

# AFTER THE DOUBLE NO

The EU's best hope

Jan-Werner Müller

For once, it seems, observers across Europe agree on something: the European Union is in crisis. The crisis was provoked by this past spring's rejection of the European constitution by France and the Netherlands, two of the EU's original members. True, the European bureaucracies keep working away on a day-to-day level, and EU leaders even managed to pull themselves together and open accession talks with Turkey this past October. But the sense of profound malaise is not going away—polls show that European citizens are less and less satisfied with the EU.

Are we witnessing the end of European integration as we have known it for the past 20 years? Will the goal of an “ever closer” and ever expanding union, with ever more integrated markets and politics, be abandoned?

To gain perspective on the current crisis, and to make a start in rethinking the EU's future, we must return to this spring's “double no.” European leaders have a tradition of moving on a little too often and a little too quickly—after other EU referenda were won by only the narrowest of margins, or after people (as in Denmark and Ireland) had been made to vote until they finally said yes. Some leaders, though, seem to have come to their senses and have ordered an official “pause for reflection.” So let's pause and reflect.

Two interpretations of the French and Dutch votes have been competing for public attention. The first—call it “technocratic”—dismisses concerns about legitimacy and argues that the construction of the EU should never have been subject to a popular vote. According to this view, a European constitution was an entirely unnecessary response to the misguided worries of overexcited academics and aspiring Madisons about the lack of democracy or, more generally, legitimacy in the EU. Andrew Moravcsik, easily the most sophisticated defender of the technocratic thesis, insists that the EU does not face a democratic deficit because it is simply not the kind of bureaucratic leviathan that requires democratic domestication. It employs fewer civil servants than a medium-sized European city; it cannot enforce its decisions and depends on member states to translate them into national law; and its budget is well below two percent of European GDP. Most importantly, its institutions are subject to numerous checks and balances that constrain EU institutions in a way that many citizens accept as the benchmark for legitimacy in their own countries.

Some proponents of this technocratic argument take it a step further: they ar-



The EU parliament building, Brussels.

gue that the insulation of EU decision-makers from many popular pressures has contributed to successful policy innovation. A fair amount of evidence suggests that EU regulations, rather than drifting to the lowest common denominator, have raced to the top, as insulated experts deliberate about appropriate health regulations, product-safety standards, and environmental rules.

And yet, the EU's power cannot be measured simply by the magnitude of the Brussels budget, or the number of employees on its payroll, or the size of its police force. We must also consider its ability to intervene and regulate (and, for that matter, deregulate and reregulate). How strong is that power today? Some national interior ministries in Europe claim that 50 percent of the laws they deal with originate beyond their national borders. In the same vein, national bureaucracies and legislatures find it increasingly difficult to adequately translate EU decisions into national laws. When the German Constitutional Court decided this past summer to strike down legislation incorporating a European arrest warrant into German law, the problem was not the EU's threat to some primordial superiority of the German *Staat*; rather, the government's draft proved insufficiently sensitive to the German Basic Law's specific protections of its own citizens. The sheer size and speed of what hits national institutions from Brussels and elsewhere has in itself become a political and administrative challenge that member states find more and more difficult to meet.

Moreover, it is not obvious that such non-democratic institutions as expert committees and regulatory agencies, which are viewed as legitimate elements of

national administration, have comparable legitimacy at a supranational level. Without a shared political culture, a basic sense of what political institutions should generally accomplish, and, above all, a sense of *trust*, technocratic arrangements can strike citizens as alien impositions, even if they are very effective and subject to checks and balances. It is arguably for this reason that Europeans are expressing increasing doubts about the EU's legitimacy, contrary to what the defenders of a technocratic Europe would lead us to expect. And for the same reason, pro-European intellectuals such as Jürgen Habermas have recently been stressing that what is missing among Europeans is not an attachment to the union, or even a European patriotism—but simple mutual trust.

The technocratic view also faces a more immediate political problem. The genie of popular politics is out of the bottle. At least since the introduction of the Euro, the EU has come to the people—in a sense, they feel it in their pockets every day. The more defenders of a technocratic Europe insist that Europe should return to low-key decision-making behind closed doors, the greater the temptation to remind them of Bertolt Brecht's poem after the East German regime brutally suppressed a workers' uprising in 1953: “Would it not be easier / . . . for the government / To dissolve the people / And elect another?”

Radical democrats have offered a second interpretation of the crisis. According to this view, the double no was a kind of democratic big bang: ordinary citizens sent a clear message to the elites that not only did they want to be consulted

more often but they were also ready for a full-fledged European democracy. (American neoconservatives have been quick to conclude that we're witnessing the stirrings of democratic revolt against bureaucratic centralization.)

This radical-democratic interpretation faces several large objections. To begin with, votes against the constitution were not signs of a democratic insurgency but the result of debates and a distribution of information that had been profoundly shaped by national, rather than European, concerns, and in particular what are often referred to as “Franco-French” (*franco-française*) questions. Families and friends split over the vote, many driven by what they saw as their only chance in years to register discontent with national elites. And the more these elites dramatized the vote—“The entire future of Europe is at stake!”—the more citizens were tempted to spite them.

It is true that at least in France the left decisively tipped the vote. Animated by a desire for a “more social” Europe, with better protections of education, health, and public services, the left rejected the constitution as a charter of neoliberalism. The new constitution, they said, would deprive member states of the capacity to regulate domestic markets and would centralize regulatory power in a democratically unaccountable Brussels. But the no vote was also driven by simple xenophobia and, in particular, concerns about Turkish membership. So the rejection of the constitution did not signal that a coherent alternative had emerged, that Europeans were ready to endorse a government in which Laurent Fabius, the leading no-campaigner of the socialists, would be the commissioner for social services while the far-right populist Jean-Marie Le Pen would act as commissioner for the accession, or rather non-accession, of Turkey. The no vote was purely destructive.

Present but more elusive has been a general sense that it was time to give the elites a bloody nose. Many citizens—especially in parts of France such as the northeast that have benefited enormously from European subsidies—insist that they are pro-European but that the proposed constitution (and all kinds of other decisions, including the creation of the Euro and the opening of accession talks with Turkey) was being “imposed” on them. This sense of resentment increased down the class ladder and was neatly distributed along regional lines: all of Paris voted yes and essentially the rest of the country voted no. In short, what politicians like to call *la France profonde* was profoundly uncomfortable with the constitution.

ANTHONY J. HICKS

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More disconcerting still: the young—among whom unemployment is particularly high—are by no means reflexively pro-European (with the exception of students, who voted predominantly in favor of the union). While the older generation still accepts the argument that the union secured peace, people in their 20s take peace on the continent for granted (the experience of Yugoslavia in the 1990s notwithstanding) in much the same way they now take for granted that they can drive from Vienna to Lisbon without having to show a passport or change money.

A protest vote was, in short, not necessarily an assertion of democratic conviction. In any case, the preconditions for European democracy—especially a Europe-wide public sphere of associations, parties, and public debates—are not in place. Although national debates are no longer rigidly separated from each other, we now have the worst of all possible worlds. Rumors, misperceptions, and arguments taken out of their national and linguistic contexts circulate freely, with almost no serious, sustained engagement across national boundaries. For instance, as French voters turned increasingly negative, panicked pro-European German intellectuals warned their neighbors “not to betray progress.” And Habermas, Günter Grass, and others implored the French not to abandon little Poland between a mighty Germany and a still-powerful Russia. Meanwhile, British commentators were baffled that the French would condemn a constitution for its *libéralisme*, forgetting that in France *libéralisme* now refers almost exclusively to what the British (and Americans) would call “economic neoliberalism.”

Economic integration, then, is not necessarily increasing communication or mutual knowledge. This may partly be due to the fact that a generation of great public intellectuals who made it their life's work to mediate between different European nations and to articulate the values and principles that might provide a common point of reference for an emerging Europe is passing from the stage. Moreover, aging conviction is giving way to youthful indifference. Although there is no shortage of highly specialized Europe experts, it would be hard to name a single prominent intellectual under 45 who has made “Europe” his or her primary concern.

Can Europeans forge ahead and create a proper European public sphere? Perhaps. But building a public sphere, like building a nation, is not a matter for the short term, and it faces linguistic barriers as well as deep differences in group organization and national media. These difficulties do not mean we should stop trying; but they should lead us to be skeptical of any claims that the age of European democracy has already dawned.

If we resist the comforting conclusions of the technocrats, who idealize the governors, and the radical democrats, who idealize the governed, can we get any closer to the meaning of the double no? Let me suggest that we have seen a classic Tocquevillian mechanism at work: political elites try to mobilize a population by building expectations, but they are not at

all willing or able to fulfill those expectations, and the result is popular resentment. In the case of the European constitution, political elites hoped to improve Europe's legitimacy and pursued that project by proposing a constitution rather than another international treaty. They seemed to believe that the very word “constitution” would dignify their policy goals with symbolic paraphernalia and thus instantly generate citizen support.

In reality, what they proposed was a comparatively modest revision of existing treaties, with the less modest addition of a Charter of Fundamental Rights. Yet the president of the constitutional convention, Valéry Giscard d'Estaing, described the drafting as “our Philadelphia.” Constitutionalization was used, for the most part, as a sophisticated form of public relations.

The constitution did contain important new elements for popular participation and accountability. Citizens could ask the European Commission—the European executive body and the driving force behind the integration process—to propose new laws or policies if they managed to collect a million signatures across a significant number of member states; the powers of the European Parliament, the only EU institution that is directly elected, were expanded; national parliaments were given more power to check that competences reserved for the member states were not silently creeping upwards to the union; and finally, ministerial deliberations were required to be public.

On a theoretical level, state and constitution can be separated; in fact, many academic observers see the de facto stateless federal constitution of the EU as its most distinctive feature, and as a potentially promising model for other supranational political arrangements. But this is not how politicians framed the issues. They wanted legitimizing symbols, not the reality of a federal state. Nobody—least of all the smaller member states—was in the business of constructing a United States of Europe.

The result was an eruption of popular discontent just at the moment when European elites were trying to create more mechanisms of participation and contestation. At the very least, European elites, rather than spending millions of Euros conducting polls about the European anthem (the “Ode to Joy,” if you care to know), motto (“united in diversity”), and day (May 9), might have shown the courage of their convictions: they might have held a pan-European referendum on the constitution—let's say on Europe Day. Instead, they probably managed to discredit the very word “constitution” for years to come.

Desiring the symbol of a federal constitution without its reality is only one of the EU's deep problems. Those who have long advocated the EU as a completely new, postmodern polity might initially have felt vindicated by the double no. After all, if elites had not oversold the EU as a large state—*une grande France*, as it was often put—but explained its real nature as a federal entity without a state, devoted to recognizing and preserving dif-

ference, then things might have turned out differently. The NYU law professor Joseph Weiler is probably the most eloquent proponent of such a Europe—one devoted not to constitutional uniformity but to “constitutional tolerance” as the principle value holding together a “Community of Others.”

Yet even this looser, postmodern vision of Europe might not have been “bought” by citizens, even had it been properly explained, promoted, or “sold” (the commercial and advertising language is standard among pro-European politicians). The referenda revealed a profound clash between what you might call modern and postmodern logics of conflict. French working-class and lower-middle-class anxieties were most effectively stoked by the specter of the “Polish plumber” who would steal over from Poland to fix bidets for a pittance and destroy fine French plumbing craftsmanship. Clearly, the problem was not that the French did not want to recognize the plumber in his Polishness—the issue was who was going to get the work. As it

limited capacities, either to inspire allegiance or to solve problems, at the European level, let alone globally. Brussels is not about to open itself to the Other, if that Other happens to be a Third World farmer; and even if it wanted to, it could not embark on the great adventure of reforming the economies of France and Germany. Still, it’s a convenient place for politicians to project false hopes, and, even better, lay the blame for unpopular decisions.

Increasing the fiscal powers of Brussels would seem the obvious way to redirect national loyalties to the supranational level. One is reminded of the Federalist’s advice that “the government of the Union, like that of each State, must be able to address itself immediately to the hopes and fears of individuals; and to attract to its support those passions which have the strongest influence upon the human heart.” But generating supranational loyalties is not an end in itself. And the case remains to be made that a Brussels-directed welfare state would be more effective than solutions at the national level.

## Political theorists often argue for a European super-state, but the looser, postmodern vision of the EU is closer to the realities of today.

happened, these particular anxieties were unfounded: statistics revealed that a mere 150 Polish plumbers had made their way to France (and of the 65,000 people who have left Poland since accession to the EU, only 5,500 have gone to France). Still, in the face of profound economic fears, talk of celebrating diversity will seem at best irrelevant and at worst the kind of insult that ruthless cosmopolitans direct (perhaps unwittingly) to those who need to stay put.

True, cultural conflicts and economic conflicts cannot always be neatly separated. European elites have a habit of overselling the union either with pretentious philosophical rhetoric urging recognition or with tacit suggestions that Brussels can solve economic problems that nation-states cannot solve on their own. Slow growth and persistently high levels of unemployment are real problems, and the pumped-up rhetoric only exacerbates the sense of frustration when basic economic promises aren’t kept. For instance, two leading European writers tried to convince citizens before the referenda that the essence of Europe somehow consists in “the opening toward the other,” “the overcoming of oneself,” or even in being together in a “great adventure.” The authors—Jorge Semprún, former Spanish culture minister, and Dominique de Villepin, then French Interior and now Prime Minister—teamed up to offer a “definition” of “European Man” or *L’Homme Européen*, to quote the title of their jointly authored treatise. (“European Man,” incidentally, turns out to be a “travelling dream”—*un rêve qui voyage*—as if anyone could have had any doubt.)

Such rhetoric contrasts markedly with the reality of the union and its still

So if the technocrats, radical demoscra, and philosophical pitchmen have it wrong, where does this leave us? In the short run European leaders should do everything they can to salvage the sensible parts of the constitution. These include the ground rules for voting on major decisions, for dividing competences between the union and the member states, and for creating a union that can do a better job of acting internationally by having a foreign minister and a common diplomatic service.

What shape might such a salvaging operation take? Before the failure of the referenda, the Harvard political scientist Cindy Skach proposed the idea of having a “basic law”—rather than a symbolically charged constitution—as a provisional document setting out institutions and political ground rules. This is, after all, what happened in West Germany after 1945, whose constitution is widely considered the most successful of the 20th century (and which has been widely exported throughout Central and Eastern Europe)—and all without ever mentioning the c-word. If such rules proved successful over the long run, one could eventually dignify them with the designation “constitution.”

European leaders should also continue to take the risk of pressing ahead with enlargement. What Timothy Garton Ash has called the “power of induction” is probably the union’s greatest power of all. It has profoundly reshaped, and especially liberalized, countries negotiating accession, enabling them to make credible commitments to liberal democracy, strengthening the rule of law, and penalizing xenophobia. Especially in the Balkans, the EU remains the only hope

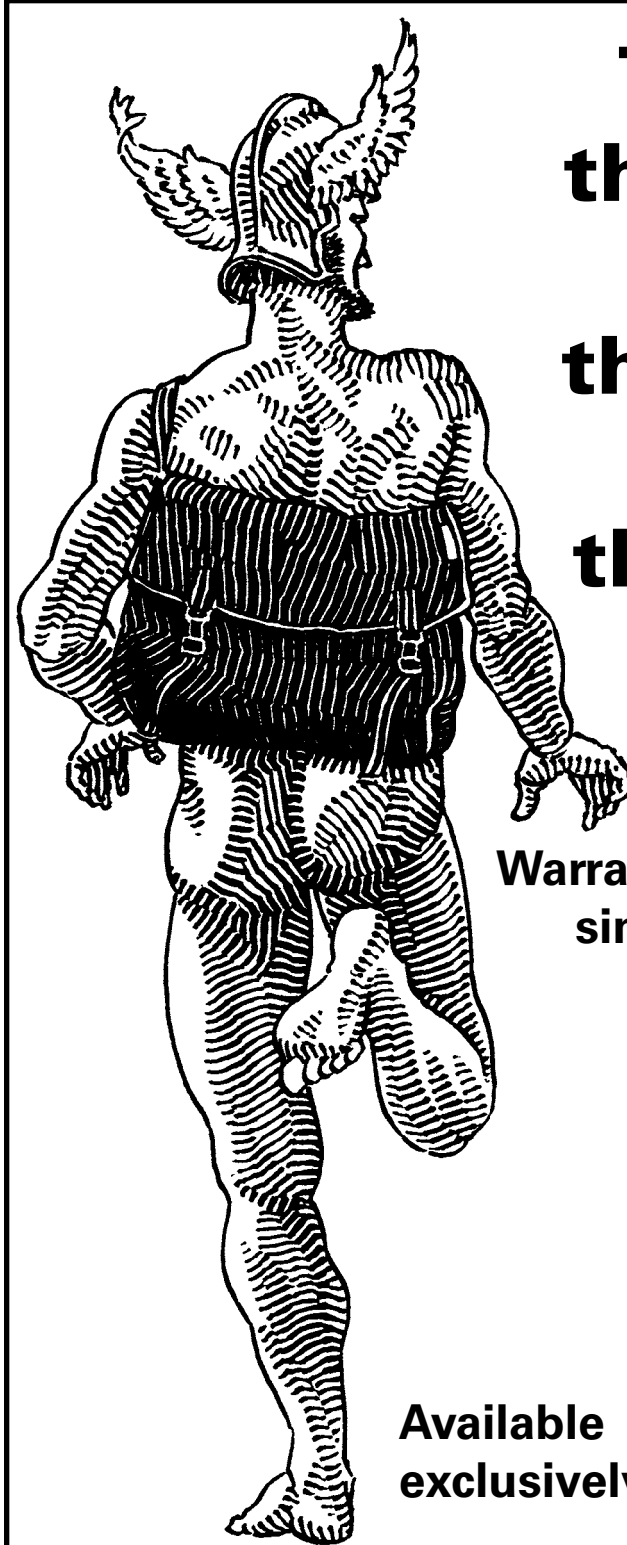
in the short run; anything that looks like retreat on enlargement will embolden the anti-reformist forces of the past.

Of course, the issues of enlargement are not simple: especially in countries with deep ethnic divides such as Bosnia, local politicians tend to foster the illusion that one can somehow leap from having no state at all into a something called “European integration,” in which Brussels makes all the decisions. But the peculiarity of EU enlargement consists in the fact that only those who already have modern-state capacity can transcend it: you can only share the sovereignty you have. Here the signs are not hopeful for the Balkans. As a swearing-in ceremony for an all-Bosnian army earlier this year, Serbian recruits whistled and booed at the pan-Bosnian anthem and sang Serb songs instead. The ceremony had to be canceled, and with it vanished the

dreams of achieving proper, sovereign statehood any time soon.

Thus, the EU has an enormous responsibility in the Balkans, more so than even in Turkey, which might be bitterly disappointed were it not to become a member in the end but would not collapse as a state.

What has made the enlargement question so much more complicated is the fact that Europe appears to have entered the age of the popular referendum for good. France has amended its constitution, guaranteeing its citizens the right to vote on all potential new member countries (although the amendment was clearly designed to alleviate anxieties about Turkey in particular). With the defeat of the technocratic vision, populists could dominate the field for years unless political leaders find ways to communicate Europe more convincingly.



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And in the long run? The emergence of a European super-state remains unlikely. Yet political theorists often argue that this is the only way to coherently envisage European unity and European democracy: no accountability without democracy, and no democracy without statehood. And so one might be tempted to hope that more referenda and more populist insurgencies over the years might eventually persuade European elites that they do need a real federal state and not simply a constitutional fig leaf. According to this logic, any form of integration short of statehood will turn out to be unstable and breed permanent discontent. There is no way back.

The same position might be adopted by those who really care for a social Europe—an EU truly devoted to transnational social justice. Thomas Nagel recently defended this kind of “statist logic”: genuine claims for justice, he argues, emerge only within a state, when citizens are subject to coercive laws that are made in their name. Europeans won’t have real duties of justice in a postmodern Europe that only knows “soft” transnational economic and administrative law, freedom of movement, and the occasional normative spillover, like the requirement that applicant countries abolish the death penalty. The arguments are complex, but the message is clear: those who want a functioning union ought to push for statehood; rather than fiddle with the psychology of loyalty they should submit to a hard Madisonian, or even Hobbesian, logic.

It seems to me, though, that the defenders of the postmodern vision are somewhat closer to European realities today—even if they haven’t found a compelling way to communicate that vision. The EU, after all, really is a *sui generis* institution, dedicated to solving common problems against the background of a persistent plurality of its members. It successfully engages in wide-ranging policy experiments, fosters mutual learning among the member states, and exerts pressure on would-be members to liberalize and democratize. These characteristics do not easily add up to a single political vision, and some of them are cer-

## The Circle of the Fifths

The work tastes overwhelmed, like alert palms flanking a full highway.

How you find the grit later in your mouth & wake into

your own enormity. How the work takes an unexpected amount of right turns

that run into the darkness & peter out under abandoned bridges.

To the Massachusetts from which I come, my brother-country racked by cobblestones that left me sprained, I leave my brain

infused with slick bottom stones where three rivers converge. Men in hip-boots pull breaching trout from the surface.

The work is as barbarous as bookends. Waterspouts deviated by a tough wind, as if we could jump up into our wings, hold a pitch to the point of ownership & scatter as sure as light.

Though I was willingly broken by the grandeur, I made not one exception, too taken by a trumpet taking stabs at Gershwin, the faults & repeats passing in on a breeze. Yet I was often awakened by a horrid kind of surprise into my primary image (a small brook that borders a deaf school).

Having worked a summer holiday for belladonna, I thought my sight was proof.

I believed all the endings curved into the choirmaster’s slender fingers which formed a closed circle against the darkened faces of the crowd.

Yet I stared at a map for a year & could only remember the colors of countries.

The work followed me like the carcasses of roadkill I counted while passing through Colorado. Two days in, the toll mounted to unhumorous heights. 284 was lifted from the asphalt by a hawk just before the grille of the car. The work was like that, both skyward and lifeless.

—Catherine Meng

tainly not exclusive to the EU. Moreover, they would not necessarily solve many of the most pressing problems of Europeans (unemployment, for instance). Solving these problems is largely a task for nation-states.

Still, these principles and practices—not merely rhetoric about “opening toward the other”—could be communicated more clearly by European leaders. One might call them, following the French political scientist Pierre Rosanvallon, a kind of “experimental universalism,” or, reverting to an old Deweyan idiom, “democratic experimentalism.” They would increase the density and complexity of political relations among Europeans but still fall short of full statehood. But if one unties the Hobbes–Nagel knot between statehood and justice, it is not clear why such an increased density would not come to be seen as involving more complex moral requirements, too.

Finally—and here I risk wishful thinking—there ought to be more instruments of popular participation short of a full-fledged European democracy. The ill-fated constitution did go some way toward initiating participatory experiments. It is not easy to gather a million signatures across Europe, but it was at least one attempt at an answer to those who feel entirely disempowered. Even better would have been measures to give the European Parliament the power to propose legislation, given that many citizens feel the current crisis to be precisely a crisis of representation.

The EU may well have a certain amount of what political scientists describe as “indirect accountability”—that is, the accountability of Brussels through the governments of the member states. But it needs to be brought closer to the people, and that will not happen through anthems, Europe Days, and cartoon Web sites announcing that “Europe is fun!” Closeness must incorporate some measure of meaningful participation, and those who care for the fate of the EU would do well to spend their time during this pause thinking of new and more effective ways to achieve it. ♦

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