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#DEMOCRACY

■ THIERRY CHOPIN

Professor of Political Science at the Catholic University of Lille (ESPOL), Special Advisor at the Jacques Delors Institute

This series is a cooperation between the Jacques Delors Institutes in Berlin and Paris and makes concrete proposals for the EU's next institutional cycle.

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NEW BEGINNINGS

EUROPEANS FACE THE RISK OF DEMOCRATIC REGRESSION: WHAT CAN BE DONE?

The principles of liberal democracy and the rule of law have played a structuring role in the history of European integration, which reflects the desire to promote fundamental rights and human dignity after the crimes committed during the Second World War. These principles are the legal and political foundations of the EU. For several years, however, liberal democracy has been called into question under pressure from populist and extremist political forces. Surveys have shown that public opinion is increasingly dissatisfied with democracy, which can be interpreted as a risk of democratic regression. Even if simple solutions do not exist, it is essential to develop a strategy to combat these developments.¹



1 ■ Democracy and the rule of law in Europe: major pillars of the EU

The Member States of the EU are united in a 'Union of Law' and are required to respect the legal commitments to which they have subscribed. Whether this occurs within

the framework of the treaties or during the creation or implementation of secondary legislation, the effective application of these commitments is guaranteed by judicial mechanisms. This community is based on its own legal system, with an autonomy that has been firmly established under national law. In this perspective, the logic of power, which has characterized relations between European states since the 17th century, must give way to the law, which limits the power of states. In the process of European integration, Europe has rediscovered a long-hidden tradition: constitutionalism.

As it is intimately linked to the liberal idea of constitutional guarantees for individual freedoms and rights, the European integration process is an ideal field for constitutionalism. After the Second World War, emphasis was placed on fundamental rights, as shown by the case law of the Court of Justice and the European Court of Human Rights (ECHR) from the late 1960s and early 1970s onwards. Politically, until the fall of the Berlin Wall, the possibility for 'any European State [to] apply to become a member of the Community' (Article 237 of the Treaty of Rome) was only relevant

1. I would like to thank Sébastien Maillard, Martin Michelot, Laurent Pech and Sébastien Platon for their comments on this text. Of course, I retain sole responsibility for the proposals of this paper.

to countries west of the Iron Curtain. For the southern countries (Spain, Greece and Portugal) it became an option after the end of dictatorships and authoritarian regimes. Only after the collapse of the Soviet Union were the countries of Central and Eastern Europe and the Baltic states able to join the EU. In 1991, the Treaty establishing the European Union (TEU) stated that '[t]he Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which are common to the Member States' (Article 6) and that '[a]ny European State which respects [these] principles [...] may apply to become a member of the Union' (Article 49); in 1993, the European Council in Copenhagen defined criteria that need be respected, both economic and political. Today, compliance with Article 2 of the TEU2 and the Charter of Fundamental Rights is a sine qua non, not only for accession, but also for participation in the EU.

This has a profound implication: European integration cannot be reduced to a simple alliance between sovereign states.³ If this were the case, the EU would simply be an intergovernmental entity and would not have gone as far in its integration as to enshrine it in treaties that take precedence over national law, including national constitutions. Opinion surveys suggest that the majority of

public opinion is in favour of participation in this Union⁴ and support for the euro is remarkably stable.⁵ Europeans are united for historical and geopolitical reasons. This is where Europe's founding value lies: first integration created the conditions for peace and anchored democracy before it built strength through unity. In other words, Europe's founding value lies in the need to remain geopolitically united and to protect itself from authoritarian or even totalitarian temptation. Europeans feel European because they know that their fate, both past and future, is inseparable and that they are community of shared destiny. The European construction redeemed the collective suicide of the world wars and sublimated national political rivalries by rejecting power politics. The de facto solidarity created by the internal market was intended to create common interests and a high degree of interdependence that discouraged national egoisms. This logic was achieved thanks to the initiative of Jacques Delors, supported by François Mitterrand and Helmut Kohl. After peace and unification, the idea was that prosperity and solidarity should guide the project for a Unified Europe. The euro has become a symbol of this union because it provides a concrete guarantee that we will not separate (attacking one of the members means attacking the single currency and thus collectively attacking all Member States).⁶

2. Article 2 of the TEU defines the fundamental values on which the EU is founded: "respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

3. Contrary to what is claimed, for example, by Gideon Rachman (2019), "[Europe is an alliance, not a union of values](#)", Financial Times, 21 January 2019.

I would like to thank Jean-François Jamet for our discussions on this point.

4. See [Eurobarometer Survey 90](#), European Parliament, October 2018 -

5. 75% of respondents in the euro zone support the single currency, while 20% oppose it. It was only in the spring of 2003 that the euro found such support among citizens. Among euro area countries, support is lowest, but rising in Italy (63%, +2pp) and highest in Slovenia (86%, +2pp). Source: Eurobarometer Standard Survey (EB 90), October 2018.

6. For example, the Baltic States feel threatened in their borders and security by Russia in particular, which has resulted in a strategy of strengthening integration with the adoption of the euro, which is perceived to assure greater solidarity.

Both logics (integration into a community of destiny and intergovernmental) coexist and Member States can behave as members of an alliance according to their national interests. European integration will not make state sovereignty disappear. But the originality of this 'union' is that its nature is very different from an alliance that is solely based on the sovereignty of States. An alliance does not create a new form of sovereignty, whereas EU law does.⁷ This is one of the problems of the Brexiteers who would like a simple alliance (like the alliance with the United States or with other Commonwealth states) without European sovereignty. The foundation of European cohesion, underlying fundamental values and development of policies, is the need to remain united. A simple alliance does not provide this guarantee of permanence.

2 ■ The EU faces the risk of democratic regression

The stability of such a legal order, composed of States that have freely and under sovereignty decided to associate themselves in a wider Union to exclude any risk of conflict between them for the long term, requires a minimum degree of political homogeneity. This, in turn, implies a consensus on common political values, which come from the European intellectual and political tradition of political liberalism that is in the spirit of Enlightenment philosophy: respect for and rights of the human person, all fundamental freedoms, equality of citizens before the law, the rule of law, parliamentary democracy and, fundamentally, the idea that the protection of freedoms is a priority and implies both the guarantee and impartiality of the State. These values have been implemented in light of the historical experience of European peoples, particularly following the horrors and tragedies of the 20th century. They

are centred around a number of essential elements: the renunciation of force and the preference for peaceful settlement of conflicts through negotiation in mutual respect; the emphasis on solidarity and the search for social justice, which confers an important role on the State; a vision of international relations that relativizes the notion of state sovereignty; as well as a strong spirit of moderation, tolerance, openness and mistrust towards political passions, particularly those unleashed in the name of religions or nations or in the name of the 'will of the people'. These ideas are expressed in the European political project, as initiated by the founding fathers in the 1950s, which is now a value in itself: the claim whether or not one is 'European' (i.e. being a 'partisan and defender of European integration') has become an essential marker of political positioning that is comparable to the cleavage between left and right.

These values are now being challenged by the governments of an growing number of EU member states. The crisis of the European project is linked to the crisis of liberal democracies⁸ even if the latter does not specifically concern Europe, as shown by the cases of Donald Trump in the United States or Jair Bolsonaro in Brazil. But for several years opinion surveys have shown a growing dissatisfaction with democracy that can be interpreted not necessarily as a rejection, but rather as the risk of a 'deconsolidation of democracy'.⁹

7. It should be stressed that the concept of "European sovereignty" is not legally established and that there is a discussion on this topic following its use by Emmanuel Macron in his [speech at the Sorbonne](#).

8. Letta, E. (2018), "Ho Imperato", Edizioni Il Mulino, p. 57-77.

9. Mounk, Y. (2018), "People vs. Democracy. Why our Freedom Is in Danger & How to Save It", Harvard University Press. Part 1, Chap. 3.

FIGURE 1 ■
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Dissatisfaction with how democracy is working increased in many countries

% who say they are dissatisfied with the way democracy is working in their country



Note: Statistically significant changes in bold. The chart was updated on April 30, 2019.
 Source: Spring 2018 Global Attitudes Survey, Q4.

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This is reflected in a number of different developments: growing, often sustained, mistrust of parliamentary and representative democracy that is competing with a strong demand for direct democracy; growing scepticism about the usefulness of voting

that is questioned by one third of respondents; demand for an authoritarian form of power that is exercised by a 'strong man' that is desired by a third of respondents in the EU. These trends are even more significant with young people and respondents that have

lower levels of income and education.¹⁰ Moreover, liberal democracy is strongly challenged in Europe. It is under pressure from populist and extremist political forces which, despite their diversity, lay claim to be 'illiberal democracy' as is the case in Hungary and Poland. The rise of populism is accompanied by a desire to dissociate the two components of constitutional and liberal democracy that have been at the heart of our democratic systems since the end of the Second World War. Deprived of the principles of limited and moderated power, illiberal democracy is in reality a smokescreen that masks an evolution towards 'majority authoritarianism',¹¹ whose characteristics are becoming increasingly clear: reference to the sovereignty of the people as the exclusive basis for the democratic legitimacy of power; strengthening of the executive power on the basis of the legitimacy that is conferred by elections and citizens' votes; willingness by authoritarian leaders to avoid questioning of their power; reduction of uncertainty in electoral competition in order to closely control political life; (legal or illegal) capture of the opposition and intervention against them to reduce their role and weaken them at the expense of the rule of law in order to better control the state apparatus; intervention in the media to control information and communication; reduction of academic freedoms; desire to establish hegemonic control over the economy; etc.

30 years after the fall of the Berlin Wall, a new East-West divide seems to be re-emerging around values. The wave of contestation of European values, while taking specific forms in each Member State, is a general phenomenon that affects the entire EU. However, the capacity to resist this phenomenon varies according to several cleavages, including that between 'East and

West'. The weaker capacity for resilience by liberal democracy in the East is mainly due to several factors.

- First, the young Central and Eastern European democracies are based on more fragile structures, as evidenced, for example, by the chronically low levels of voter turnout and the structural weaknesses of the media sector.

- Second, the societies of Central and Eastern Europe have, by and large, not overcome their traumas that fuel mistrust and even resentment towards the West. The rejection of European values is also fuelled by a variety of feelings and even resentments that must be taken seriously: the conviction of being the eternal victim, the fear of suffering a 'diktat'; and the obsessive attachment to the ethnically and culturally homogeneous character of society, which developed under tragic circumstances during the 20th century, but which, after 40 years of communism, became second nature of their societies.

- Third, Central and Eastern European public opinion is very sensitive, even susceptible, to anything that may create feelings of being or appearing to be 'second-class Europeans'. However, there is a long list of subjects on which Central Europeans feel their Western European fellow citizens treat them with condescension or bad faith. For values, the critical subject is the application of a 'double standard' on the memory of the two totalitarianisms that bloodied European history in the 20th century. In these circumstances, it is essential that the recapturing of support for European values doesn't exaggerate, misinterpret or exploit these real differences between 'East and West'.¹²

10. See Reynié, D. (2019) (ed.), "Fragiles démocraties", Fondation pour l'innovation politique, May 2019.

11. Chopin, T. (2019), "'Démocratie illibérale' ou 'autoritarisme majoritaire'? Contribution à l'analyse des populismes en Europe", Policy Paper No 235, Jacques Delors Institute, 19 February 2019.

12. Rupnik, J. (2019), "East-West, Reality and Relativity of a Divide", Policy Brief, Jacques Delors Institute, 29 March 2019.

3 ■ What can be done?

3.1 The central role of the Court of Justice

The Union is based on a community of values as specified by the Treaties.¹³ Some Member States do not respect EU law or the principle of the rule of law¹⁴ and thus call into question the fundamental values on which the EU is based. Article 7 of the TEU allows the Council to ‘determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2’ and, where appropriate, to ‘determine the existence of a serious and persistent breach by a Member State’ of those values. While these legal provisions may act as a deterrent, the effectiveness of this mechanism may have been questioned because of its inability to correct potential deviations from the rule of law.¹⁵ In addition, as a result of a number of factors, the Commission is increasingly politicised, in particular because of its political responsibility towards the European Parliament.¹⁶ This politicization necessarily affects the perception of its independence and neutrality and thus its ability to exercise

some of its powers, particularly of a judicial nature, when it exercises its role as the guardian of the treaties. Thus, in addition to strengthening existing legal instruments (soft law and instruments provided for by the Treaties)¹⁷, it is the Court of Justice, a genuine constitutional court of the Union (failure to comply with its decisions may result in severe financial penalties), which has a central role to play in protecting fundamental European values and the rule of law, regardless of (or in addition to) the cases and procedures laid down in Article 7. This is the way that has been successfully used to ask Poland to suspend the provisions aimed at lowering the retirement age of Supreme Court judges, which was considered to infringe the principle of an independent judiciary.¹⁸

3.2 Budget conditionality or a strengthened fight against fraud and corruption?

In parallel with the negotiations on the next Multiannual Financial Framework (MFF), which will start in 2021, the European Commission has published a legislative

¹³ Article 2, TEU.

¹⁴ According to the European Commission, the concept of the rule of law in Europe presupposes the following elements: ‘legality, which implies a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibition of arbitrariness of the executive powers; independent and impartial courts; effective judicial review including respect for fundamental rights; and equality before the law.’ See Communication from the Commission to the European Parliament and the Council, ‘A New EU Framework to Strengthen the Rule of Law’, COM (2014) 158 final, p. 4.

¹⁵ See Michelot, M. (2019), “The Article 7 Proceedings Against Poland and Hungary : What Concrete Effects?”, Blog Post, Jacques Delors Institute, 6 May 2019.

¹⁶ Art. 17, §8, TEU.

¹⁷ Pech, L., Kochenov, D. (2019), “Strengthening the Rule of Law Within the European Union: Diagnoses, Recommendations, and What to Avoid”, Policy Brief, Reconnect, June 2019.

¹⁸ In its judgment of 24 June 2019, the ECJ held that these provisions are contrary to EU law (Case C-619/18). See Pech, L., Platon, S. (2019), “The beginning of the end for Poland’s so-called ‘judicial reforms’? Some thoughts on the ECJ ruling in Commission v Poland (Independence of the Supreme Court case)”, EU Law Analysis, 30 June ; and also, from a more political point of view, Buras, P. (2019), “The EU must defend its rule-of-law revolution”, European Council on Foreign Relations, 11 July 2019.

proposal (under discussion in the Council) to introduce a new procedure to make the payment of EU budgetary resources conditional on respect for the rule of law. Some recent works show that budget conditionality can be a useful instrument to influence the actions of member states in areas where there are common consensual objectives but no common legally binding rules (for example, making the disbursement of European funds to promote growth and convergence conditional on measures that support these objectives)¹⁹. On the other hand, budget conditionality is unlikely to be an effective solution to political conflicts over the violation of fundamental European values and the rule of law.²⁰ In the latter case, the threat and implementation of financial sanctions could easily be politically instrumentalized by using the 'victim's resentment' that characterizes Central and Eastern European societies and by intensifying the denunciation of the EU as a scapegoat. In addition, many recent studies show that the rise of populism is linked to the issue of regional inequalities.²¹ In this light, financial sanctions, in particular lack of disbursement of cohesion funds by the EU,²² must be rigorously assessed in advance as

there is a risk to further promote the rise of illiberal populist political forces. At the same time, it is essential to strengthen control over the use of community funds (which account for 95% of public investment in Hungary, for example) in order to ensure that they are not misappropriated and do not finance a rent-seeking economy. It is therefore necessary to strengthen the EU's role in the fight against corruption, which is an aspect of the current democratic regression.²³

- A concrete initiative would be to strengthen the mechanisms for monitoring the use of European funds, for example by strengthening the role of the European Anti-Fraud Office (OLAF).
- In addition, it is necessary to strengthen the common fight against corruption by relying on the European Public Prosecutor's Office. Such initiatives would address the perception of many citizens that the EU is not capable of maintaining and strengthening security and the rule of law²⁴.

19. Schneemelcher, P., Haas, J. (2019), "Rules Enforcement in the EU: Conditionality to the Rescue?", Policy Paper, Jacques Delors Institute, Bertelsmann Stiftung, May 28 2019.

20. 20 Michelot, M. (2018), "Quelle réponse européenne aux défaillances de l'état de droit?", Institut Jacques Delors, Policy Paper n°221, 4 avril.

21. Voir Wishlade, F. (2019), "The Rise of Populism, Regional Disparities and the Regional Policy Response", Research Paper, N°109, European Policies Research Centre, University of Strathclyde, Glasgow ; Dijkstra, L., Poelman, H., Rodriguez-Pose, A. (2018), "The Geography of EU Discontent", Working Paper, 12/2018, European Commission.

22. It should be stressed here that the Commission's proposal provides that, in the event of suspension of European funds, the Government must nevertheless finance the planned projects from its own resources (Article 4(4) of the proposal: "Unless otherwise provided in the decision adopting the measures, the imposition of appropriate measures shall not affect the obligation of the public entities referred to in paragraph 1(a) or the Member States referred to in paragraph 1(b) to implement the programme or Fund allocated by the measure, and in particular the obligation to make payments to the recipients or final beneficiaries").

23. See the corruption perception index assessed by Transparency International: for example, in 2017, Hungary is at the level of its Balkan neighbours.

24. Pech, L., Kochenov, D. (2019), 'Strengthening the Rule of Law Within the European Union: Diagnoses, Recommendations, and What to Avoid', op. cit.

3.3 An indispensable political strategy

- The first step is to recognize the depth and urgency of the problem: it is an intellectual, political and cultural struggle.²⁵ The key lies in education and culture policies.
 - It is essential to strengthen young people's ownership of democratic culture and the rule of law. Civic attitudes play an important role in the development of illiberal forms of populism and education can make a positive contribution to combating the risks of democratic regression.²⁶
 - Moreover, beyond the civic dimension, the lack of pride and attachment to Europe's spiritual and cultural heritage is a sign of weakness in the face of internal and external threats. It is urgent for European education systems to realise that, in the face of the ever-increasing superficiality conveyed by the media and social networks, it is necessary to give priority to depth, the long term, and to high standards and quality. In this perspective, two fields need to be invested in.
 - (1) On the one hand, the introduction of a genuine European dimension to primary and secondary education, with an emphasis on history and culture, on the diversity and richness of local and national realities, but also on their common roots, as well as on the cross influences between them.
 - (2) On the other hand, education on the media literacy, with critical thinking at the heart of this approach.
 - The EU cannot and must not be the main vehicle for this renewal of the education system: it is up to the member states and their educational communities to assume responsibility. But the EU can contribute, by focusing first and foremost on its existing expertise, particular encouraging mobility²⁷ and providing quality support.

- The other key is to be found with European political elites, who must seize the discourse on European values and stimulate it consistently, in a credible and audible way.
 - For too long, the discourse on the European project has been bogged down in a double impasse. First of all, it is dominated by technical issues and tends to be reduced to a complex discourse that fails to convince or mobilize citizens around deeper meaning beyond questions of standards and financing. Moreover, the discourse on the European project takes place before a small audience and is mainly addressed to the convinced. The problem of an inaudible European discourse is largely linked to the inadequacy of political mechanisms at the European level. It leads to the weakness of European political representation and a European public space that is perceived and identified as such by the citizen.
 - Beyond the need to bring European political actors into national public spaces and to further decompartmentalise them, a new political discourse on European values must include the ability to address two other major issues.
 - (1) On the one hand, we must build and internalize a discourse on the pride of being European, not because we forget or disguise the crimes and tragedies of our past, but because we know how to recognize them, learn from them and find in the glorious elements of our common heritage resources for action in the present. Far from resembling nationalism, imperialism or Eurocentrism, this pride must remain humble, without however preventing us from expressing, loud and clear, the unwavering attachment to European values—especially in the face of the alternatives that are on offer in the world today.
 - (2) On the other hand, it is necessary to restore credibility to the main actors in the

25. Chopin, T., Macek, L. (2018), "Une Europe des valeurs ? Un combat à mener", Telos, 9 July 2018.

26. Voir Abiodun Olatokun, M. (2019), "The Rule of Law Should be Taught in Schools", Reconnect, June 17.

27. Versini, C. (2018) 'For an "Erasmus Teens"', Paris : Jacques Delors Institute, September 2018.

European discourse and to find answers to the increasingly widespread mistrust that is fuelled by the discreditation of elites. Without the awareness of elites and a real change in their behaviour, this mistrust cannot be reduced and any discourse on values risks being disqualified *a priori*.

Simple and quick solutions do not exist. Beyond financial or diplomatic sanctions, we must lead by example. It is also necessary to deconstruct the available counter-models, comparing point-by-point how the EU, despite its weaknesses and imperfections, continues to distinguish itself as a continent that strives to respect the balances between freedom and social justice and between freedom and security. By instilling new dynamism and self-confidence in Europeans, supporters of European values will be able to break the 'illiberal' dynamic, which is not inevitable, neither in the East nor in the West.



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BERLIN
Centre for European Affairs at the Hertie School of Governance



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PREMIER MINISTRE

Institut Jacques Delors

18 rue de Londres, 75009 Paris

info@delorsinstitute.eu – www.institutdelors.eu

Jacques Delors Institute – Berlin

Friedrichstraße 194, 10117 Berlin, Allemagne

info@delorsinstitut.de – <https://www.delorsinstitut.de>