ disquisitions about the fiscal virtues and vices of the European peoples and nations in debates at the peak of the euro and sovereign debt crisis (see De Angelis, *infra*), this would be a decisive step back into national(ist) thinking – hardly an encouraging prospect for the future of European cohesion.

It is doubtful, moreover, that the reforms that might be undertaken in the absence of explicit democratic authorization could be as deep as would be needed to restore the efficiency of the EMU. As long as no democratic system of authorization is in place to buttress political (instead of supposedly ‘technical’, merely rule-based) EMU management, action in critical times might still be too slow, and long-term macroeconomic imbalances are unlikely to be redressed (Scharpf, 2013, p. 16). Furthermore, it is doubtful that economic reforms can be made to rest on a rule-based system (this being a system with reduced discretionary powers on the side of the controllers) (Terzi, 2015). Thus EMU governance will be based on the discretionary powers of the Commission (whose decisions more or less reflect the balance of power among member states) in the absence of democratic checks and balances regarding the implementation of intergovernmentally agreed rules.

The future of European governance (2): enhancing transnational democratic checks and balances

Despite all the elements that make the seemingly necessary steps towards stronger supranational democratic legitimation of European governance choiceworthy for people for whom democracy is the greatest (and for many a hard-won) political achievement, the implementation of such a development seems politically difficult and burdensome. Whatever the model one might favour, it currently seems unmarketable as a political option, offers few incentives to national political elites, and raises considerable doubts as to its acceptability to increasingly irritated national electorates. The memory of the 2005 defeat of the constitutional project stands as a warning against speeding up political integration from the top down.

Additionally, its implementation would have to overcome the usual hurdles, the undiminished presence of which has always been an argument against far-reaching political integration: the linguistic barriers that stand in the way of the establishment of European representative election processes not carried out at the national level; the restriction of media attention to national concerns; the lack of cross-Europe integration of the political landscape (even as regards European parties); and the even less adequate integration of ‘representative bodies’ (‘corps intermédiaires’ – unions, civil society associations, etc.). Although these hurdles are not carved in stone and advances in political integration might in fact contribute to their steady removal, this is nonetheless a difficult path, the progress of which will be as unpredictable as its outcomes.

Notes

1. For an overview of the decade-long debate on the European democratic deficit, see, for instance, McCormick (1999), Bellamy and Castiglione (2000), Naurin (2004), and European Commission (2001).

2. The EMU is a prime example of the latter attitude. It was set up to mirror the standards of financial discipline adhered to by those countries with the best monetary performance and was meant to leave unaltered member states' relative differences with regard to economic capacity – while excluding any risk sharing or solidarity mechanisms that could have smoothed out the process of economic and fiscal convergence (see De Angelis, *infra*).
3. See, for instance, the Resolution of 24 June 2015.

Disclosure statement

No potential conflict of interest was reported by the author.

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