



The Normative Implications of the Eurozone Crisis

Erik Oddvar Eriksen



ARENA Working Paper 2
February 2014

The Normative Implications of the Eurozone Crisis

Erik Oddvar Eriksen

ARENA Working Paper 2/2014
February 2014

ARENA Working Paper (print) | ISSN 1890-7733
ARENA Working Paper (online) | ISSN 1890- 7741

Reproduction of this text is subject to permission by the author
© ARENA 2014

ARENA Centre for European Studies
University of Oslo
P.O.Box 1143, Blindern, N-0318 Oslo

Working papers can be downloaded from ARENA's website: www.arena.uio.no

Abstract

Through lock-ins and normative commitments the EU's member states and in particular the Eurozone members have moved themselves into a community of fate. Risks are collectivised and sovereignty is pooled and shared. There is disagreement regarding what medicine will be the right cure for the Eurozone crisis. Even before the crisis there was uncertainty and volatility with regard to the economic and political spectacle at the European continent, and the nature of the risks. Mending the Eurozone crisis has, however, become a matter of justice as some are profiting and some losing on the EMU. Collective action at the European level is not beyond the demand of duty. Moreover, a fiscal union has also turned into a roadmap for the solution of the crises. It makes the making of the European Political Union a plain imperative.

Keywords

Constitution – Crisis – Democracy – EU – Eurozone – Integration

Abstract

Through lock-ins and normative commitments the EU's member states and in particular the Eurozone members have moved themselves into a community of fate. Risks are collectivised and sovereignty is pooled and shared. There is disagreement regarding what medicine will be the right cure for the Eurozone crisis. Even before the crisis there was uncertainty and volatility with regard to the economic and political spectacle at the European continent, and the nature of the risks. Mending the Eurozone crisis has, however, become a matter of justice as some are profiting and some losing on the EMU. Collective action at the European level is not beyond the demand of duty. Moreover, a fiscal union has also turned into a roadmap for the solution of the crises. It makes the making of the European Political Union a plain imperative.

Keywords

Constitution – Crisis – Democracy – EU – Eurozone – Integration

Introduction¹

Why the emotional reactions to European Union's Eurozone crisis-management?² Why such rage, why such harsh language?³ Why the many disillusioned expectations towards the EU? After all, EU competencies in social and economic matters are miniscule. It has no competence in fiscal matters; it cannot redistribute resources, issue state bonds, print money, and it has no sovereign tax basis. The European Central Bank (ECB) cannot act as a lender of last resort. All this belongs to the competency of member states. There is a structural imbalance in the internal market. Even before the crisis, monetary union, arguably, contained many gaps, inconsistencies and asymmetries.⁴ A monetary union without a fiscal union is unsustainable. The will and the resources needed to make a common fiscal policy with redistributive measures are lacking at the European level today. A true political union is lacking. This is all well-known and a result of member states' unwillingness to grant more powers and resources to the Union.

Moreover, why denounce the EU when the European Monetary Union (EMU) was established in the heyday of the neo-liberal *zeitgeist* disposed to labour market liberalisation, privatisation and removal of subsidises? A neoliberal economic regime in which state intervention was to be abolished has been in place since the late 1970s initiated by Ronald Reagan and Margaret Thatcher. Monetarist supply-side programmes propagated by the Chicago school replaced Keynesian demand-side programmes. The European Monetary System was established to counter the destabilising effects of the collapse of the Bretton Woods order,⁵ when fixed exchange rates disintegrated amid the

¹ This paper draws on Eriksen 2014.

² Today's European Union began as the European Economic Community in 1958, and was renamed the 'European Union' by the Maastricht Treaty, formally, the Treaty on European Union (TEU), which entered into force in 1993. For convenience I use the expression 'EU' to describe the whole period.

³ See Beck 2013, cp. 'Habermas, the Last European: A Philosopher's Mission to Save the EU', *Der Spiegel Online*, 25 November 2011, available at: <<http://www.spiegel.de/international/europe/habermas-the-last-european-a-philosopher-s-mission-to-save-the-eu-a-799237.html>> [last accessed 20 February 2014]. See also 'We are Europe! Manifesto for re-building Europe from the bottom up', initiated by Ulrich Beck and Daniel Cohn-Bendit, available at: <<http://manifest-europa.eu/allgemein/wir-sind-europa?lang=en>> [last accessed 20 February 2014].

⁴ Verdun 2000, see also Streeck 2011, Vogl 2010, and also Crouch 2008; cp. Lord 2012; Streeck 2013.

⁵ The Bretton Woods Agreement was based on consensus about the value of controlling capital, viz., to protect the effectiveness of domestic policies that were threatened by the free movement of capital across borders (Rodrik 2011: 93).

first deep post-war recession. In this new system regulation is mostly *negative*; it is about abolishing barriers for an effective internal market (Scharpf 1999). Already the Rome Treaty (1957) elevated the fundamental market freedoms and competition law. For many people, the EU came to be seen as an attempt to establish unrestricted competition: the unfettered circulation of capital, goods and labour and a levelled playing field. It is the member state that is supposed to provide for socio-economic goals and social welfare. The EU's *positive competences* to ensure reregulation and redistribution at the European level are close to non-existent. Price stability, not redistribution, is a constitutional norm of the EU. The EU itself is not merely an instrument for catching up politically with economic globalisation; it has contributed to it as well, given the structural neoliberal bias in its set up. The EMU was not complemented with the necessary fiscal means to handle crisis, to 'mutualise' debts and stimulate growth. So, why lambast the EU for inaction and desolation?

The answer is that there has been an idea of a 'better Europe', of peace, justice, dignity and democracy built into this project from the very beginning. The European integration process came with a promise of *post-humiliation society*. Now the states find themselves entangled in a community of fate and of collectivised risks, and one which has brought domination and humiliation back. How has that been made possible? In this paper, I address this question first by clarifying how the normativity of the EU has been institutionalised, then what has been accomplished with regard to curtailing the state of nature between the states. Thereafter, I set out some ideas as to what is lacking in order to handle the crisis in line with the normativity of the European integration process.

A Post-Humiliation Society

The vision of *a better Europe* is inherent to the integration project: a Europe united on the principles of equality, freedom and solidarity reminiscent of the French Revolution. The turn to the formation of European nation states in its wake deprived the revolution of its universalistic content.⁶ Nationalism undermined the cosmopolitan potential of the humanitarian and democratic principles of the Enlightenment during the first half of the 20th century. Europe

⁶ This gave 60 million people a state of their own, leaving about 25 million as minorities within their 'own' territories.

after 1945 (and 1989) might be able to revoke them and install them at the proper level, that is, above the war mongering international 'system of states'.⁷

European integration came with a promise of peace and democracy; of protecting European democracies from dictatorship and war, from crisis and misery. Intrinsic to the vision was the promise that power transfer would be accompanied by democratic upgrade. The citizens should themselves be able to influence their destiny. Even if European democracy was not initially an issue, the process itself was conducted through multilateralism and legal proceedings with democratic credentials. The integration of European states and citizens was not to be conducted through *blood and iron*, but in a peaceful and civilised way, through the medium of law. There is a vision of *a better Europe; a post-humiliation society*. Instead of the humiliating Versailles Treaty after WWI, Germany got the status enhancing Schuman plan after WWII (Schultz 2013).⁸

Building on the idea of peace without humiliation, a process was set in motion with a view to a *democratic supranational federation*. A new regime of European cooperation with wide-ranging effects, and one which abolished the right of individual states to take the law into their own hands was initiated.⁹ In the words of the 'founding father of European integration' and the first Statesman of Interdependence, Jean Monnet: 'We are starting a process of continuous reform which can shape tomorrow's world more lastingly than the principles of revolution widespread outside the West' (Duchêne 1994: 390). However, the will and vision of leaders do not count for much unless they are connected to action programs and mechanisms for converting them into practical results.

Locked-In Cooperation

A particular set of *lock-in mechanisms* have been important in the history of European integration. Institutional path dependencies helped 'lock in' contended European institutions and policies (Parsons 2002). These

⁷ Thucydides pointed out that in international relations the strong do what they want, while the weak endure what they must.

⁸ According to EP President Martin Schulz, it was a 'Schuman plan instead of a Treaty of Versailles', see 'Our Mothers, Our Fathers: Next-Generation WWII Atonement', *Spiegel Online International*, 28 March 2013, available at: <http://www.spiegel.de/international/germany/zdf-tv-miniseries-reopens-german-wounds-of-wwii-past-a-891332.html> [last accessed 20 February 2014].

⁹ The EU's rejection of reciprocity and inter-state countermeasures is demonstrated in a series of foundational judgments by the European Court of Justice.

mechanisms have firmly fixed the member states in cooperative schemes. This was the case with the very founding act of the Coal and Steel Community (ECSC) in 1952. By the 'Communitarization' of the material means of war – coal and steel – subjecting them to the High Authority (which later became the Commission), it should become structurally impossible to go to war.¹⁰ The peace motive was firmly bolstered through the institutionalisation of the intense interdependence between the states.

In the beginning, cooperation on coal and steel locked the states into an obligatory scheme of cooperation. By the mid-1950s, when enthusiasm for supranationalism had waned, the ECSC member states created two new Communities – Euratom and the EEC – at the Messina Conference (June 1955). Cautious about the sovereignty question, the foreign ministers reinitiated the integration process by founding a general common market, which assigned new and important tasks and competencies to the established institutions of the ECSC: a Council of Ministers, a Commission, a common assembly and a court. The common market founded by the Rome Treaty (1957) with its free movement and non-discrimination clauses imposed a new obligatory scheme, with new lock-in mechanisms paving the way for further integration.

In 1987, in the Single European Act (SEA), the European Community (EC) decided to complete their *internal market*. This was to take place before the end of 1992 through the elimination of a wide array of nontariff barriers, including border controls, national standards, preferential procurement policies, and industrial subsidies. Moreover, the SEA replaced unanimity voting – national vetoes – in the Council of Ministers. A system of majority voting over matters pertaining to the internal market was put in force. In addition, the internal market was buttressed with an elaborate and powerful legal system – EC law. This law was considered to have supremacy over national laws and to have *direct effect* in domestic jurisdictions, regardless of whether it was explicitly incorporated through legislation. The European communities no longer only pooled sovereignty they increasingly *shared* it as well.

Today this scheme has been greatly expanded by legal developments in the wake of the Treaty of Maastricht (1992) and the Single Market and the EMU. The latter was realised in three stages, culminating with the introduction of the euro in 1999. In the Eurozone the euro now performs a vital lock-in function. Today the states find themselves not only locked in but also *entrapped* in a situation of shared sovereignty and collectivised risks. Risk depicts the

¹⁰ This is not to say that lock-ins explain the establishment of ECSC. Rather they, and the competency traps that came with them, constituted vital preconditions for its materialisation.

probability of harms that may appear in the future that we need to predict and avert at present. There is a foreseen catastrophe for everyone if the Euro fails. If the Euro fails, the EU fails, according to Angela Merkel.

The Eurozone crisis testifies to the fact that the European integration project has – as an unintended consequence – developed into *a community of risk and risk management*. It now represents a densely integrated community of fate – a ‘*Schicksalsgemeinschaft*’ in gross format for the members of the Eurozone. They are all put in the same boat, and defection would negatively affect everyone. Disagreement or grid-lock on necessary measures produces system-wide effects: surging interest rates, increased debt problems, and declining growth rates. With this structure, the Eurozone countries cannot opt out of the Euro and simply re-introduce national currencies without severely harming their own citizens’ interest (e.g. through bankruptcy and insolvency at least in the short run) as well as those of third parties by exporting the costs of devaluation. Even the worst off will be better off with the Euro than without it. Hence there is *a one for all and all for one* effect.

In the political economy of the EU, there is an experience of a community of fate. However, there is not an experience of fate control (Offe 2013: 604). The collectivisation of action capacity has not reached a level that can be grasped with present contingencies. The EU lack powers, competences and appropriate measures of taxation and transfer. There is no European treasury. Collective action is constrained by the politics of European states, viz. their unwillingness to surrender more sovereignty (Scharpf 2010).

The Accomplishments

The EU in many respects furthers the Enlightenment and the European *civilization process* – through the pacification of conflict between states, through establishing democracy between states. Martti Koskenniemi (2006) speaks of the *Kantian constitutional mind-set*, viz. that citizens’ political autonomy must be secured through constitutional and representative structures. This is the mind-set of the French revolution advanced by social movements and their rallying cry for social justice. Legal orders are orders of peace and by uploading constitutional democracy to the European level the EU contributes to the deterring of arbitrary dominance. A brutalised Europe was supplanted by a civilized one. Dignity-protecting and juridification and democratisation processes, which have been underway for the last 60 years in Europe, have brought about *a post-humiliation society*.

Today, there is in fact a superior political community to which the states are subordinate. The states cannot take the law into their own hands. The ECJ with its compulsory jurisdiction provides a novel system of compliance: the 'all or nothing effect' means that the states are 'unable to practice selective application of Community obligations' (Weiler 1982: 53, 54). This effect results in substitution of voluntary compliance (which characterises the classical international legal order) with obligatory compliance premised on a binding judicial process. The European states have domesticated international relations among themselves and have agreed to be outvoted. This has taken place through political experiments that have resulted in the following democratic innovations: *constitutional fusion*, *shared sovereignty*, *state-less government*, *parliamentary interweaving*, and a *layered public sphere* (see Eriksen 2009; 2014). These innovations represent functional equivalents to state-based democracy. They make it possible to assess the EU according to democratic standards of autonomy and accountability.

The EU represents an effort at establishing a distinct polity model that draws on complex links with a public sphere rooted in civil society as well as the global community. The informal and unruly streams of communication that characterise European public debate take place in scattered fora and arenas, but is not without clout and impact, hence not without democratic value. Opinion formation takes place in more than a few publics that can check each other making up dispersed fora for self-identification and will-formation. Currently the addressees of claims-making are not only the states but the EU and its power holders as well. Redistributive struggles have appeared at the European level and have become a distinct feature of the EU's representative system (Statham and Trenz 2012). In a manner of speaking, the European public is in being created as the protesters show their discontent with what they perceive to be the commanding heights of the European Union – in Brussels (the Commission), Frankfurt (ECB) and Luxembourg (ECJ).

The European Treaties have achieved the function of a superior legal structure. They establish both a unitary European citizenry distinct from national ones and a set of autonomous European bodies: the European Commission, the European Council, the Council of the European Union, the European Court of Justice and the European Parliament (EP), which make European-wide law and are devoted to the Union itself.

The EU does not possess or exercise the same degree of direct territorial control that we associate with the sovereign state. Yet the template for democratic rule is that of the modern constitutional state. This partly self-proclaimed democratic system of law-making and norm interpretation at the European level, constrained by the member states, has built-in assurances,

checks and balances, in order to ensure that the EU does not become a power-usurping entity – an eventual ‘world despotic Leviathan’. The EU is not a superimposed structure, a super-state of a second order nature, but a selectively institutionalised political body dependent on the member states’ chain of democratic legitimation.

The problem with the present state of affairs is that the Union depicts not what makes a number of actors a group with some distinctiveness, a collective identity in marked difference to others, and which hence can be made a basis for *solidarity* and collective action. Solidarity, which means to do what is good for all of us, depends on a collective or shared identity but this is poorly established in the EU. While the EU is founded on an abstract and formal form of justice – of justice as impartiality specified as non-discrimination and free movement clauses – specific bounds of solidarity are required for the formation of a collective identity enabling redistribution and socio-economic justice. The Eurozone crisis discloses the inbuilt weakness of the system in place and the unredeemed normativity of the European integration process.

The Missing Link

With the benefit of hindsight we can see that values like *peace, democracy, impartiality and dignity* have been important ‘musts’ of the European integration process, and despite their indeterminate character, they have obtained a quasi-empirical status and force as requirements on actors and institutions.¹¹ Increasingly, normative commitments are specified and entrenched in legal systems and institutional arrangements, as can be seen also in the emerging constitutionalisation of the world order. The ‘musts’ of the European integration process establish normative criteria according to which Europeans can nominate themselves as European citizens. But in the lists of ‘musts’, there is one obvious *manqué*. If one compares today’s process with the French revolution’s famous template of equality, freedom, and fraternity or *solidarity* (as we would say today), the latter is lacking.

As long as the European integration project could be portrayed as advantageous for everyone – a win-win arrangement – the citizens of Europe were not called upon in the name of solidarity. European integration is however much more than a matter of *joint convenience* and normative musts have guided the integration process from its inception. The financial crisis has

¹¹ We detect them in claims-making processes, in processes of contestation and politicisation, as well as decision-making premises in legal and political documents.

though made the integration project visibly more moral. European integration is not a matter of joint convenience and choice, but a matter of justice and solidarity. It has become a duty for the members of the Eurozone to solve the crisis. However, solidarity is in short supply: it tends to stop at national borders. There is only a weak competence and only limited resources available for socio-economic justice; for redistribution among groups and across borders. There are structural barriers to solidarity as there is no European liability (Tuori 2012; Menéndez 2013). Solidarity is, however, not a categorical category that can be administratively or legally enforced as it depends on civic virtues and bonds of comradeship. Solidarity is always a gradual question of more and less. It is not an either/or category.

While justice is morally required in order to safeguard the autonomy and self-respect of the individual and while it can be achieved through impartial laws, solidarity, which also is a moral demand, has another basis and logic. According to Kant justice is formally determined, while solidarity is *material*. Solidarity has to do with particular goals to be attained—to reduce the misery and enhance the well-being of a group. It is related to experiences of injustice and the violations of rights and the collective we-feeling that can be mobilised in a context where commitments and ethical obligations subsist. Solidarity is a question of the will and onus of compatriots to contribute; to pay for each other's misfortune, which depends on a common identity and a conception of the common good. Solidarity cannot be bought nor categorically decided as it springs from the felt commitments to care for affected parties, from the common interests that can be articulated, from the virtues of cooperation and relief that can be mobilised. Solidarity is the *virtue* that is demanded when there is a shortage of material resources to satisfy pressing needs and legitimate interests (Steinvorth 1998: 69).

In solidarity discourses actors are called upon in their capacity as fellows – as compatriots, mates and companions – to do more that can be expected by norms of impartiality. Solidarity is so to say a question of *supererogation*, viz., of action beyond the demand of duty. This does not mean that solidarity is merely a question of altruism. Prototypically actors are called upon to help others in need though the establishment of a more just economic system, a better political regime or policy in the common interest. By helping the people who are now in need, you can also expect to be helped out yourself at a later point in time. The concept of solidarity thus contains a *reciprocity dimension* (Habermas 2013); not only in the sense that actors' efforts may be compensated at a later stage but also in the sense that actors who succeed in establishing a more robust political and economic regime, will themselves profit from this in the long run.

As solidarity is a virtue, there can be no 'right' to solidarity. However, there is a right to socio-economic justice. Even if solidarity is not a categorical and administratively enforceable value, the means for realising what is claimed for justice are. Claims of justice both stem from the entanglements of the Eurozone, the many dependencies and costs and harms it has inflicted, as well as from the new forms of dominance that crisis management has brought about.

Intergovernmental Dominance

Today, the financial crisis, which has developed into a social, economic and political crisis, threatens to unravel the normativity of the EU by discarding the reasons for EU membership. The integration project was founded on the principle of *peace and cooperation without humiliation*. The manner in which the Eurozone crisis has been tackled, has brought humiliation back – not only in the form of economic and social exclusion but in the form of executive, *intergovernmental dominance* as well. The lingering crisis, the many non-decisions, stop-go measures, and austerity programs initiated by the Troika, have brought the European civilising process to a standstill. The crisis has divided Europe and reshaped the political landscape (cp. Schäfer and Streeck 2013; Streeck 2013). Naming, shaming and blaming take place among groups and states in Europe today, creating images of suppliers and spenders, of givers and receivers. *Humiliation* is on the rise in the wake of the economic meltdown. *Exclusion* from the labour market, from benefits and pensions has consequences for *self-respect and self-esteem* (Margalit 1996).

The Troika is dictating the austerity cure to poorer states in order to regain the trust of the financial industries. But austerity is a highly toxic medicine, an overdose of which will kill the patient. It will not stimulate growth and expand the tax base. The weakest Eurozone members become weaker and dependent on lenders. In some respects the civilising process has even been reversed. The autonomy of the citizens and of insolvent states is being reduced and a new unaccountable hierarchy (the troika) is making decisions with severe consequences (Smith 2013). *Subjection* to hegemonic forces instead of jointly made law undermines the idea of equal citizenship. In the place of co-membership and co-determination, there are arbitrary dominance and dictates. Domination designates 'un-freedom' in the sense that human beings are in the power of others. *Domination* is rule without justification. It carries the 'whiff of illicitness' (Shapiro 2012: 307ff). The right not to be arbitrarily dominated is however a fundamental one. Non-domination is the essence of justice.

In the light of the EU's normativity and the ethos of the integration process, the reactions to the crisis management of the Eurozone – the *strong emotions*

this triggers – are easy to comprehend. We can understand the reactions to the handling of the present crisis, the outcry of betrayal and loss of mission. For many the promise of a democratic, dignity-protecting Europe does not hold any longer. It has been broken by the inability to handle the exacting demands of debt, rising borrowing costs, unemployment and structural imbalances between the countries through authorised and democratically accountable bodies. Old fashion power politics have kicked in and people are humiliated – they suffer from exclusion, and new forms of dominance. Democracy has degenerated into technocratic rule. Millions of European citizens are disenchanted as heteronomy replaces autonomy, which is the case when dictates substitute cooperative law-making.

The economic melt-down of the Eurozone effectively demonstrates common vulnerabilities and the degree of affectedness and global interdependence that has been reached. It also makes clear that some are profiting and others are suffering under the same economic regime, which justify the call for solidarity among winners and losers of the integration project. Those that have made the monetary union or gained from it have a duty to mend it. The melt down also makes clear that a monetary union without political union is futile and makes a country fiscally fragile. As the member states of the Union change from being classical ‘tax states’ to ‘debt states’, they become ever more defenceless to the whims of the financial markets (Streeck 2013).

More fundamentally, the present European economic crisis raises a normative claim of democracy as there is a question of authorisation – who is authorised to make binding collective decisions – as well as a question of accountability: Who can be held responsible, through which fora and which institutions, and which consequences should they face?

Citizens and states all over Europe (and beyond) are deeply interwoven and affect each other’s well-being and freedom in profound ways. Greece’s present financial situation is the problem of all Europeans. Those actors who are adversely affected require answers, and they require that the rules they are supposed to observe be observed by those in power. Actors and institutions are responsible for the consequences of their wilful actions. Affected parties are owed explanations, justification and compensations when they are malignantly affected (Habermas 2012: 298). At the bottom of every social crisis and political disaster lies the question of justification: why should we suffer from other people’s mismanagement, why should we pay for other people’s recklessness and misbehaviour? Someone should be held accountable for the effects of bad choices, misbehaviour and institutional inertia.

Only a system of democratic rule can ensure proper authorisation, compliance and accountability. From its very initiation, the EMU was supposed to be accompanied by a parallel move toward European Political Union. Lacks of unity, of solidarity, of a collective we-feeling; of unwillingness to surrender national sovereignty have been held as the main obstacles to further integration. A collective identity is held to be needed to overcome the collective action problem and for binding the elites to the voters.

A Powerful State-Less Union

The question is whether a fiscal union and redistribution can come into place without state-like punitive measures at the European level. In short, can there be a transfer Union without a state? Institutions compel actors to act against passion and self-interest. *Strong institutions* are needed to control financial markets and tax havens and to reallocate resources. It is generally agreed that a monopoly of power is needed to levy taxes and enforce redistribution. Nobody pays voluntarily, the saying goes, and even less so when not everybody contributes the same amount and to the same degree. The challenge, according to Giandomenico Majone (2013), is to resolve the contradiction of the Eurozone which requires the punitive and solidaristic resources of a state but is situated within a construction in which members are neither sovereign states nor members of a federation.

The EU may not be a state, but it undertakes many functions of a state. *Authoritative institutions* equipped with an organised capacity to make binding decisions and allocate resources are in place at the European level. The EU possesses well-developed legislative, judicial, and executive functions and has obtained competencies and capabilities that resemble those of an authoritative government. Its institutional set-up is complex, but 'still it legislates, administers and adjudicates; the legitimacy of these processes also has to be assessed according to the same standards that one would apply to any government' (Chalmers et al. 2006: 87).

The EU has expanded its realm of competence and has developed into a polity with:

- an institutional arrangement with representative qualities;
- an organisation with competences and capabilities of its own;
- treaties with basic rights protection as a proxy for constitution;
- transparency provisions and popular consultative mechanisms; and
- a corresponding nascent intermediary structure of civil and political organisations.

Even though the EU lacks the distinct *state form*, it amounts to a government which binds the legislator in the making of law itself. The term government refers to the political organisation of society, and to the fact that a state is not merely a Hobbesian coercive order as Weber's famous definition suggests. It is an expression of common will and public opinion, as well. Government refers to the authorised body within a system of rule that has the power to make and enforce rules, laws and regulations. It refers to the political organisation of the community and its legitimacy basis; a non-state conception of a legally constituted community. The characteristic feature of governmental power is not coercion, but the ability to act in concert and to be recognised within a legal framework (MacIver 1928).

The EU is embedded in a political culture and premised on a common constitutional complex; on the values and democratic practices widely shared by Europeans. This normative infrastructure lends legitimacy to the proceedings and collective decision-making of the post-national Union and constitutes a vital part of the common self-understandings of the citizenry. When entrenched in such a legally regulated sphere, we could conceive of the state not as a dichotomous variable but in terms of degrees of stateness – on a continuum with the autarchic state and the world society as end points. Means of coercion for protecting rights and realising collective goals would be shared between levels. Within such a framework, the EU could claim legitimacy for its decisions by referencing the legal form they are dressed in, rather than some form of collective identity and superiority.

Grounds for Integration

On the basis of the normativity of the EU and the institutional make-up of euro-polity, one may claim that neither the penal state nor an external *foe* or a collective identity is needed to get a fiscal union in place and operative. This is so for the following reasons:

First, solidarity as well as a European identity has almost always been in short supply in Europe but this has not prevented the EU from growing in size and competence over time. The EU has developed into a power-wielding entity, with the treaties as a proxy for a constitution and with political-representative institutions. European law is observed all over Europe. The EU is a state-like organisation, which could be a trigger for egalitarian standards of justice.

Second, the Eurozone has brought the members into a community of fate, in which all are dependent on all, and where some are profiting and some are

suffering from the same economic regime. There are thus *reasons for solidarity*. Collective European action is not beyond the demands of duty.

Third, there are some signs of a transfer union as the ECB increasingly has stepped in as lender of last resort of sovereigns, and the financial sector is being stabilised by the slow creation of a banking union. A fiscal union is no longer a utopic idea.

Fourth, the idea of a fiscal union has in fact turned into a strategy for solving the crisis:

What a (currently shrinking) minority of EU enthusiasts among elites and non-elites would dream of for many years in terms of deepening the integration process, has suddenly, under the impact of the crisis turned into a roadmap for an urgent rescue operation that makes the empowerment of fiscal and economic governing capacities at the EU level a plain imperative.

(Offe 2013: 599)

And what would a solution entail? There are two conditions to be met: First a banking union, based on:

[c]ommon supervisory standards; access to central bank liquidity and lender-of-last-resort facilities; common mechanisms for 'resolving' banks in difficulty; and a credible deposit guarantee scheme. The second condition is shared fiscal resources and arrangements. The former are needed to back the banking union's resolution and deposit guarantee regimes, and also to provide insurance against macroeconomic shocks. The latter are needed to contain the 'moral hazard' from spillover effects from any fiscal crisis in one member, which is deemed likely to force other members to offer a rescue.¹²

Is it feasible? The choice is between a just union and a bust continent, to paraphrase Brian Barry's (2005: 261ff) response to the question of whether social justice is economically and politically feasible. Solidarity has become a *functional must* in the sense that it is needed to solve the Eurozone crisis. Along these lines, Offe states that, 'bailing out Greece (and now Cyprus), to say nothing about Spain, Portugal and Italy through debt mutualisation, Eurobonds, [...] would have to be paid through inflation or/and increase

¹² Martin Wolf, 'England Must Reject Currency Union with Scotland', *Financial Times*, 31 January 2014.

budget deficits in the North. That is to say, it is extremely unpopular in countries [...]. The only argument to possibly convince 'northern' voting publics that burden sharing [...] is still an acceptable idea is the argument that failing to do so might be even more expensive' (Offe 2013: 602). It is thus in Germany's and others' self-interest to rescue the Euro, to mutualise debt and bail out the insolvent ones.

Further integration has become a 'must'. What is more, the normativity of constitutional democracy, which has hitherto lent legitimacy to previous steps of integration – the proceedings and collective decision-making procedures of the Union – could also pave the way for more integration. Further integration depends now as previously on the will and capability at the member state level to bring it about. Requisite measures require leadership, will and competence, and nothing will happen without popular mobilisation.

Traditionally, nation, class, and common memories of heroic pasts are used as unifying forces able to mobilise for collective action. But *shared traumas* and misfortunes can sometimes also be as effective in mobilising for socioeconomic justice as for extra duty efforts. Claims-making along such lines flourish today due to the European wide democratic infrastructure. In other words, the conditions for rallying for social justice and solidarity are in place today in Europe, not only because of shared misfortunes and adversely affected parties, but also because the *rule-of-law principle* is entrenched, there is a formal *right to political participation* and 'power-free' spaces for public debate (and rebellion) exist. The constitutional essentials necessary for opinion formation and collective will formation to come about are established at the European level. What the liberal state made possible at the nation state level in the 18th century are today established beyond it: a sphere where private people can come together as a public to confront the power holders with their mandate (cp. Habermas 1962).

Leadership and Resolve

The urgency of issues, the dire economic, social and political conditions in many countries call for immediate action in order to establish a fiscal union on constitutional grounds. While Kant (1785) in his *Groundwork of the Metaphysics of Morals* holds 'there is no war' as a 'veto' of practical reason, one may today say that the same reason dictates integration. Further integration is a categorical imperative.

This reminds us of the importance of *leadership and resolve*, which the integration process has depended on most of the time. As we learn from Ernst

Haas (1958), the integration process in the formative years took the form it did because of the French government. The Community model, rather than the intergovernmental one, was chosen because of the French. Had the latter been chosen, Europe would reflect the rule, not the exception, in international relations 'through which the member states still would have to solve problems through diplomatic means.' (Parsons 2002: 48). In other words, if the French had not insisted and put their view through in the 1950's, there would not have been a supranational community but an intergovernmental arrangement in Europe. The strife that is thriving today and which is due to the crisis and the lack of a political union with clout and competence would have been the normal situation. Intergovernmental power politics have become *abnormal in today's Europe*. This is a pertinent reminder both of Max Weber's insight that *leaders' ideas* are an autonomous causal factor that select from a set of structural options and a decisive factor for action. One should not forget that without Konrad Adenauer's resolve, the Schuman Plan would not have materialised (Milward 1984: 390). The ECSC Treaty was a hard won ratification (Closa 2013: 92ff).

One cannot possibly know whether there is any chance that requisite action will be taken in due time. Winston Churchill preserved his optimism regarding the Americans in dreadful times, believing that they would do the right thing in the end (i.e. when all other options had been tried). Likewise, what has come to be known as Jean Monnet's law reads:

[P]eople only accept change when they are faced with necessity, and only recognise necessity when a crisis is upon them.

(Jean Monnet 1979: 109)

Catastrophe lurks without resolute action: a deeply divided continent leaving millions in misery and utmost poverty is a possible outcome of a solution with lax measures.¹³

Conclusion

European citizens are humiliated by the way in which European institutions treat them in handling the Eurozone crisis. Social and political exclusion and technocratic rule contradict the normative thrust of the European integration

¹³ See the report by the International Federation of the Red Cross and Red Crescent Societies *Think Differently Humanitarian Impacts of the Economic Crisis in Europe*, available at: http://www.ifrc.org/PageFiles/134339/1260300-Economic%20crisis%20Report_EN_LR.pdf > [last accessed 20 February 2014].

process. Non-domination is the crux of justice and goes to the core of EU normativity.

Through lock-ins and normative commitments, the EU's member states and in particular the Eurozone members have accidentally moved themselves into a situation of collectivised risks and shared sovereignty. The *cunning of reason* is so to say at work in the sense that there are spill-over effects necessitating new integrative moves. A principle of solidarity is institutionalised behind the citizens' back. This is the reason why further integration has become a functional must – a tool for solving the crisis – as well as an obligation for justice: the countries that have made the monetary union and reaped its effects have a duty to mend it. Establishing a European political union has become both a duty and a strategy for solving the crisis.

References

- Barry, B. (2005) *Why Social Justice Matters*, Cambridge: Polity Press.
- Beck, U. (2013) *German Europe*, Cambridge: Polity Press.
- Chalmers, D., C. Hadjiemmanuil, G. Monti, and A. Tomkins (2006) *European Union Law*, Cambridge: Cambridge University Press.
- Closa, C. (2013) *The Politics of Ratification of EU Treaties*, London: Routledge.
- Crouch, C. (2008) *Postdemokratie*, Frankfurt am Main: Suhrkamp.
- Duchêne, F. (1994) *Jean Monnet: The First Statesman of Interdependence*, New York, NY: W.W. Norton & Co.
- Eriksen, E.O. (2009) *The Unfinished Democratization of Europe*, Oxford: Oxford University Press.
- (2014) *The Normativity of the European Union*, Basingstoke: Palgrave MacMillan
- Haas, E. (1958) *The Uniting of Europe*, Stanford, CA: Stanford University Press
- Habermas, J. (1962) *The Structural Transformation of the Public Sphere*. Cambridge, MA: MIT Press.
- (2012) *Nachmetaphysisches Denken II*, Berlin: Suhrkamp.
- (2013) *Im Sog der Technokratie*, Berlin: Suhrkamp.
- Kant, I. (1785/1996) 'Groundwork of the Metaphysics of Morals', in M. Gregor (ed.) *Practical Philosophy*, Cambridge: Cambridge University Press.
- Koskeniemi, M. (2006) 'Constitutionalism as Mindset: Reflections on Kantian Theme about International Law and Globalization', *Theoretical Inquiries in Law*, 8(1): 9–36.
- Lord, C. (2012) 'On the Legitimacy of Monetary Union', SIEPS Report No. 3, Stockholm: Swedish Institute for European Policy Studies.
- MacIver, R.M. (1928/1964) *The Modern State*, Oxford: Clarendon Press.
- Majone, G. (2013) 'A General Crisis of the European Union', paper presented at the conference 'Europe in Crisis: Implications for the EU and Norway', Oslo, 14–15 March 2013.

- Margalit, A. (1996) *The Decent Society*, Cambridge, MA: Harvard University Press.
- Menéndez, A. J. (2013) 'The Existential Crisis of the European Union', *German Law Journal*, 14(5): 453–525.
- Milward, A. (1984) *The Reconstruction of Western Europe 1945–51*, London: Methuen.
- Monnet, J. (1979) *Memoirs*, Garden City, NY: Doubleday.
- Offe, C. (2013) 'Europe Entrapped: Does the EU Have the Political Capacity to Overcome its Current Crisis?', *European Law Journal*, 19(5): 595–611.
- Parsons, C. (2002) 'Showing Ideas as Causes: The Origins of the European Union', *International Organization*, 56(1): 47–84.
- Rodrik, D. (2011) *The Globalization Paradox: Democracy and the Future of the World Economy*, New York, NY: W.W. Norton & Co.
- Scharpf, F.W. (1999) *Governing in Europe: Effective and Democratic?*, Oxford: Oxford University Press.
- (2010) 'The Asymmetry of European Integration, or Why the EU Cannot Be a "Social Market Economy"', *Socio-Economic Review*, 8(2): 211–50.
- Schäfer, A and W. Streeck (2013) (eds) *Politics in the Age of Austerity*, Cambridge: Polity Press.
- Schultz, M. (2013) *Der gefesselte Riese: Europas letzte Chance*, Berlin: von Rowohlt.
- Shapiro, I. (2012) 'On Non-Domination', *University of Toronto Law Journal*, 62(3): 293–336.
- Smith, D. (2013) 'What Kind of Crisis in Europe? Debt, Disequilibrium and Displacement', paper presented at the conference 'Europe in Crisis: Implications for the EU and Norway', Oslo, 14–15 March 2013.
- Statham, P. and H.-J. Trenz (2012) *The Politicization of Europe: Contesting the Constitution in the Mass Media*, London: Routledge.
- Steinvorth, U. (1998) 'Kann Solidarität erzwingbar sein?', in K. Bayertz (ed.) *Solidarität - Begriff und Problem*, Frankfurt am Main: Suhrkamp.
- Streeck, W. (2011) 'Crises of Democratic Capitalism', *New Left Review*, 71 (September–October): 5–29.

- (2013) *Gekaufte Zeit: Die vertagte Krise des demokratischen Kapitalismus*, Berlin: Suhrkamp.
- Tuori, K. (2012) 'The European Financial Crisis – Constitutional Aspects and Implications', EUI Working Papers, LAW 2012/28, Florence: European University Institute.
- Verdun, A. (2000) *European Responses to Globalization and Financial Market Integration: Perceptions of Economic and Monetary Union in Britain, France and Germany*, Basingstoke: Palgrave MacMillan.
- Vogl, J. (2010) *Das Gespenst des Kapitals*, Zürich: Diaphanes Verlag.
- Weiler, J.H.H. (1982) 'Community, Member States and European Integration: Is the Law Relevant?', *Journal of Common Market Studies*, 21(1): 39–56.

ARENA Working Papers

14/02	Erik Oddvar Eriksen	The Normative Implications of the Eurozone Crisis
14/01	Guri Rosén	Secrecy versus Accountability: Parliamentary Scrutiny of EU Security and Defence Policy
13/08	Jarle Trondal and Frode Veggeland	The Autonomy of Bureaucratic Organisations: An Organisation Theory Argument
13/07	Helene Sjursen	A Mere Irrelevance? Assessing the EU's Foreign and Security Policy
13/06	Erik Oddvar Eriksen	Reason-Based Decision-Making: On Deliberation and the Problem of Indeterminacy
13/05	Espen D. H. Olsen and Hans-Jörg Trenz	The Micro-Macro Link in Deliberative Polling: Deliberative Experiments and Democratic Legitimacy
13/04	Bruno De Witte	Using International Law in the Euro Crisis: Causes and Consequences
13/03	Mai'a K. Davis Cross and Xinru Ma	EU Crises and the International Media
13/02	Johanne Døhlle Saltnes	The EU's Human Rights Policy: Unpacking the Literature on the EU's Implementation of Aid Conditionality
13/01	Zuzana Murdoch, Jarle Trondal and Stefan Gänzle	The Origins of Common Action Capacities in EU Foreign Policy: Observations on the Recruitment of Member States' Diplomats and Officials to the European External Action Service (EEAS)
12/06	Nina Merethe Vestlund	Changing Policy Focus through Organisational Reform? The Case of the Pharmaceutical Unit in the European Commission
12/05	Falk Daviter	Framing Biotechnology Policy in the European Union
12/04	Morten Egeberg	Experiments in Supranational Institution Building: The European Commission as a Laboratory
12/03	Cathrine Holst	Equal Pay and Dilemmas of Justice
12/02	Helene Sjursen	From Fly in the Ointment to Accomplice: Norway in EU Foreign and Security Policy
12/01	Jarle Trondal and B. Guy Peters	The Rise of European Administrative Space: Lessons Learned
11/14	Jarle Trondal	Bureaucratic Centre Formation in Government Institutions: Lessons From the European Commission
11/13	Guri Rosén	Can You Keep a Secret? How the European Parliament got Access to Sensitive Documents in the Area of Security and Defence

ARENA Working Papers

11/12	Espen D. H. Olsen and Hans-Jörg Trenz	From Citizens' Deliberation to Popular Will Formation: Generation Democratic Legitimacy Through Transnational Deliberative Polling
11/11	Daniel Gaus	The State's Existence Between Facts and Norms: A Reflection on Some Problems to the Analysis of the State
11/10	Morten Egeberg, Åse Gornitzka, Jarle Trondal and Mathias Johannessen	Parliament Staff: Backgrounds, Career Patterns and Behaviour of Officials in the European Parliament
11/09	Irena Fiket, Espen D. H. Olsen and Hans-Jörg Trenz	Deliberations under Conditions of Language Pluralism: Insight from the Europolis Deliberative Polling Experiment
11/08	Daniel Gaus	The Dynamics of Legitimation
11/07	Ian Cooper	A "Virtual Third Chamber" for the European Union?
11/06	Martin Marcussen and Jarle Trondal	The OECD Civil Servant between Scylla and Charybdis
11/05	Erik Oddvar Eriksen and John Erik Fossum	Representation through Deliberation: The European Case
11/04	Espen D. H. Olsen	European Citizenship: With a Nation-state, Federal or Cosmopolitan Twist?
11/03	John Erik Fossum	Nationalism, Patriotism and Diversity: Conceptualising the National Dimension in Neil McCormick's Post-sovereign Constellation
11/02	Agustín José Menéndez	United They Diverge? From Conflicts of Law to Constitutional Theory? On Christian Joerges' Theory
11/01	Agustín José Menéndez	From Constitutional Pluralism to a Pluralistic Constitution? Constitutional Synthesis as a McCormickian Constitutional Theory of European Integration
10/16	Cathrine Holst	Martha Nussbaum's Outcome-oriented Theory of Justice: Philosophical Comments
10/15	John Erik Fossum and Agustín José Menéndez	The Theory of Constitutional Synthesis: A Constitutional Theory for a Democratic European Union
10/14	Pieter de Wilde, Hans-Jörg Trenz and Asimina Michailidou	Contesting EU Legitimacy: The Prominence, Content and Justification of Euroscepticism during 2009 EP Election Campaigns
10/13	Espen D. H. Olsen and Hans-Jörg Trenz	Deliberative Polling: A Cure to the Democratic Deficit of the EU?

ARENA Working Papers

10/12	Morten Egeberg and Jarle Trondal	EU-level Agencies: New Executive Centre Formation or Vehicles for National Control?
10/11	Jarle Trondal	Bureaucratic Structure and Administrative Behaviour: Lessons from International Bureaucracies
10/10	Morten Egeberg	EU-administrasjonen: Senterdannelse og flernivåforvaltning
10/09	Erik Oddvar Eriksen and John Erik Fossum	Bringing European Democracy Back In – Or How to Read the German Constitutional Court’s Lisbon Treaty Ruling
10/08	Liesbet Hooghe	Images of Europe: How Commission Officials Conceive their Institution’s Role in the EU
10/07	Erik O. Eriksen	European Transformation: A Pragmatic Approach
10/06	Asimina Michailidou and Hans-Jörg Trenz	2009 European Parliamentary Elections on the Web
10/05	Åse Gornitzka and Ulf Sverdrup	Enlightened Decision Making: The Role of Scientists in EU Governance
10/04	Christer Gulbrandsen	Europeanization Of Sea-Level Bureaucrats: A Case of Ship Inspectors’ Training
10/03	Morten Egeberg and Jarle Trondal	Agencification and Location: Does Agency Site Matter?
10/02	Pieter de Wilde	Contesting the EU Budget and Euroscepticism: A Spiral of Dissent?
10/01	Jarle Trondal	Two Worlds of Change: On the Internationalisation of Universities

For older issues in the series, please consult the ARENA website: www.arena.uio.no