

The Crisis of the European Union

Jürgen Habermas

THE CRISIS
OF THE
EUROPEAN
UNION

A Response

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Preface

Since 2008 we have been witnessing the laborious learning process of the German federal government as it moves reluctantly in small steps towards Europe. Over the past two-and-a-half years it first insisted on unilateral national responses, only to go on to haggle over rescue parachutes, to send out ambiguous signals and to drag its feet over concessions. Now, finally, it seems to have come to the realization that the ordoliberal dream of voluntary stability criteria to which the budgets of the member states were supposed to conform has failed. The dream of the ‘mechanisms’ which are supposed to render the process of reaching joint political decisions superfluous and to keep democracy in check has been shattered not only by the differences in economic cultures but above all by the rapidly changing constellations of unpredictable environments. Now all the talk is of the ‘construction flaw’ of a monetary union that lacks the requisite political steering capacities. There is a growing realization that the European treaties have to be revised; but there is a lack of a clear perspective for the future.

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The plans recently in circulation would confine the joint governance of the seventeen euro states to the circle of the heads of government, thus to a 'core' of the European Council. Since this governing body is not able to make legally binding decisions, reflection is concentrating on the kinds of sanctions to be imposed on 'disobedient' governments. But what is actually being proposed here? Who is supposed to force whom to obey decisions with what content? Now that the rigid stability criteria have been extended and flexibilized into the invocations of the 'pact for Europe', the decisions of the European Council are supposed to expand to cover the broad spectrum of all those policies that could influence the global competitiveness of the national economies that have drifted apart. Thus, the European agreements would intervene in the core domains of the national parliaments, from fiscal and economic policy, through social policy, to education and employment policy. The procedure envisaged seems to be that, in order to ensure the political implementation of all goals agreed upon with their colleagues in Brussels, the heads of government would organize majorities in their respective national parliaments under threat of sanctions. This kind of executive federalism of a self-authorizing European Council of the seventeen would provide the template for a post-democratic exercise of political authority.

As was to be expected, this intergovernmental undermining of democracy is meeting with resistance from two sides. The defenders of the nation state are seeing their worst fears confirmed and are now barricading themselves more than ever behind the façades of state

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sovereignty, even though these were breached long ago. However, in the current crisis they have lost the support of a business lobby whose interest up to now lay in keeping both the common currency and the common market as free as possible from political interventions. On the other side, the long-mute advocates of the 'United States of Europe' have again found their voice, though with this emphatic conception they frustrate their own goal of first promoting integration in core Europe. For with this proposal the well-founded opposition to the precipitous path to a bureaucratic executive federalism becomes entangled in the hopeless alternative between nation state and European federal state. A vague federalism which fails to negate this false alternative in a clear-cut way is no better.

With my essay on the 'constitution' for Europe – that is, on its current state and its political make-up – I want to show, on the one hand, that the European Union of the Lisbon Treaty is not as far removed from the form of a transnational democracy as many of its critics assume. On the other hand, I want to explain why the construction flaw of the monetary union cannot be rectified without a revision of the treaty. The current plans to coordinate the decisions of the EMU states in major areas of policy call for an extended basis of legitimation. However, the constitutional model of a federal state is the wrong one for such a transnational democracy. Once we come to see the European Union as if it had been created for good reasons by two constitution-founding subjects endowed with equal rights – namely, co-originally by the citizens (!) and the peoples (!) of Europe – the architecture of the supranational but

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nevertheless democratic political community becomes comprehensible. Thus we need only to draw the correct conclusions from the unprecedented development of European law over the past half-century.

The political elites continue to shy away from the daunting prospect of a revision of the treaty. Presumably this hesitation is not just a matter of opportunistic power interests and a lack of decisive leadership. The economically generated apprehensions are inspiring a more acute popular awareness of the problems besetting Europe and are lending them greater existential significance than ever before. The political elites should embrace this unusual boost in public prominence of the issues as an opportunity and also regard it as a reflection of the extraordinary nature of the current situation. But the politicians have also long since become a functional elite. They are no longer prepared for a situation in which the established boundaries have shifted, one which cannot be mastered by the established administrative mechanisms and opinion polls but instead calls for a new mode of politics capable of transforming mentalities.

I would like to use the means at my disposal to try to remove mental blocks that continue to hinder a transnationalization of democracy. In doing so, I will situate European unification in the long-term context of a democratic legal domestication and civilization of state power. This perspective should make it clear that the pacification of belligerent nations – hence the goal that motivated not only the foundation of the United Nations but also the process of European unification after the Second World War – has created the preconditions for

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realizing a more far-reaching goal, namely, the construction of political decision-making capabilities beyond the nation states. The time when the constitutionalization of international law was focused exclusively on the goal of pacification, which also marked the beginning of the development of the European Union, is long past. The shattering of neoliberal illusions has fostered the insight that the financial markets – indeed, more generally, the functional systems of world society whose influence permeates national borders – are giving rise to problems that individual states, or coalitions of states, are no longer able to master. This need for regulation poses a challenge for politics as such, politics in the singular, as it were: the *international* community of states must develop into a *cosmopolitan* community of states and world citizens.

The essay on the European constitution is followed by a paper (which has already appeared in an academic journal) which explores the connection between the systematic concept of human rights and the genealogical concept of human dignity. By ‘genealogical’ is meant that the experiences of violated human dignity foster a militant dynamic of outrage which lends repeated impetus to the hope for a worldwide institutionalization of human rights, however improbable this may be. The prospect of a political constitution for world society loses something of its semblance of utopianism when we recall that the rhetoric and politics of human rights have in fact exercised global effects over the past couple of decades. Already from the days of the French Revolution, the tension-laden distinction between civil and human rights has involved an implicit claim that

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equal rights for everyone should be implemented on a global scale. This cosmopolitan claim means that the role of human rights must not be exhausted by moral criticism of the injustices prevailing within a highly stratified world society. Human rights rely on finding institutional embodiment in a politically constituted world society.

The three political interventions collected in the appendix can be read as commentaries on the ethnocentric image of Europe which is reflected in the self-centred perception of the reunified Germany.

Jürgen Habermas
Starnberg, September 2011

The Crisis of the European Union in Light of a Constitutionalization of International Law – An Essay on the Constitution for Europe¹

I Why Europe is now more than ever a constitutional project

In the current crisis, it is often asked why we should continue to cling to the European Union at all, not to mention the old aim of an ‘ever closer political Union’, now that the original motive of making wars in Europe impossible is exhausted. There is more than one answer to this question. In what follows, I would like to develop a convincing new narrative from the perspective of a

¹ My thanks to Armin von Bogdandy for his detailed support and to Claudio Franzius and Christoph Möllers for their critical advice.

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constitutionalization of international law² which follows Kant in pointing far beyond the status quo to a future cosmopolitan rule of law;³ the European Union can be understood as an important stage along the route to a politically constituted world society.⁴ Admittedly, on the laborious path leading up to the Lisbon Treaty, the

² Jochen A. Frowein, 'Konstitutionalisierung des Völkerrechts', in *Völkerrecht und Internationales Recht in einem sich globalisierenden internationalen System: Berichte der Deutschen Gesellschaft für Völkerrecht* 39 (2000): 427–47. Although this perspective is closely associated with German jurisprudence in particular, it suggests itself today above all for political reasons; on this, see the preface in Claudio Franzius, Franz C. Mayer and Jürgen Neyer (eds), *Strukturfragen der Europäischen Union* (Baden-Baden: Nomos, 2010), p. 16. A brilliant analysis of the German-language contribution to the history of international law, which also throws light on the prominent status of the idea of a constitutionalization of international law in German jurisprudence, is offered by Martti Koskeniemi in his essay 'Between coordination and constitution: law as German discipline', in *Redescriptions: Yearbook of Political Thought, Conceptual History and Feminist Theory* (Münster: LIT, 2011).

³ On this interpretation of Kant, for whom the model of the confederation of states is just a stage in the development towards a more far-reaching integration of peoples, see Ulrich Thiele, 'Von der Volkssouveränität zum Völker(staats)recht: Kant – Hegel – Kelsen: Stationen einer Debatte', in Oliver Eberl (ed.), *Transnationalisierung der Volkssouveränität: Radikale Demokratie diesseits und jenseits des Staates* (Stuttgart: Franz Steiner, 2011), pp. 175–96. There he writes: 'The special treaty which would transfer national sovereign rights to supranational or international bodies for the sake of perpetual peace would have to spring from a "treaty among nations themselves" and not merely from a treaty of factual sovereigns' (p. 179).

⁴ I dealt with Kant's idea of cosmopolitan law several times between 1995 and 2005. See Habermas, 'Kant's idea of perpetual peace, with the benefit of two hundred years' hindsight', in *The Inclusion of the Other: Studies in Political Theory*, trans. Ciaran Cronin (Cambridge: Polity, 1998), pp. 165–201; 'Does the constitutionalization of international law still have a chance?', in *The Divided West*, trans. Ciaran Cronin (Cambridge: Polity, 2006), pp. 115–93; 'A political constitution for the pluralist world society?', in *Between Naturalism and Religion*, trans. Ciaran Cronin (Cambridge: Polity, 2008), pp. 312–52.

Why Europe is now a constitutional project

forces friendly to Europe have been worn down by disputes over such constitutional political questions; but, quite apart from the implications for constitutional law of the European 'economic government' now planned, this perspective recommends itself today for two further reasons. On the one hand, the current debate has become narrowly focused on the immediate expedients for resolving the current banking, currency and debt crisis and as a result has lost sight of the political dimension (1); on the other hand, mistaken political concepts are obstructing our view of the civilizing force of democratic legal domestication, and hence of the promise associated from the beginning with the European constitutional project (2).

(1) The economic narrowing of vision is all the more incomprehensible because the experts seem to be in agreement on the diagnosis of the deeper reasons for the crisis: the European Union lacks the competences to bring about the necessary harmonization of the national economies whose levels of competitiveness are drifting drastically apart. To be sure, in the short term the current crisis is monopolizing all of the attention.⁵ However, this should not lead the actors concerned to forget the underlying construction flaw of a monetary union which lacks the requisite political regulatory capacities at the European level, a flaw which is rectifiable only in the longer term. The 'pact for Europe'

⁵ The considerable uncertainty in the predictions of the relevant economic expert reports is indicative of how the politicians are dealing with this crisis.

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repeats an old mistake: legally non-binding agreements concluded by the heads of government are either ineffectual or undemocratic and must therefore be replaced by an institutionalization of joint decisions with irreproachable democratic credentials.⁶ The German government has become the catalyst of a Europe-wide erosion of solidarity because for too long it has shut its eyes to the only constructive expedient, one which even the liberal-conservative *Frankfurter Allgemeine Zeitung* now paraphrases with the laconic formula 'more Europe'. None of the governments concerned has yet demonstrated the necessary courage, and they are all struggling ineffectually with the dilemma posed by the imperatives of the major banks and rating agencies, on the one side, and their fear of losing legitimacy among their own frustrated populations, on the other. Their panic-stricken incrementalism betrays the lack of a more expansive perspective.

Since embedded capitalism has run its course and the globalized markets have been outstripping politics, the OECD countries have found it increasingly difficult to stimulate economic growth while at the same time ensuring social security and a tolerably just distribution of income for the mass of the population. After the exchange rates were allowed to float freely, the OECD countries had temporarily defused this structural problem by accepting rising inflation. When this policy generated excessively high social costs, they chose the alternative expedient of increasingly financing public

⁶ On this, see my article 'A pact for or against Europe?' below (pp. 127–39 in this volume).