EUROPEAN INTEGRATION THEORY

AND

THE FUTURE OF THE EUROPEAN UNION AFTER BREXIT

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Diogo Magalhaes

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Diogo Magalhaes, J.S.D

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ABSTRACT

In the last decade all four areas of European integration – economic, social, legal and political – have faced a series of unprecedented crises that have shattered the foundations of the integration process and have thrown into question the future of the European Union. Among the many paradoxes that have riddled the integration project since its inception, none is more puzzling than the one the EU faces currently. Arguably never in any other time has the EU been so integrated and so successful as it is today, and likewise, never in any other time has there been a greater cognitive dissonance and distance between the peoples of Europe and the EU. This project argues that the greatest crisis afflicting the European project is an epistemological crisis, resulting from our continued failure to understand the processes and forces that drive European integration. Attempts to address questions regarding the future of Europe are failing precisely because we are attempting to answer Europe's ontological question, without first answering Europe's epistemological question, in other words, we are attempting to agree on a future for Europe without first understanding the very nature of the

integration process, and if we persist on this fallacy we are doomed to fail in both pursuits, as we have been failing for the last seventy years. This project argues that in order to solve this paradox, in order to determine the future of the EU and overcome Europe's crisis, we must adopt a systems theory approach to understand the complex adaptive nature of the integration process. A systems theory approach to European integration theory allows us to uncover and to understand the different inputs that both constrain and compel European integration and allows us to create predictive models of future integration and disintegration.

BIOGRAPHICAL SKETCH

Diogo Magalhaes is currently a Law Fellow at Cornell Law School, teaching Conflict of Laws, and International Trade Law. He has taught European Union Law, and Law, Markets and Globalization at Chicago-Kent School of Law, and Introduction to Law at the Portuguese Catholic University's Lisbon School of Law. Diogo earned his first law degree (*Licenciatura em Direito*) at the University of Lisbon's Faculty of Law, and his LL.M. in Law in a European and Global Context from Catolica Global School of Law. Born in Macao, China, and having lived in Portugal and the United States, Diogo has always been fascinated with different cultures, with the pursuit of knowledge, and with self-improvement. The study of Law has been a constant throughout his life, as he has always been enamored with the idea, which Archibald Macleish expressed so well, that "the business of the law is to make sense of the confusion of what we call human life - to reduce it to order but at the same time to give it possibility, scope, even dignity". Legal theory has always commanded great interest in Diogo's work, as well as public law, and international law, although recently, while working as a legal consultant to the Ethical Shareholder Initiative, he has also developed an interest in sustainable corporate governance, and in how certain private actors might actually be better positioned to addressed some of our most important long-term public interests.

For Emily

For there is no greater blessing than being loved,

We did it, together.

ACKNOWLEDGMENTS

If the measure of success is what we achieve for ourselves in this life, then surely the measure of greatness must be what we help others achieve for themselves. This project, despite its many substantive faults and insufficiencies, which are mine alone, represents an unlikely milestone and achievement in my life, one that would not have been possible were it not for the greatness of so many people along the way. I would like to start by thanking my supervisor, Professor Mitchel Lasser, without whom I would have never have had this opportunity. My relationship with Professor Lasser started when I was his student at Catolica, where, like so many of my colleagues, I was in awe of his charming, engaging and versatile intellect. Great academics make learning delightful and fascinating but doing so with a commanding understanding of civil law, common law, and international law is almost unheard of, and what we had to look forward to in all his classes. I was therefore besides myself when we first started talking about the possibility of me coming to Cornell to pursue a J.S.D. degree. Until then I only knew the professor side of him, and I could not anticipate what our relationship would be like, or even if our personalities and values aligned. Any doubts however, if any I truly had, were soon dissipated in the very first month of my coming to Cornell, when per chance I happened to come across something he had written in honor of his mentor Lee Teitelbaum, entitled "Reflections on Lee". To this day I vividly recall Professor Lasser's warm heartfelt homage to his mentor, and I immediately knew we shared the greatest academic value of all, that of gratitude. Unsurprisingly, that was exactly what he had written about Lee, about his interpersonal generosity, and I can only

hope that one day if I am ever in a position to help someone along their academic path, that they too might recall how these opportunities are made possible, and I hope they too are grateful for Professor Lasser, as I am grateful for Professor Teitelbaum.

To Professor Lasser I am however indebted with two debts. The first debt is for not allowing me to settle on a lesser project. Whatever its actual merits, this project would have been much less interesting where it not for Professor Lasser's unyielding belief that I could do more, and that I could do better. The second debt is for bringing me to Cornell Law School, where I found my "home" and where I have been blessed to meet greatness and great people.

I am grateful and indebted to my Committee Members, Professor Michael Dorf, Professor Jens Ohlin, and Professor Joseph Margulies. All of whom, like Professor Lasser, are among the greatest scholars in their respective fields and in the general theory of Law, and all of them have generously given me their valuable time and constant support. From each of them I was very fortunate to learn from and to enrich myself, in different ways, as an academic, as a professional, and as a person.

I am grateful for our beloved, and deeply missed, Professor Lynn Stout. Lynn was a brilliant scholar and a dear friend, and she helped me navigate the emotional challenges of writing this doctoral thesis, to the very end.

I am grateful to Dean Eduardo Peñalver and to our Cornell Law School community. Academic success flourishes within a caring collaborative community, and this thesis is therefore a product of that support as much as it is a product of my own work.

I am grateful to the Cornell Law School Library, without whose support I would not have been able to conduct the extensive research that enabled this project. The Cornell

Law School Library team's added value to this community is unparalleled, they act collectively and uniformly with only one tireless goal in mind, to help each student, scholar and faculty member have all the resources they need to succeed. Their dedication is inspiring, and their contribution inestimable.

I am grateful to my family. We sacrifice so much these days to achieve success, but the greatest sacrifice is borne by our families, and is felt by the time we spend apart in pursuit of our own dreams. This project has taken me away from you for the last five years, I only hope you can be proud of me and know that I love and miss you. I also did this for you.

Finally, I am grateful to my wife Emily, to whom I owe the greatest debt of all, for none of this would have been possible without her love and the fact that she always believed in me. I suspect there comes a time when every doctoral candidate feels like giving up, that the challenge is too great, and the obstacles insurmountable. I don't know how others meet those moments, but I was fortunate never to do so alone, and to have your love to lift me up and carry me forward. All the loving encouraging notes you would write on the many drafts that you proof-read for me, all of your support throughout these years, all of your love made this possible.

So much of our success is a composite of the love, friendship and kindness that we receive in life, and in that regards I have been very blessed. Thank you all!

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CAS	Complex Adaptive System
CHES	Chapel Hill Expert Survey
CJEU / ECJ	Court of Justice of the European Union / European Court of Justice
EC	European Commission
ECB	European Central Bank
EFSM	European Financial Stabilization Mechanism
EMU	European Monetary Union
EP	European Parliament
ESM	European Stability Mechanism
ESS	European Social Survey
EU	European Union
SGP	Stability and Growth Patch
SOTU	State of the Union
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union
TSCG	Treaty on Stability, Coordination and Governance in the Economic and Monetary Union
WA	Withdrawal Agreement

PREFACE

"When the great Rabbi Israel Baal Shem-Tov saw misfortune threatening the Jews, it was his custom to go into a certain part of the forest to meditate. There he would light a fire, say a special prayer, and the miracle would be accomplished and the misfortune averted.

Later, when his disciple, the celebrated Magid of Mezritch, had occasion, for the same reason, to intercede with heaven, he would go to the same place in the forest and say: ''Master of the Universe, listen! I do not know how to light the fire, but I am still able to say the prayer,'' and again the miracle would be accomplished.

Still later, Rabbi Moshe-Lieb of Sasov, in order to save his people once more, would go into the forest and say: ''I do not know how to light the fire, I do not know the prayer, but I know the place and this must be sufficient.'' It was sufficient and the miracle was accomplished.

Then it fell to Rabbi Israel of Rizhyn to overcome misfortune. Sitting in his armchair, his head in his hands, he spoke to God: ''I am unable to light the fire and I do not know the prayer; I cannot even find the place in the forest. All I can do is ask You to redeem us, and this must be sufficient.'' And it was sufficient."[1]

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[1] Old Hasidic tale.

No greater things do we forget at our own peril than our history and our values. When I first started writing this project, as a purely ontological essay about the legal nature of the European Union, I had chosen the above cautionary tale as a reminder of the importance of a certain "European Idea", what in the meantime Joseph Weiler has since described as the importance of Political Messianism. As I delved more deeply into the many malaises of Europe, I uncovered that the greatest threat to Europe was its epistemological failure to grasp the integration project. The joy of this breakthrough was dampened by the realization that I would have to rewrite my preface, or at least to choose a different cautionary tale. As I concluded my project I came to the same realization that many greater lawyers did before me, like Llewellyn, Roscoe Pound, and many others, that law must fit an ever-changing society. My systems theory approach to European integration honors that maxim. The European integration project is a complex adaptive system, and we must understand how each area of European integration – legal, social, economic and political – interact with and permeate each other. But society must aspire to law, to the rule of Law, to certain guiding values that make social life possible, give it scope and even dignity, as Archibald McLeish's words reminds us. The EU's epistemological question is paramount, and needs solving, but once we have solved it, we still need to address its ontological question, and hope that by then it will still be sufficient.

INTRODUCTION AND METHODOLOGY:

The research question, and an underlying premise

This thesis project was born out of the research question: how should we conceptualize the European Union (EU) as a polity in the aftermath of Brexit[2] and Europe's political, economic and social crises? The research question stems from the premise that there might be something fundamentally new about this period, that both shifts and puts into question many of the essential paradigms of European integration theory - that we have accepted thus far - that threatens the cohesion and the very future of the EU

Throughout the project it will become apparent that this commonly accepted premise is both an oversimplification and a misrepresentation of the true *malaise*[3] afflicting the integration project. This project will suggest that there is nothing fundamentally new *per se* about this period, at least not with regards to the design and nature of the EU - there is no unforeseeable or surreptitious event that should not have been long-ago contemplated. Instead, our flawed understanding of European integration theory itself, too long anchored in classic typologies and doctrines of international law and politics, has finally rendered the evolving integration process unintelligible through those lenses.

There is no denying that this period raises several ontological questions regarding

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[2] Brexit here understood broadly as the formal process of the UK triggering article 50 TEU;

3 The term European malaise has inspired a countless number of prognosis and prescriptions as to the disease afflicting the integration process, but its true diagnosis has remained elusive;

the nature of the EU, and more importantly regarding the future of the European project. While they need to be addressed, those questions have pervaded Europe's unique project since its inception. What is truly unique about this period is therefore not Europe's ontological question, but rather the importance of its epistemological question[4]. How can we uncover what truly drives European integration and disintegration? Are the aggregate of those inputs and outputs, as often suggested, a zero-sum binary process premised on a Nash equilibrium[5]? Or have unintended integration spillovers made the EU evolve to a complex adaptive system, that can no longer be reduced to any simple game theory problem[6]? How do we identify which are the socio, economic, legal or political levers that can be incentivized to promote further integration? Lastly, how do we refine integration theory to account for and overcome exit moments?

The epistemological question has never been developed to address these and other questions that the EU's integration process no longer escape. Only then can we correctly

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4 The core of this thesis focuses on the dissonance between European integration theory ontology and epistemology, so it is important that I clarify how I am using these terms in that context. For the purposes of this project, ontology is understood as the study of what there is, and epistemology is the study of knowledge itself. Framed as such, in their simplest iterations, these concepts are used as follows:

Europe's ontological question is: "what is the normative nature of the EU?" It reflects our metaphysical concern regarding what should be the outcome of the integration process.

Europe's epistemological question is: "how can we know what the normative nature of the EU is?" It is concern with how we attain our knowledge regarding the integration process.

5 For the purposes of this project I am adopting the following definition of a Nash equilibrium: "a solution in which each player evaluates the strategies of their competitors and decides that they gain no advantage by unilaterally changing strategy when all other players keep their own strategies unchanged" (Ohlin 2012, 921);

6 Note Kaiser and Meyer, criticizing the "false assumption of a necessary trade-off in power between national governmental and supranational institutional actors (…as) EU politics is not a zero-sum game between opposed sets of institutional actors." (Kaiser and Meyer 2013, 1);

address the ontological question, only then can Europe decide it's future. Interestingly, a great part of the integration scholarship has, with this regard, operated in reverse, and has informed the epistemological question according to a prescribed ontological answer. Integration theory has therefore and until now been rather monochromatic and two dimensional, when the integration process is nothing but.

The project objectives

Underlined in the framing and the development of the research question and its main assumption are two essential purposes, which will be manifest throughout the structure and content of this project. The more obvious and immediate concern is to engage and inform the present and paramount debate concerning the future of the EU, by understanding both the framework and the forces that drive European integration and disintegration. The secondary and perhaps more ambitious goal is to inform the scholarly field of European integration theory itself.

First objective - to inform the debate on the future of Europe

The pervasive ontological question: what now for Europe?[7]

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7 The EU's most pervasive question since its very inception has always been "*quo vadis*, Europa"? "Once more unto the breach", this project attempts an answer;

Discussions over the future of the EU are not new, yet scholars[8], politicians[9], economic markets[10] and European citizens[11] alike are signaling that the EU is currently at a unique crossroads, with its very existence in question. In many regards Europe's current crisis moment is historically unparalleled, for it affects all areas of European integration, as documented extensively by a new and flourishing subgenre within the integration scholarship – the EU crisis literature.

While it would be both interesting and rewarding to interact with this scholarship and explore the web of entangled facts and decisions which led us to this pivotal moment, it should be noted from the start that the purpose of this project is not to provide

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8 In parts two and three I visit the increasingly growing "crisis literature", here are just some examples, to name a few: Berend, T. Iván. 2017. The contemporary crisis of the European Union. Routledge; Demetriou, Kyriakos N. 2015. The European Union in Crisis. Springer International Publishing; Fabbrini, Sergio. 2015. Which European Union? Europe after the Euro crisis. Cambridge University Press; Joerges, Christian, and Carola Glinski, . 2014. The European Crisis and the Transformation of Transnational Governance. Bloomsbury Publishing; Piattoni, Simona. 2015. The European Union - democratic principles and institutional architectures in times of crisis. Oxford University Press; Scicluna, Nicole. 2015. European Union Constitutionalism in Crisis. Routledge; Stefanova, Boyka M. 2015. The European Union beyond the crisis. Lexington Books; Westle, Bettina: Segatti, Paolo. 2016. European Identity in the Context of National Identity: Questions of Identity in Sixteen European Countries in the Wake of the Financial Crisis. Oxford University Press;

9 The United Kingdom's triggering of article 50TEU on March 29th 2017 is perhaps the greatest political signal of a European crisis, prompting questions surrounding the future of Europe to be addressed concurrently and separately by the EU Commission and Parliament, respectively: "White Paper on the future of Europe – Reflections and scenarios for the EU27 by 2025" by the European Commission, presented 3/1/2017; Reports adopted on February 16th 2017 and presented by Mercedes Bresso (S&D, Italy) and Elmar Brok (EPP, Germany); Guy Verhofstadt (ALDE, Belgium); and Reimer Böge (EPP, Germany) and Pervenche Berès (S&D, France);

10 The European financial and economic crisis are well documented since 2008; the sovereign debt crisis led to increased yields on government bonds and the loss of confidence in European markets;

11 The surge in popular support for EU membership withdrawals in several member states, notably France, Netherlands and Italy, have prompted increased concerns over the future of the European project;

a descriptive and analytical account of Europe's current crises. It is not focused on explaining, for instance, the possible contributing link between Europe's migration crisis and the United Kingdom's triggering of article 50TEU[12], or how the economic and financial crisis may have spawned popular and political incentives for a possible Grexit, Nexit or Frexit. To that effect, it does not hope to inform the debate on the future of Europe by providing specific economic, politic, legal and social solutions to Europe's immediate crises[13], nor discourse or weigh in on specific policies that have been enacted in their response. Extending the malaise metaphor, these are important considerations for those providing vital first aid to the European project, to stop the crisis from worsening, however, I am concerned with the diagnosis and the treatment of the EU's underlying issue.

My desire is to shed light on which framework or frameworks govern the actual construct of Europe, which factors might enable or curtail further integration, and which political and democratic choices might become paramount for the EU to subsist. My hope is to allow for an informed ontological discussion to take place by first providing a better understanding of the subject matter itself. In sum, to discuss how the EU can move forward, or be redesigned, we must understand the forces that shape and govern it.

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12 Or the more recent questions regarding the possible role that Cambridge Analytic played in the UK's referendum;

13 Again, this project is not meant to engage directly with descriptive European crisis literary, but rather to highlight how the current crisis stems from past conceptual failures in integration theory;

Second objective – to inform the field of integration theory

The neglected epistemological question, not only necessary but now finally unavoidable[14].

Discussions over the nature of the EU have been equally prevalent[15] over time, forming what is regarded as a scholarly field by its own merit, that of European integration theory[16]. Both law and political sciences have played an important role in this field, competing among and within each other to provide the primary sources of our normative understanding of the EU While some of their most fundamental premises might have been challenged by Europe's recent crisis, much of Europe's epistemological frameworks are still informed by the constructs that these two disciplines have espoused over the years.

Nonetheless, Europe exists as a composite of four distinct orders[17]: Europe's social order, as an amalgamated mosaic of the social orders of its members states, but later also by its own right, resulting from free movement spillovers and, unintentionally, from the birth of European citizenship, which combined to create at least the possibility of an

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14 Weiler himself seems to acknowledge this, in his recent restatement of the European transformation: "the current crisis overwhelms current thinking of European integration" (Maduro and Wind 2017, 335);

15 Most of the vast bibliography reviewed for this project relates to the field of integration theory, from Haas to Stone Sweet; from Stein and Weiler to Walker and Lasser;

16 Although the term is more prevalent in political sciences (see Wiener and Diez 2009 for a compehreensice analsyis of integration theory in that field) it describes the process by which the European Union has come to exist and operate, its nature and framework to be more precise. Legal scholars write on integration theory when they talk about the cosntitutionalization of Europe for example, as a process of European integration and operation;

17 This multi-dimensional aspect of the EU is explored in Europe's four constitutions (Tuori and Sankari 2010);

emerging European identity[18]; the economic order, which still lies at the centerstage of the EU as one of its *raison d'être,* and as a metric for the E.U's success and appeal, regardless of the trends and evolutions in the remaining orders; and finally, both the political and the legal orders, which dispute primacy over the governing framework of Europe.

This project will argue that the mistaken normative dichotomy between traditional legal and political frameworks at the heart of integration theory must give way to a new systemic understanding of the integration process, one that encompasses all forces that drive Europe closer together or further apart. Europe's nature is not static; it was created to avoid wars by entwining enemies, then to seek prosperity by the pooling of resources, and only later to serve as an additional beacon for human rights and a powerful but principled trading bloc[19].

It is easy to imagine that Europe's future, whatever it will be, will always be dynamic and adaptive. Therefore, traditional narratives explaining the nature of the EU

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18 See Checkel and Katzenstein 2009;

19 Esteban Gonzalez Pons, European M.P. for Spain, while addressing Brexit and the future of the EU recalls the evolution of the EU, how it's much more than just an internal market, but also how this evolution can be undone if not protected.

"Europa es la paz que vino después del desastre de la guerra. Europa es el perdón entre franceses y alemanes. Europa es la vuelta a la libertad de Grecia, España y Portugal. Europa es la caída del muro de Berlín. Europa es el final del comunismo. Europa es el Estado del bienestar, es la democracia. Europa es los derechos fundamentales." (...) "Europa no es un mercado, es la voluntad de vivir juntos. Dejar Europa no es dejar un mercado, es dejar los sueños compartidos." (...) "La globalización nos enseña que Europa hoy es inevitable, la única alternativa. Pero el brexit nos enseña también que Europa es reversible, que se puede caminar hacia atrás en la historia."

http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20170315+ITEM-007+DOC+XML+V0//ES&language=es&query=INTERV&detail=3-058-000

and its integration processes are no longer sufficient to understand Europe's emergent framework and what options lie ahead. Integration theory can no longer afford to ignore all variables and processes that play a part in Europe's systemic dynamic nature and adaptive evolution.

Thesis structure

This project will pursue the following structure: parts ONE and TWO offer a revisionist account of the leading integration narratives, from both law and political sciences respectively, as *l'état de lárt* of integration theory must be properly understood before it can be effectively questioned. This revisionist account will encompass:

a) a qualitative review of the leading *orthodox narratives* within each field – including how each of their fundamental premises and paradigms have been questioned over time, and what is their current standing as a result of Europe's unique moment;

b) a qualitative review of what we can label as *fringe narratives* within each field- works that over time have been critical of the shortcomings of the orthodox literature, and that provide alternative and competing frameworks for understanding European integration;

c) and a combined qualitative review of the *crisis narratives* in both fields - recent scholarly works in law and in political science that specifically address the nature of the EU in reaction to Europe's crisis.

My main argument in this regard will be that these narratives have been stuck in mistaken inescapable dichotomies both normatively and methodologically. Normatively the dichotomies range, for example, between: constitutionalism, and

executive or administrative federalism (in law); or between realism, and functionalism, or neo-functionalism and constructivism (in political sciences). But the greatest mistaken normative dichotomy is believing that EU integration theory lies necessarily between traditional legal and political typologies. Methodologically, the mistaken dichotomies take the form of binary spectra, based on linear communication and interaction patterns within what are perceived to be either zero-sum or positive-sum systems.

I will have the opportunity to expand these considerations, but suffice to say for now that the methodological considerations resulting from the revisionist account of the leading integration narratives, will prove to be of great added value throughout this project[20]. Each of these narratives are based on one or more fundamental premises[21] – *e.g.* that integration agents act according to hard or soft rational choice theory[22]. The fundamental premises are validated through certain qualitative or quantitative inputs to European integration, *i.e.* decisions, factors, occurrences or metrics that are deemed as enablers, disablers, or merely triggers of the integration process according to the fundamental premises. Later on, I will challenge the epistemological value of such *a priori* assumptions, which necessarily condition the intelligibility of the system we

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20 In a first instance, and as our understanding of the EU stems mostly from the research produced in both these fields, because most of our understanding of the factors and inputs that shape integration are limited to that same research. They provide as good a starting point as any other;

21 Narratives will often favor one factor or input as being crucial or more decisive than others, either because of a top-down approach, or because said factors further compelled the theory that is being advocated. We will expand upon this criticism later on in chapter THREE;

22 Mark Pollack has written about "Rational Choice and EU Politics", see (Jorgensen, Pollack and Rosamond 2007);

purport to study. At the same time, I recognize how much we have benefitted from the vast research and thoughtful analysis that the combined narratives of European integration have produced in terms of identifying and measuring the different factors affecting the integration process. While their analysis might have suffered from purposive selection bias, their individual data, once observed without agenda or limitation, can be aggregated and superimposed to produce a much clearer picture of the system we want to study and understand.

A brief caveat is in order regarding how this revisionist account will proceed. My concern will not be to offer a Linnaean taxonomy nor a descriptive account of each theory, but rather to explore the basic tenets of the main integration narratives. We need to understand the premises on which the foundations of our knowledge of the EU lie, so that we can test them against this unique moment. And it is the assumptions themselves and the data points that are of interest to us, not their normative draping.

Two additional considerations weigh against investing in a rigorous and rigid taxonomy of integration theories. First, it is an effort fraught with diminishing returns, as will become apparent as we expose the main assumptions that inform the different narratives. Secondly, a rigid taxonomy might not even be possible because there is both anecdotal and empirical evidence of a certain confusion in labeling these narratives. As evidence of the former, Alter has objected to being categorized as a neo-functionalist, instead of as a historical institutionalist, primarily because she believes that neo-functionalism as a theory is "actually wrong"[23]. Haas's 2004 restatement of neo-

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23 "Since my work is compatible with their accounts of legal integration, most scholars think that I too am providing a neo-functionalist account of legal integration. (…) Why do I insist on asserting that my work is historical institutionalist rather than neo-

functionalism[24] provides even further evidence to that effect. As evidence of the latter we have Jupille's empirical claim that "scholars are not always explicit about these metatheoretical commitments, which makes it hard to identify what is on offer, what is being rejected, and what is at stake. Finally, because of this, and because these metatheoretical categories are correlated with each other, the debates are often confusing and multi-stranded, with the role played by different metatheoretical elements difficult to disentangle". (Bourne and Cini 2006, 220)

Part THREE addresses the second objective of this research project, and will be the core of my contribution to integration theory as a field. I will start by enunciating which shortcomings of the law and political science narratives remain to be addressed. Shifting from the narratives and paradigms of integration theory to the paradoxes of European integration, I will also review the yet unexplained controversies and contradictions in the integration process.

I will then conduct a new blanket qualitative analysis of the economic, social, political and legal inputs that drive integration under a systems theory approach, and under the assumption that the EU is a complex adaptive system[25]. Some of the political and legal indicators – such as the number of preliminary references made to the CJEU, the number of cases in which the CJEU followed the reasoning put forth by the European institutions, and several other percentages and statistics relating to the

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functionalist? I do this because I think neo-functionalist theory is actually wrong" (K. J. Alter 2009, 14);

24 "Because NF's relationship to general theories of International Relations (IR) remains contested, I make it my purpose in this introduction to restate my theoretical objective" (…. stressing) "its relevance to 'constructivism', a theory of which NF may be considered a forerunner as well as a part". (E. B. Haas 2004, xiii);

25 The importance of this study will become apparent in the methodologic section presented in this introduction;

European legislative process – have already been extensively researched by political scientists. To these I intend to add a more comprehensive study of inputs from the social and economic dimensions of European integration. Among others, I will be reviewing large-sample quantitative data regarding EU migration movements, EU related national referendums, national constitutional decisions regarding the EU Treaties, and economic indicators such as GDP and employment rates.

I will also conduct a qualitative analysis of national political statements addressing issues of European integration. I will then juxtapose these findings to the periods of successful and strained European integration, i.e. the periods of EU expansion and EU crisis. From this study I hope we can learn: (a) how linear and nonlinear communication patterns occur and emerge within the integration process; (b) which interactions positively or negatively impact European integration; and (c) if there is a baseline requirement for integration to occur. With these results we hope to better inform the ontological question surrounding Europe.

Part FOUR addresses the first objective of this research project, and hopes to be the core of my contribution to the present debate on the future of Europe. A better understanding of what drives integration will, in the very least, make such future normative discussions more informed. It might even allow us to bridge political science and law and develop a framework attuned to the functional, political, economic, social and legal requirements of European integration.

Parts THREE and FOUR are driven by the understanding that frameworks matter - it is paramount for us to understand Europe's framework as it really is. Academics are

sometimes accused of statescraft[26], in addressing the tension between *de lege lata* and *de lege ferenda*, they compound *what is* with *what should be*. While it is vital that academics should be able to inform debates on how society should evolve, but they should do so without compromising *what is*[27].

This project precedes the ontological question with a systems theory analysis of the European Union, precisely because it hopes to render the integration project intelligible, accepting no *a priori* ideology as to what drives, and what should be the outcome of, the integration process. Only then can we bring all interested actors to the table, have a candid discussion of the future of the EU without subterfuge or misrepresentations, and leave the choices to be made and borne by the peoples of Europe. Many scholars and politicians have suggested that loyalty is the only way out of this crisis, and the only way forward for Europe[28], that the EU requires a new act of volition, and further curtailing of our national identity and sovereignty. That is certainly a possible path for Europe, and in my view the right path, however, the greatest threat to European cohesion is not lack of loyalty, but lack of informed decision-making.

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26 Notably by Antonin Cohen in "Transnational Statecraft: Legal Entrepreneurs, the European Field of Power and the Genesis of the European Constitution"; and Antoine Vauchez in "How to Become a Transnational Elite: Lawyers' Politics at the Genesis of the European Communities (1950–1970)" (Petersen, et al. 2008);

27 The tension between these two concepts will be further developed *infra* in chapter 4.4;

28 Recall Gonzalez Pons's speech: "*Yo espero que la próxima cumbre de Roma hable menos de lo que Europa nos debe y hable más de lo que nosotros le debemos después de todo lo que nos ha dado.*"

Methodology and a systems theory inspired law-in-context[29] approach

As suggested earlier, the two principal objectives driving the pursuit of this project stem from the realization that Europe's crisis moment has revealed itself to also be a crisis in integration theory[30], and perhaps even a consequence of the shortcomings of integration theory over time. It is therefore central to the second objective of this project to present a new methodologic approach to the study of European integration – revisiting the epistemological question.

Traditionally, the study of the nature of the European Union has been conducted through several different jurisprudential approaches[31]. Legal scholars have adopted: legal positivism, cosmopolitanism, constitutionalism and new governance approaches. Political scientists have adopted: realist/intergovernmentalist, neofunctionalist, institutionalist, and constructivist approaches[32], to name a few.

Some, if not most, of these studies conflate the nature of the EU with the process of European integration, and I believe this explains why Walker notes that there is "a tendency towards a reactive, event-driven and context-dependent approach to EU legal

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29 "Law in context refers not to theory of or about law, but to a general, explicitly pluralistic, approach to a discipline." In Twining, William. Law in Context. Enlarging a discipline. Oxford University Press, 1997, p 23;

30 Scicluna had already put forward this concern, stating that the Europe's crisis "have also triggered a crisis of integration theory", and advocating for a "radical rethink" of our "scholarly conceptualizations" (Scicluna 2015, 1);

31 "(T)here is not even the level of acknowledgement of an accepted canon of theories in EU Law (…). Neil Walker (…) alerts us to the elusive novelty of theorizing in the EU, drawing attention to the lack of theoretical self-consciousness in EU legal scholarship" Cryer, Robert, et al. p 19;

32 Cryer, Robert, et al. p 10 and Hunt and Shaw p 94;

studies"[33]. While I will argue that these notions are not necessarily interchangeable[34], the first step for a new methodologic approach to the study of European integration must be to understand that the nature of the EU is determined by all the processes of European integration, at least until the EU is formally recognized as a constitutional order of supranational law, or formally acknowledged as an international agreement establishing an internal market. Because the EU's is still somewhat *sui generis*[35], or distinctive, it warrants that it be understood by its composite processes of integrating Europe's social, economic, political and legal orders[36].

The shortcomings in integration theory methodology have been increasingly acknowledged, albeit still within the traditional binary framework of law and political science. Nonetheless, several scholars have finally recognized the importance of further bridging the relationship between law and political science in the study of European

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33 Walker (2005) p 583;

34 The nature of the European Union is undoubtedly affected by the processes of European integration, e.g. it has been argued that the constitutionalization of Europe created a quasi-federalist polity or a supranational constitutional State. The linear and synallagmatic connection between the normative framework of Europe and the processes that drive European integration is only tenable when you consider only one of those processes. For example, the judicial constitutionalization of Europe does not necessarily enact a supranational constitutional polity; to understand that polity we must also take into account political sovereignty redistributions, social identities and economic realities;

35 Europe's *sui genericity* is another field of study vastly explored. Europe is unique because it can be equally described as an international or intergovernmental organization with functional constitutional features; Neil Maccormick has written that "neither state nor superstate nor sovereign federal union, but rather the first effective marrying of democratic institutions with the principles of confederal self-government as contrasted with those of full-dress federalism" (MacCormick, The Health of Nations and the Health of Europe 2005);

36 There are arguments against thinking of the EU as being distinctive or sui generis. As Cryer et al note, citing Walker, the fascination with conceptualizing the EU as special as created problems of translation in terms of jurisprudential theories p 19-20;

integration, and have further called for such works to take place[37].

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37 "a promising research agenda on the dynamics of European integration – examples of which, building on Haas's work, have recently begun to appear – could develop if legal scholars paid more attention to the empirical methodologies and explanatory theories of political science, and if political scientists adopted a less reductionist and more nuanced account of law." (…) "while the last decade in EU studies has seen the emergence of a substantial body of research by political scientists on the significance of law, and an expansion in the range of legal scholarship which is attentive to the political and social impact of law, the relationship has not yet matured." De Burca 2005 p 310;

"It will be interesting to see if legal scholars explicitly will take over ideas from the second wave in political science and implement them in legal scholarship in the years to follow." Neergaard and Wind 2012 p 278;

"this is what one should expect from a theoretical concept which no longer substitutes political processes with legal prescriptions. (…) this project seems worth pursuing" Joerges and Glinski p 46;

"there is simply no single answer to questions such as: what is the legal constitutional nature of the EU, and what is the role of the law in the governance of the EU? (…) there remains significant scope for legal scholars to engage usefully in more constructive efforts towards theory-building, connecting their work more self-consciously and consistently to well-established or newly emerging currents of theory." Jo Hunt and Jo Shaw p 107;

"Walker wonders whether EU law requires its own new tools of analysis and new forms of theory building, and we agree that this is a question worth exploring." Cryer et al, p. 20;

"doctrinal and non-doctrinal approaches towards law and legal research are becoming more intertwined. (…) According to Posner senior, this type of research is important for the vitality of the legal system and of greater social value than much esoteric interdisciplinary legal scholarship" Van Gestel and Hans-W. Micklitz. Revitalising Doctrinal Legal Research in Europe: What about Methodology? P 26. In Neergaard, Ulla, Ruth Nielsen and Lynn Roseberry. European Legal Method - Paradoxes and Revitalisation. DJOF Publishing, 2011;

"Weiler demonstrated how a legal study of the integration process can benefit from using political science concepts, but also how the classical political scientists' neglect of law when studying Europe, was catastrophic." Neergaard and Wind 2012 p 264;

"It remains an open and deeply contested question whether the documentary constitutional idea, or indeed the discourse of constitutionalism generally, is a ladder to new conceptions of legal and political community or a drag on their development" Walker (2005) p 601;

"European legal integration provides an enduring challenge to social scientists and lawyers, who have not yet been able to establish the integration processes as a coherent scientific object". Petersen et al p1;

"The complexity of EU affairs calls for research methods known from a number of disciplines and for the further development of cross- or transdisciplinary research designs. (…) the actual European integration process has now reached a point where more wide-ranging research strategies, designs and methods are needed". (Lynggaard, Manners and Lofgren 2015, 4);

Others, pursuing a polycentric approach to understanding the EU, have argued that integration results from "a dynamic and even somewhat contradictory (plurality of) processes" and subject matters linked to the efforts of integrating Europe's economic, politic and legal orders. Petersen et al defend a "holistic view of European legal integration which incorporate(s) a series of interdependent socio-legal processes" in order to understand "how a set of concurrent – and often competing – processes makes up decisive dynamics of the on-going process" of integration. Important amongst this consideration is that "no single process encapsulates the larger process"[38].

The approach I will use and advocate for is a systems theory inspired law-in-context approach, which shares some of the same rationales and tools as Petersen's legal polycentricity[39], in the sense that it adopts a system's view of the integration process. The law-in-context approach in European scholarship[40] developed precisely with the

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38 (Petersen, et al. 2008, 2-5)

39 First among which, the desire to find "multi-variable conclusions to issues that (are) typically categorized (…) in terms of a single structure and thus were assumed to have a single answer". (Petersen, et al. 2008)

40 Ulla Neergaard and Marlene Wind have written a summary on the EU Law in Context approach in part 2 of their article in "Studying the EU in Legal and Political Sciences Scholarship". They state that "one of the first and most significant contributions to the "EU Law in Context" approach was no doubt the 'Integration Through Law' project launched in the early 1980s. The project's initiators were: Weiler, Cappelletii and Seccombe" (p 271). Regarding the approach itself, they borrow the following quotes from: Richard Posner, law in context looks "at the law from the outside from perspectives shaped by other fields of scholarly inquiry, such as economics, political theory, moral philosophy, literarily theory, Marxism, feminist theory, cultural studies, cultural anthropology, structuralism, and poststructuralism…" (p 270); Tamara K. Harvey and Jean V. McHale, "a contextual approach involves treating legal subjects broadly, using materials from other social sciences, and from any other discipline that helps to explain the operation in practice of the subject under discussion" (p 270); Francis Snyder, law in context is "the study and understanding of European law in its social, cultural, political and economic contexts" (p 273);

Jo Shaw and Jo Hunt note how the call for a contextual approach in EU law research "has elicited a significant response from the legal academic community, as scrutiny of the pages of journals such as the 'law-in-context' European Law Journal will attest. This

realization that law and politics are fundamentally intertwined, and further that the understanding of law must be conducted within its social, cultural, political and economic context[41]. The problem with this approach, as de Burca notes, is that it has historically been used without "empirical support, and seemingly disinterested in the actual dynamics of political and social change"[42]. As Neergaard and Wind suggest, the issue lies with the fact that the law-in-context approach is tethered to law as its starting point and center of interest, "it is not an approach which necessarily is truly interdisciplinary, because law is often meant to be the primary object of study"[43].

The EU law-in-context scholarship has therefore adopted a top-down approach to answering the question of the nature of the European Union. They award primacy to the constitutional/legal process of European integration over all others, through the constitutional and legal dimension theses. This explains most of the empirical

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response is most notable in work published in the English language, though such work is not necessarily undertaken by those trained and working in the UK or the US. The imprint of the intellectual heritage of the European University Institute (which founded the European Law Journal) is significant, and this institution has now bred generations of law-in-context scholars, working mainly in English, though initially trained in other EU states, and beyond." p 97;

41 Snyder argues that "European Community law represents more evidently perhaps than most other subjects an intricate web of politics, economics and law … which virtually calls out to be understood by …an interdisciplinary, contextual or critical approach." In Snyder, F. (1990) New Directions in European Community Law (London: Weidenfeld and Nicolson) p 167;

42 The disciplinary differences partly explain the immaturity of the relationship between law and political science scholarship on European integration. To the political scientist, legal scholarship often appears to be arid, technical, atheoretical (apart from the 'metatheoretical' branches of legal and constitutional theory), full of unstated or unproven assumptions, lacking empirical support, and seemingly disinterested in the actual dynamics of political and social change. To the lawyer, political science scholarship often appears to be obsessed with methodology, jargonistic, and – in particular when it engages with law – remarkably banal, in that pages are spent demonstrating a proposition which lawyers take to be axiomatic (such as that 'courts matter' or 'judges have some autonomy'). De Burca, p 314;

43 Neergaard and Wind, p275;

challenges to the assumptions of the integration through law narratives[44], because they are reached through legal doctrine. Legal doctrine is limited in its sources: it looks primarily at *normative* and *authoritative* sources, such as statutory texts and general principles of law, case law and scholarly articles.

As long as it can break away from the legal dimension thesis however, the law in context approach seems tailored for the study of European integration. This approach challenges the classic assumptions of law and political science, that "integration is fundamentally a political process (… in which) the law has a vital role to play" (Cappelletti, Seccombe and Weiler)[45], and challenges that political integration "is more important than economic and social trends" (Haas)[46].

The obvious shortcomings of such an approach is that it cannot be undertaken by one scholar alone. Petersen's legal polycentricity results from a collaboration of scholars from different fields and areas of expertise. This however is not truly a shortcoming, at best a challenge, for integration theory should be a composite endeavor of the four fields of study that relate to the four orders that govern the EU My stated goal is not to present a narrative of European integration, but to inform future narratives. I hope to demonstrate that a systems based law-in-context approach is better suited to do so, while maintaining the triangular relationship[47] between research question, the

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44 Hunt and Shaw, p 95;

45 Cappelletti et al, p 4;

46 Haas, Ernst B. "The Study of Regional Integration: Reflections on the Joy and Anguish of Pretheorizing." International Organization, Vol. 24, No. 4 (1970): footnote 31 page 632;

47 Cryer, Robert, et al. p 8;

data presented to answer the question and the method in which it is analyzed[48].

Lastly, it is worth noting for conceptual clarity purposes that often the scholarly fields of Europeanization and Integration theory get muddled. It is important that we do not confuse the concepts. Europeanization is best understood as the "process of change affecting domestic institutions, politics and public policy. Change (which) occurs when political behavior at the European Union (EU) level has a transformative effect on domestic political behavior." (Exadaktylos and Radaelli 2012, 1)

While the process of Europeanization does contribute, and in fact brings about significant changes to European integration, it does not exhaust the integration process. Still, the process of Europeanization warrants reflecting within the complex system that is the EU – not just as an integrative part of that system - but also because of the perception that it generates undue influence within that system, by (perceivably) inverting or subverting the classic "community method". We can all imagine several reasons why this perception occurs, for Europeanization has been prevalent in Europe's

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48 Other considerations regarding methodology and scope of analysis: the starting point of my approach is to question and challenge the orthodox paradigms of European integration as seen through the lenses of the most influential works in law and political science since the early 1960's, such as integration through law, constitutionalism, new governance; and intergovernmentalism, neo-functionalism and constructivism, respectively. There are other lenses through which European integration has been researched, as identified by Cryer et al, namely liberalism (Ian Ward's liberal approach to EU law and governance – Cryer et al p.44-45;), cosmopolitanism (Eirk Oddvar Eriksen's cosmopolitan approach tethered to human rights and a Kantian ideal – Cryer et al p. 48-49), feminism (Joe Shaw's research on the "gender character" of the EU – Cryer et al p. 65-66), queer theory (Cryer et al p. 67-68), postcolonial theory (Cryer et al p. 69), to name a few. The insights of these approaches are invaluable, nonetheless, most of them, except from liberalism – that we could subsume within the wider lens of intergovernmentalism/realism and or neo-functionalism – are concerned with Europe's normative framework alone, and as aspirational or restorative values. These values are paramount and should inform EU's normative framework, but my work must start with uncovering first what the EU as it is, so as to, in a later stage, better argue what it should be;

response to its financial and fiscal crises, and has had deep impact in national policies and the lives of common citizens, as Radaelli notes [49]. These linear cause-effect interactions become easily instrumentalized in pro/against Europe political discourse, as if they represented or even subsumed the entirety of the process of integration.

It is important to recognize Europeanization within integration theory, but it is just as important to place it within the complex adaptive system that is the EU

Summary

Since its inception, the future of the European Union has always been in question. On the brink of failure on more than one occasion[50], the EU has historically managed to move forward – on the edge of chaos - through mitigated integration and *de jure* and *de facto* sovereignty redistributions. Questions surrounding the future of the EU however are becoming increasingly pervasive and paradoxical, how has the EU managed consistently to move forward, while simultaneously moving further apart?

We can no longer ignore that the integration project "faces an interlocking set of political, economic, legal and social challenges that go to the very core of its existence[51]". The normative and methodological dichotomies between and within law

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49 As evident in the following: "fiscal coordination and Economic and Monetary Union are two sectors where the binding and constraining power of the EU on the member states goes beyond the effects of a single piece of legislation. In these cases the EU is trying to transfer an institutional framework (based on an independent European Central Bank in charge of a common currency, the euro) and a governance architecture concerning budgets and, arguably, a culture of responsibility in fiscal policy"; (Exadaktylos and Radaelli 2012, 1);

50 Empty chair crisis (1965); Failure of the Constitutional Treaty (2004);

51 (Scicluna 2015, in foreword);

and political science have provided a compelling and engaging binary framework, but have also blinded us from the larger picture. Integration results from the complex, dynamic and adaptive quadrichotomies of European law, politics, economics and sociology. We must finally understand that European integration is woven in an increasingly composite polycentric web that transcends any one social-normative order alone.

CHAPTER ONE – LEGAL NARRATIVES OF EUROPEAN INTEGRATION: METHODS, PREMISES AND PARADIGMS.

1. Introduction.

Our foundational knowledge of integration theory stems mainly from the fields of law and political science[52]. These disciplines have, since the 1950's, produced an immeasurable amount of literature on this topic. As Mitchel Lasser[53] has noted, rivers of ink have been spilled expounding the ideas and concepts brought forth by the classic legal orthodoxy of European integration alone. The combined scholarship on integration theory from both law and political sciences has become so vast and complex that it risks becoming unintelligible.

Accordingly, this project's concern is not to offer a descriptive account of all these narratives, nor a strict Linnaen categorization of each scholar into a specific normative theory or -ism. This is because these categories may get blurred, or scholarly works may nest in between different normative categories (intersecting constitutionalism and functionalism for example[54]). More interestingly, if not further defying any strict categorization, we also see scholars in one field advancing normative frameworks in another, like Joseph Weiler, Alec Stone Sweet and Daniel Kelemen[55] . This trend has

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52 For a more comprehensive analysis distinguishing between International Relations (IR) and Political Science, and IR's role in EU studies see (Rosamond, European integration and the social science of EU studies: the disciplinary politics of a subfield 2007);

53 Lasser, Mitchel de S.-O.-L'E. Judicial Transformations: The Rights Revolution in the Courts of Europe. Oxford University Press, 2009 p.?;

54 Recall for example (Isiksel 2016);

55 These two scholars, among many other accolades, have earned a PhD in Political Sciences, but have contributed prominently to

been well documented by Neergaard and Wind, as well as Cryer et al. As these same authors note, this tendency has been quite beneficial for the advancement of the scholarly field as a whole[56], as it has expanded the toolkit with which integration theorists further their understanding of the EU, by bridging the main doctrinal premises from both law and political science.

Even if any categorization was universally accepted, it would not necessarily be useful for the purposes of this project. One of the main arguments put forward by this thesis is that the EU's current crisis moment is entangled with a crisis within European integration theory itself. Seeing that the very edifices of our understanding of the EU are in question, it is only logical that we should reconsider past methodologies, premises and frameworks, and then proceed to wipe the slate clean normatively. But where should we start? Should we wipe the slate clean epistemologically as well? In a way, yes, but not completely.

As will become clear shortly and reiterated throughout this project, integration theory scholarship is one of the most thoughtfully and carefully developed fields in international law and politics. Several of the authors that have written in this field are among the leading scholars of the past six decades, and certainly among those who have given greatest consideration to the normative constructs of law. This project hopes to build on their amazing contribution.

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the legal normative structures of European integration, and have influenced legal integration scholarship;

56 "the use by scholars within one discipline of the insights, methodologies, approaches, questions or date produced by another will in many instances prove to be profitable" (Neergaard and Nielsen, European Legal Method - in a Multi-Level EU Legal Order 2012, 275)

The premises on which these theories were built, and more importantly the unique data sets they relied upon to consubstantiate their claims, are our starting point to refine Europe's epistemological question. They provide us with a baseline from which to start something that we can contrast not only to recent events, but also to all shifts, crisis, progress and regression moments in the construction of Europe.

As also suggested earlier, by focusing on premises rather than on taxonomies, we will attempt to reverse the top down approach, shifting the focus from normative constructs to the inputs (factors) that impact integration. It has been argued that Europe requires a new transformation [57], similar to the one that brought about the constitutionalization of Europe. But perhaps what is truly required is a transformation in our approach to the study of the EU

The structure of this revisionist account will be the same in both chapters ONE and TWO, and will encompass: a) a qualitative review of the *orthodox narratives*- how each fundamental premise and paradigm has been questioned over time, and what their current standing is as a result of Europe's unique moment; b) a qualitative review of what we can label as *fringe narratives*- works that over time have been critical of the shortcomings of the orthodoxy literature, and that provide alternative and competing frameworks for understanding European integration; c) and a qualitative review of the *crisis narratives*- more recent scholarly works in these fields that specifically address the nature of the EU in reaction to Europe's crisis.

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57 (Maduro and Wind, The Transformation of Europe, Twenty-Five Years On 2017);

1.1 The legal orthodoxy of integration theory.

The leading orthodoxy on the nature of the EU stems linearly from one author alone and his school of thought. In 1991 Joseph H. H. Weiler published an article in the Yale Law Journal entitled "The Transformation of Europe." It is hard to circumscribe the reach and influence of this article, which on its own merits and on the coattails of its renowned author has permeated the minds of EU scholars, and arguably has shaped the dominant normative framework of the EU. It is no wonder therefore that "path-breaking" and "seminal" are perhaps the most common terms to describe Weiler's constitutional narrative of Europe[58]. The impact of Joseph Weiler in this field is unparalleled, it has

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58 Books / Articles:

"Of all European constitutional narratives, the one about juridical constitutionalization is perhaps the most familiar and most often recited, frequently with a heroic undertone. it is the story of the great landmark cases of the Court of Justice establishing Community law as an independent legal order; the story of van Gend en Loos and Costa v ENEL, 19 which together make up the declaration of independence of Community law. The aspiration for autonomy was accompanied by a quest for order; in addition to independence, the promise of juridical constitutionalization was the unity of European law.

Influenced by Joseph Weiler's seminal article, 20 the conventional account of juridical constitutionalization points to a deadlock in the political dimension, still dominated by intergovernmental structures and procedures, which left the field to the Court."
Sankari, Suvi, and Tuori, Kaarlo, page 17 (see bibliography);

"The work of Joseph Weiler is primarily known for its seminal understanding of the constitutionalization of the EU legal order and of the 'silent revolution'. A transformative process made EU law both 'the law of the land' and 'the higher law of the land'."
Martinsen, Dorte Sindbjerg, page 43 (see bibliography);

"Joseph Weiler's path-breaking and later refined vision of Europe and its 'integration through law' conceptualised Europe as an equilibrium between market building legal supra-nationalism and political inter-governmentalism." Glinski, Carola, and Christian Joerges, page 288 (see bibliography);

"The literature on the ECJ-initiated, gradual quasi constitutionalization of the EC legal order is too vast to cite. The thematic of this branch of scholarship is on the role of the ECJ in the process of European integration. The seminal account is Joseph H. H.

"transformed EU legal scholarship[59]", has influenced several scholars and narratives in other fields such as political science, and sociology, and has been praised as a defining moment in integration scholarship. As Maduro notes, it not only provided a "powerful analytical framework to explain how the transformation of Europe occurred" but also a "new methodological paradigm to study EU law and integration". In other words,

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Weiler, The Transformation of Europe." Hirschl, Ran, page 270 (see bibliography);

"Stein's and Weiler's accounts remain uncontested classics, providing incontrovertible evidence that the ECJ did use creative legal interpretations to establish for the ECJ a broader role in European politics." Alter, Karen J. (see in bibliography);

"Already in his seminal article on the 'Transformation of Europe', Weiler had delivered an insightful diagnosis of the problematical implications of majority-voting in terms of Europe's legitimacy.24 He was among the first to realise the normative and political ambivalences of the completion of the Internal Market by the Delors Commission". Glinski, Carola, and Christian Joerges, page 290 (see bibliography);

"Joseph Weiler presented a vision (…) in his seminal narrative on the "Transformation of Europe": Europe has in its foundational period, so Weiler argued, managed to establish an equilibrium between legal supranationalism and political intergovernmentalism. His portrayal of European integration was path breaking, unique in its doctrinal lucidity and its sensitivity for the European synthesis of "the political" and the law." Joerges, Christian, page 13 (see bibliography);

Events:

2011 Weiler Event at EUI: "20th anniversary of Joseph Weiler's path-breaking article 'The Transformation of Europe'."

"The Weiler "Transformation of Europe"

How much has Joseph's piece marked European Legal and/or Political science scholarship over the past 20 years?

http://cep.polsci.ku.dk/cep_kalender/cep_arrangementer/Preliminary_Programme-WEILER_Event.pdf

2016 Weiler Event at EUI: "Transformation of Europe, 25 years after - A Conversation between Prof. M. Wind, University of Copenhagen and President Joseph Weiler".

This Article became one of the cornerstones for discussions on the EU

http://www.eui.eu/SeminarsAndEvents/Events/2016/May/TransformationofEurope25yearsafter.aspx

59 (Maduro and Wind, The Transformation of Europe, Twenty-Five Years On 2017) p. 317;

Weiler presented a new framework for both European integration and integration theory as a scholarly field.

While I in no means want to diminish the importance of ToE, and its singular contribution, it should be noted that Weiler's contribution to this field must be understood and measured according to the vast literature he has written on this subject, which in my research I have come to call *the transformation anthology*[60].

It should be noted that the legal orthodoxy does not rest solely on Weiler, as the works of Ulla Neergaard and Marlene Wind demonstrate. These authors have written arguably the most comprehensive study on the European legal research and method and have highlighted the contributions of several other scholars in enriching this field. Authors such as Joseph Weiler, Anne-Marie Slaughter, Karen Alter, Miguel Maduro, Alec Stone Sweet, Wayne Sandholtz, Neil Fligstein, Ingolf Pernice, Mitchel Lasser, and Marlene Wind have contributed greatly to theories of supranational governance and the judicial construction of Europe. Neil McCormick, Matej Avbelj, and Jan Komárek furthered our understanding of constitutional pluralism and multi-layered governance with the EU. Kaarlo Tuori, Inger-Johanne Sand, and particularly Neil Walker have developed the nuanced concept of constitutional plurality[61] within Europe and created a meta-language of European law.

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60 It's a shame that scholars most focus solely on the one article, ToE;

61 As Tuori notes, "plurality is not the same as pluralism" Constitutional pluralism focuses on "the co-existence of transnational and national constitutions" whereas constitutional plurality focuses on the different constitutions at the European level (economic, political, social and legal) (Tuori and Sankari 2010, 3)

Normative premises of the legal orthodoxy within EU integration theory:

Most of these theories and narratives of EU integration share the same fundamental premises, *i.e.* basic yet foundational normative tenets that inform Europe's ontological question by framing the integration process according to a particular construct or feature.

The constitutional thesis: qualifying the European Union as a constitutional order instead of an international organization [62] [63] [64] [65];

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62 Very recently, CJEU Judge Rosas has noted that: "whilst not being recognized as a State, the EU has developed into a far-reaching regional integration organization endowed with a constitutional order". Presentation of Mr. Allan Rosas, Judge at the Court of Justice of the European Union, during the 55th meeting of the CAHDI. Available at: https://www.coe.int/en/web/cahdi/-/presentation-of-mr-allan-rosas-judge-at-the-court-of-justice-of-the-european-union-during-the-55th-meeting-of-the-cahdi ;

63 The "constitutional thesis", most famously espoused by Joseph Weiler, remains the prevailing narrative characterizing the legal nature of the EU. In Weiler's own words, "*the Constitutional thesis claims that in critical aspects the Community has evolved and behaves as if its founding instrument were not a Treaty governed by international law but, to use the language of the European Court of Justice, a constitutional charter governed by a form of constitutional law*." In "The Reformation of European Constitutionalism." Journal of Common Market Studies 35.1 (1997), p 96;

64 "a process driven forward by the ECJ and its case law, creates a new species of constitutional framework which underpins the emerging political order." Jo Hunt and Jo Shaw, "Fairy tale of Luxembourg? Reflections on Law and Legal scholarship in European Integration" in Phinnemore, David and Alex Warleigh-Lack. Reflections on European Integration - 50 Years of the Treaty of Rome. Palgrave Macmillan, 200, p 94;

65 "The Transformation of Europe" has not only shaped the understanding of the legal nature of the EU, it has arguably been paramount in the constitutionalization process of the EU itself, by providing the hermeneutical scheme of intelligibility in which it occurred. Schemes of intelligibility, as understood by Geoofrey Samuel, as "a term applied to the way natural or social facts are perceived and represented".

Moreover, Weiler's hermeneutical scheme has paved the way to scholars, like Halberstam, to envision further developments in Law itself, such as the transformation of Constitutional Law. Since 1991 however the legal nature of the EU has changed, and this change can only be understood through a dialectical scheme which supplements the hermeneutical.

Weiler's formulation of the *Constitutional thesis* of European Integration became the template in which the ontological legal study of the EU took place, and now represents the classic orthodoxy of EU Law.

Unlike any other international organization, the EU did not evolve solely through intergovernmental cooperation. The argument goes, that by embedding a preliminary reference system into its legal framework, the Member States unintentionally allowed for an adjudicative discourse to take place that would shape that very framework. From this adjudicative discourse, and from the understanding that there was an organic inter-connectivity between the private economic, political and social interests of the peoples of Europe, several doctrines emerged that *de facto* set forth the constitutionalization of the EU[66][67].

The main premise of the classic legal scholarship in EU integration theory is therefore that the EU was transformed from a treaty-based and member-driven

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66 See J. H. Weiler 1991;

67 This theory is fascinating because the constitutional order emerges from a hypostatic trinity that is yet to be reproduced elsewhere: the solidarity envisioned by the Member States (ideals); the judicial review process they put into place which allowed for an unintended adjudicative process that served as a "Private Attorney General model" (structure); for the peoples of Europe and in accordance with their shared private interests (organic inter-connectivity). However, if we consider that the WTO, perhaps the most integrated international organization besides the EU, shares many of these same elements (the ideal of progressive liberalization of international trade; an adjudicative dispute settlement mechanism; and likewise, shared social, political and economic interests), we are left wondering what is different between these two organizations? Granted that the WTO's dispute settlement system is not comparable to the EU's preliminary reference mechanism, but is it really this structural difference that precludes the WTO from its own hypostasis? Was is not the judicial activism of the CJEU, enabled by national courts, that allowed for the preliminary reference mechanism to create constitutional doctrines? And if so, could not a similar activism take a hold of the WTO's DSU? Most likely not, but only due to the WTO's reliance on diffuse reciprocity in its tariff system, to ensure that free trade operates under a Nash equilibrium.

organization of international law to a constitutional order of supranational law, akin to a federal state, or *quasi*-federalist state, by virtue of a series of judicial constitutionalizing doctrines. These doctrines awarded the EU direct effect, primacy, implied powers, and a constitutional mandate to measure community actions against the common human right traditions of its member states. Furthermore, this new constitutional order was not only unique in relation to international law, it had primacy over it, as the AG's opinion in Kadi suggests[68].

This characterization of the European legal order enacts the most important paradigm shift with regards to its normative construct of Europe, it triggers a Copernican revolution displacing the member states at the center of the integration process. In their stead are the European institutions, and the CJEU, shaping, or at the very least constraining, both the interactions between the member states, and the peoples of Europe.

The constitutionalization process is never truly identified as the impetus of the European integration project, rather its logical conclusion. From early on, the legal orthodoxy settled Europe's ontological question with little regard to its epistemological question.

The legal dimension thesis - elevating the centrality of law in the integration process [69]

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68 "The relationship between international law and the Community legal order is governed by the Community legal order itself, and international law can permeate that legal order only under the conditions set by the constitutional principles of the Community." Opinion of Advocate General Poiares Maduro. No. C-402/05 P Kadi v Council and Commission. CJEU. 16 January 2008;

69 In an article written before his seminal piece on the Transformation of Europe, Weiler and Renaud Dehouse had already noted that: "even if law is not a main catalyst of change in the integration process, many changes are greatly conditioned by legal and

A corollary from the constitutional thesis[71], the legal dimension thesis elevates the centrality of law, *i.e.* primarily European judicial constitutional law, in the integration process. As noted above, the constitutionalization process enacts a Copernican revolution that displaces the members states from the center of the integration process, but it also displaces the traditional processes of intergovernmental negotiation, legislation and politics in favor of supranational European law.

The Copernican revolution affects both the actors, and the means, by which decision-making is attained, or at the very list constrained, within the integration process. In other words, integration through law, not politics, becomes the EU's *modus operandi*. It should be highlighted however, as Tuori notes, that the legal dimension is made possible by "a deadlock in the political dimension"[72] that had stalled the integration process.

The combination of both the constitutional and the legal dimension thesis has an unparallel impact in our understanding of international law and regional integration. It

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institutional elements. A legal dynamic can exist when autonomous organs are entrusted with judiciary competence." In Renaud Dehousse & Joseph Weiler: The Legal Dimension, in William Wallace (ed.): The Dynamics of European Integration, Pinter Publishers, London, 1990 p. 246. Even political scientists like Stone Sweet and Kelemen recognized that the "legal system had, in effect, become the nervous system of the EU" Kelemen, R. Daniel and Alec Stone Sweet. "Assessing 'The Transformation of Europe': A View from Political Science." Yale Law School, Public Law Working Paper No. 295 (2013) p 3;

70 Also referenced as integration through law, or law as both object and agent of integration (Dehousse and Weiler 1990 p. 243; Cappelletti 1985). Hunt and Shaw note how for many scholars' law became "the agent par excellence" p 93;

71 Both the constitutional and the legal dimension theses are brought about by a reconstructive account of the CJEU's constitutionalizing case law.

72 (Tuori and Sankari 2010, 17);

creates a new mode of governance between sovereign states that had, until then, been unheard of except in federalist experiments. This new mode of governance challenged the traditional inter-governmental approach that was characteristic in international law by overcoming its inertia.

The judicial empowerment thesis - elevating the role of the CJEU in the integration process [73];

Here the constitutional thesis intercedes with the Haas v. Hoffmann debate in political sciences and focuses on the unique new actor in supranationalism, the CJEU – the true agent per excellence of the integration process.

Both legal scholars and political scientists[74] have acknowledged the important role of the CJEU in European integration theory. The CJEU not only shifted the locus of integration to the legal system but cemented that shift by allocating joint authority between supranational and national legal courts[75].

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73 The CEJU has been portrayed both as the hero (Bulery and Mattli, Tuori, Weiler) as well as the villain of the integration process. As Wincott notes "the image of the Court as hero or villain is widespread" (Wincott 2000, 3). See also Tuori's subchapter of "the heroic saga of juridical constitutionalization". (Tuori and Sankari 2010, 17)

74 Weiler's Transformation of Europe and particularly his account of the role of the CJEU in Europe's integration process, prompted, according to Neergaard and Wind an epistemological shift in the poli-sci camp, from intergovernmentalism to neo-functionalism. In Neergaard, Ulla and Marlene Wind. "Studying the EU in Legal and Political Sciences Scholarship" p 263 in Neergaard, Ulla and Ruth Nielsen. European Legal Method - in a Multi-Level EU Legal Order. DJOF Publishing, 2012. "An unsung hero of this unexpected twist in the plot appears to be the European Court of Justice." Anne-Marie Burley and Walter Mattli in Europe Before the Court: A political Theory of Legal Integration. International Organization 47, 1, Winter 1993, p 41;

75 "the juridical constitution meant judicial empowerment, enhancement of the position of both the Court of Justice and the ordinary courts of the member states entrusted with the task of supervising conformity of national legislation with Community law" (Tuori and Sankari 2010, 19);

The new supranational mode of governance within international law, discussed above, suddenly found itself with two powerful guardians. In effect, by empowering national judges, the CJEU enhanced judicial powers on both levels and, more importantly, further expanded the legal dimension of European integration.

Paradoxically therefore, the supranational mode of governance brought about by framing the EU as a constitutional order (constitutional thesis), governed by law not politics (legal dimension thesis), is sustained by courts of the member states themselves. In other words, it is the courts of the members states that allowed for the emancipation of EU law from the intergovernmentalism of international law[76], in exchange for the judicial empowerment.

The equilibrium thesis - relying on a binary and static framework between law and politics [77].

The widely acknowledged seminal piece on law and European integration[78] put

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76 Spiermann provides a different account of this emancipation, one in which the CJEU plays a much smaller role, and in which the the EU Treaties are the really heroes of the integration process (Sipermann 1999). While analyzing the foundational period of the EU, Spiermann argues that "taking into account the far-reaching nature of the Treaties" the rulings of the CJEU were actually "less impressive". This raises an interesting premise, as it seems to put the Member States themselves as actors against their own preferred mode of governance;

77 This binary and static framework has been defined as follows: "the equilibrium thesis is the overarching theoretical construct of TE (…) two strong implications flow from the theoretical framework (that the political legitimacy of constitutionalization rested on a specific equilibrium between a supranational legal system and an intergovernmental legislative system)" Stone Sweet and Kelemen, p. 3; "From a theoretical standpoint, Weiler's equilibrium thesis suffers from having been built from static, binary oppositions: the "Intergovernmental-Supranational" and "Exit-Voice." *Idem* p. 5;

78 The importance of Joseph Weiler's Transformation of Europe cannot be stated enough. "This article was in many respects path-breaking and seems to have influenced both EU lawyers and political scientists enormously" Neergaard and Wind, p. 264; "The

forward the assumption that there is a static equilibrium between the supranational constitutional order and the intergovernmental legislative system. This equilibrium, which rests on binary notions of exit and voice[79], transcribes a reciprocal relationship between law and politics, which awards political legitimacy to the constitutionalization process in exchange for the continued completion of the internal market.

The merits of the equilibrium thesis are that: it explains why Member States did not curtail the CJEU's activism and expansive constitutionalization of Europe, as they came to rely on that activism to complete the internal market; and more importantly, it mitigates concerns over output and input legitimacy in the EU.

1.2 The orthodoxy 2.0 [80]

A group of leading scholars, including Joseph Weiler himself, recently compiled a selection of essays on the continued transformation of Europe twenty-five years after ToE made its normative and methodological claims. These essays critically engage with Weiler's earlier assumptions and present a revised view, or a restatement, of the

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Transformation of Europe [TE] is arguably the most influential paper ever published on the European Court of Justice." Kelemen and Stone Sweet, p 1;

79 Weiler borrowed Hirshman's famous construct of exit, voice and loyalty;

80 (Maduro and Wind, The Transformation of Europe, Twenty-Five Years On 2017) I have opted not to include this account under the crisis literature as it relates particularly to the current restatement of the orthodoxic view of European integration. More importantly it does not share the same characteristics of the crisis literature. While it is concerned with addressing the current crisis moment, it does so in relation to its earlier premises and is mostly a normative exercise, that does not take into account specific events, nor empirical data from the current crisis period.

orthodoxy on legal integration, one that takes into account the current crisis moment.

An issue of legitimacy, and do we need a new equilibrium?

Most of the authors engaged in this restatement see the current malaise afflicting the EU as the day of reckoning of Europe's legitimacy crisis, more specifically Europe's normative legitimacy. While Europe's legitimacy crisis is often discussed with reference to its perceived democratic deficit[81], and in balancing between input and output legitimacy, the pressing concern now is much broader, and relates to the normative legitimacy of the construct of Europe[82].

It is important to recall that this normative legitimacy, the "indispensable oxygen[83]" of the European construct, was to be found in the equilibrium between the community's legal structure and its political process[84]. As Maduro notes, it was on the equilibrium between selective exit and voice that Joseph Weiler "base(d) so much of the legitimacy

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81 Perceived, because some authors, notably Moravcsik, have argued that concerns regarding the EU's democratic deficit are misplaced: "EU decision-making procedures, including those that insulate or delegate certain decisions, are very much in line with the general practice of most modern democracies in carrying out similar functions" (Moravcsik 2002, 621-622); Others, like Depaigne, go further and note that this type of legitimacy gap "is a feature of the contemporary secular state" (Depaigne 2017);

82 Normative legitimacy as opposed to social legitimacy. According to Weiler:

"There are two basic genres – languages vocabularies – of legitimacy: normative and social. The vocabulary of normative legitimacy is moral ethical, and it is informed by political theory. It is an objective measure even though there will be obvious ideological differences as to what should be considered legitimate governance. Social legitimacy is empirical assessed measured with the tools of social science. It is a subjective measure, social attitudes. It is not a measurement of popularity, but of a deeper form-of acceptance of the politico-regime." (Maduro and Wind 2017, 335)

83 (Maduro and Wind 2017, 334);

84 In Weiler's analysis of his own article and on the European crisis: "the central thesis of the (ToE) concerned a relationship – complex at times – between Community legal structure (constitutionalism, normative supranationalism, "Exit") and Community political process (institutionalism, decisional supranationalism, "Voice")". (Maduro and Wind 2017, 93)

Weiler had suggested, or perhaps hoped, that the equilibrium model itself would remain static[86] - that member states were locked in a Nash equilibrium, where the best possible outcome for each member would be not to detract unilaterally from the EU. While recognizing that the relationship in this community model would be one of "uneasy co-existence", Weiler assumed that the Community and the member states would be tethered by a "an ever-increasing embrace"[87].

It should be noted that in Maduro's constitutional pluralism the equilibrium is framed slightly differently - what sustains Europe's constitutional legitimacy is not the tension between selective exit and voice, but instead "competing (heterarchical, but equal) constitutional claims of final authority" made by both the EU and member states[88].

We could argue that both equilibriums have been shattered[89]: Brexit seems to have ended the permanent embrace between Member States and the Union; and the measures enacted to constitutionalize certain budgetary constraints in the European economic order, in response to the monetary and financial crisis, seem to shatter the notion of competing equal authority between national constitutions orders among themselves and

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85 (Maduro and Wind 2017, 318);

86 Maduro seems to hint at this when he notes that Weiler "presents the project as having a permanent incremental nature"; p 318;

87 (J. H. Weiler 1991, 2481);

88 (Maduro and Wind 2017, 319); Maduro makes the claim that "heterarchy is superior to hierarchy as a normative ideal for the European Union" and that "the question of final authority ought to be left open"; He also notes that "it is that practice of constitutional pluralism that is itself constitutive of the legitimacy of EU law" (*idem*, 320);

89 In 2011, in a draft paper presented in a panel talk at Catolica, I had already put forward the idea that the paradigm between exit and voice had been *de facto* shattered, that exit had been replaced by exodus;

between the EU[90]

Both models therefore face the same challenge. They both need to preserve the equilibrium on which their model rests upon - they need to "preserve that permanent tension between equal claims of final normative authority[91]". I will argue in chapter four that this might not necessarily be true, and that it results from false dichotomies within these theories.

Nonetheless, if in fact a state of equilibrium between EU and member state authority is required as the constitutive element of the EU's legitimacy, and seeing that said equilibrium is being challenged, then the solution to the EU's crisis is to either find a new equilibrium or be forced to find a new source of legitimacy.

With regards to finding a new equilibrium, Maduro suggests that we no longer need to rely on the tension between exit and voice, which sustained the foundational period of the EU[92]. Maduro argues that underpinning the constitutionalization of Europe is a normative and sovereign authority stemming directly from the peoples of Europe[93]. The normative authority of the EU's legal order at times competes with and is complemented

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90 Adams, Fabbrini and Larouche's work on "The Constitutionalization of European Budgetary Constraints" 2016, and Beukers, de Witte and Kilpatricks' "Constitutional change through Euro-Crisis Law" 2017, denote how such a claim can be sustained – "sovereign debt loan assistance and the new macroeconomic regime are often described as a shift from soft law to hard law and to the creation of a social straitjacket for the Member Sates". Page 14; in a similar vein, Maduro: "this intergovernmental challenge to constitutionalism is severely aggravated by the increased majoritarian character of EU polity" …there could be nothing worse than a form of intergovernmental majoritarianism" page 327;

91 (Maduro and Wind 2017, 320);

92 *Idem;*

93 "The treaty is presented as more than an agreement between States; it is an agreement between the peoples of Europe that established a direct relationship between EU law and those peoples. (…) The treaties were constituted by and constituted a new sovereign authority, distinct from the States but founded on the peoples of those States." (Maduro and Wind 2017, 321)

by an increased "independent political authority" of the member states[94]. How can we restore the equilibrium between them? Maduro argues that we must first understand the four dimensions of the current crisis, which he summarizes as follows:

1) There is cognitive dissonance between the EU and its peoples – born out of unrealistic expectations regarding the benefits of the European project, particularly with regards to areas where the EU has little competence to intervene (324)[95] [96]. In fact, more often than not, the true benefits of European integration are of a diffuse nature, they relate to peace, to sustainable growth and social development, and to the protection and furtherance of human rights both at "home" and beyond the EU. The cognitive dissonance also occurs as a result of perceptions regarding the costs of EU membership - particularly throughout the EU's financial crisis, when a perception of transference of wealth between some states to others occurred.

2) There is a political gap within the integration process: and resulting from the gap between negative and positive integration[97]; and resulting from the EU's democratic legitimacy, and from insufficient direct representation or communication between the

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94 "the autonomy to define the forms and goals of its political action" , *idem* at 322;

95 Maduro notes how EU citizens "expect more from the Union (in) matters such as economic growth social solidarity, promotion of peace and democracy, and fighting crime and unemployment, all areas where the European Union either has competences or has only limited instruments to intervene" page 324; Dervis however frames this dissonance differently - more attuned to the intelligibility of the EU by its citizens. "the perceived decline in "democratic legitimacy" of the European institutions is due to a growing gap between what the citizens of Europe can understand, follow, debate, and take into account when voting, and the decisions and policies of their leaders and parliaments"; (Dervis and Mistral 2014, 176)

96 Former EC President Durao Barroso referred this as the expectations gap – "people expect more than the political system can deliver." (Durão Barroso 2014);

97 What Durao Barroso referred to as the legitimacy gap;

European institutions and the peoples of Europe, generating the perception that social and economic policies are enacted without sufficient debate;[98];

3) The EU is struggling with the paradox of inclusion, more specifically with over-inclusion, which becomes a threat to the process of integration. Maduro considers how the prerogative to prefer one's own is not only the right, but one of the necessary conditions for a successful political community – "to deny to national political communities the right (…) to still prefer their own would deny their existence"[99].

4) There is a constitutional gap within the integration process. Maduro sees this as a product of the equilibrium thesis, and the tension left over from the foundational period between "normative constitutionalism and political intergovernmentalism". The constitutional gap is also a paradox, for despite the EU's strong claim of constitutional authority and the increase in the process of legal Europeanisation, European politics and policies remain largely within the purview of intergovernmental bargaining[100]. In the EU's own iteration of "one country, two systems", EU citizens are subjects of a supranational constitutional order, whose rules and policies are decided mostly through self-interested interstate bargaining. This has two negative consequences: first, it prevents adequate political accountability at both the supranational and national levels;

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98 Maduro claims that this particularly evident if we consider the Euro crisis, and how "European politics are still national politics that have not even adequately internalized the European dimension of policies" (page 325). Maduro criticizes "the incapacity of national politics to internalize interdependence leads to a failure of European policies in the absence of genuine European politics" (pages 325-326);

99 Idem page 326; but consider competing arguments in Habermas (Inclusion of the Other); and Arendt (The Origin of Totalitarianism);

100 "National governments aggregate the preferences of their citizens and EU policies strike a balance between those aggregated preferences." (Maduro and Wind 2017, 327);

and it allows for the displacement of political costs that arise out of unpopular decisions.

The constitutional gap takes on a more serious proportion when we consider, as Maduro does, that qualified majority is the most widely used voting method in the Council; and that the composition of the European Parliament is proportionate to a member state's population. The greater danger therefore is not that EU politics are a product of intergovernmentalism, but increasingly that European politics might result from the bargaining of intergovernmental majoritarianism.

Weiler on the other hand seems to attribute greater weight to the EU's political deficit as the main challenge to the EU's normative legitimacy[101]. Weiler's concept of political deficit is a broader crystallization of the EU's political gap; it relates to both structures of political representation and accountability – "the two primordial features of any functioning democracy"[102]. The very structure of the EU, Weiler argues, negates these two fundamental principles[103]: EU citizens feel distanced from decision-making processes; and when dissatisfied with EU policies, they feel that there are no avenues to voice those dissatisfactions and impose the political cost of what are perceived to be bad decisions. Weiler's view is shared by former EC President Barroso[104], who argued that the political issue was Europe's greatest concern: "the political issue is indeed the first

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101 Weiler notes how "the political deficit, to use the felicitous phrase of Renaud Dehors is at the core of the democracy deficit." *Idem* page 340;

102 *Idem* page 339;

103 "Thus the two most primordial norms of democracy, the principle of accountability and the principle of representation are compromised in the very structure and process of the Union." Page 341;

104 Barroso notes "the stark dilemma that is at the heart of the discussion on the future: when the people do not like a national decision, they usually vote against the decision-maker. If they do not like a European decision, they tend to turn against Europe itself." (Durão Barroso 2014)

one that must be addressed. If I get the question 'so, what is the real problem?', I would say 'It's the politics, stupid!'"

An issue of loyalty.

Having identified the challenges that the EU faces, the legal orthodoxy 2.0 moves on to their solution – loyalty. As we shall see, the sense that the European project requires loyalty is a recurring argument within the orthodoxy 2.0, as well as in many other recent integration narratives, and political statements after the European crisis. But how can loyalty solve the issues afflicting the integration project, and what's in its concept? Maduro and Weiler seem to have different answers.

Weiler's political messianism and hard loyalty.

It is curious why Weiler chose "the things that do not transform" as the title to his recent restatement of his transformation anthology, seeing that he acknowledges that the two main premises that sustained the integration project have been shattered, namely the equilibrium thesis[105], and Europe's original political messianism. The combination of these two failures has led to the unique situation which Weiler believes the integration project finds itself in, where the two modes of EU governance – supranationalism, and for the first time, intergovernmentalism [106] – cannot find a solution to Europe's

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105 Weiler restates the equilibrium thesis as follows: "the equilibrium between legal structure (as a proxy for the institutional edifice of European integration) and legitimation rooted in national polities" (Maduro and Wind 2017, 334);

106 As Weiler notes: "it has become self-evident that crafting a European solution has become so difficult, that the institutions and the Union decision-making process do not seem to be engaging satisfactorily and effectively with the crisis, even when employing the intergovernmental methodology." *Idem* page 336;

problems[107].

The equilibrium within the European construct, which was the foundation of Europe's normative legitimacy, can no longer be sustained as a result of "the tragic nature of the European construct" and the demands of national legitimation[108]. Brexit and the uncertainty regarding the EU's future are not the cause of the EU's legitimacy crisis, they are its symptoms. But perhaps equilibrium is not required after all, what is required is loyalty. Weiler, Maduro notes, "expect(s) loyalty to replace the equilibrium and not to be an element of a new equilibrium[109]".

Before addressing how we can accrue loyalty for the integration process, and how loyalty relates to the EU's normative legitimacy, the more pertinent question should be, whose loyalty? If both supranational and intergovernmental mechanisms are failing to provide legitimacy to the European project, then Weiler believes it is up to the member states to rescue the EU[110]. Weiler suggests that this enacts another paradigm shift, recalling Milward's thesis on "the European rescue of the Nation State"[111]. It is my view that legitimacy and loyalty – in Weilerian terms – have always been a synallagmatic blood pact between the EU and its Member States, and I vividly recall a brilliant lecture by Karines Caunes suggesting that the EU's legitimacy could just as easily be

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[107] Weiler describes this as the "double failure of institutional legitimacy, of Parliament and of Council. Of supranationalism and intergovernmentalism" *idem* page 342;

[108] "in my current work I have come to understand the tragic nature of the European construct. A satisfactory democratic legitimation will, I have come to think, necessarily come at the expense of the normative nobility of constitutional tolerance." *Idem*;

[109] (Maduro and Wind 2017, 328);

[110] "the legitimacy resources of the European Union – referring here mostly to social legitimacy – are depleted, and that is why the Union has had to turn to the Member States for salvation." *Idem* 336;

[111] "The pendulum has swung, and in the present crisis it will be the nation-state rescue of the European Union." *Idem* page 336;

understood as stemming from the 28 nation states, and not from the constitutional or intergovernmental construct. The question remains, how do we accrue loyalty, and how can loyalty become the new source of the EU's normative legitimacy?

Moving beyond the classic dichotomy between input (process) and output (result) legitimacy - yet another false binary – Weiler identifies political messianism as the third and most important source of European integration legitimacy [112], and loyalty is eventually construed through political messianism. To understand Weiler's political messianism we must recall how Europe's political deficit features prominently in his understanding of the current crisis – echoing Barroso, it's the politics stupid, it's not having accountability nor representation. But it is also that we have mistakenly put our faith in output processes to solve the EU's legitimacy issue – Europe's misguided bread and circuses promise to sustain its democracy [113]. Weiler now thinks that output legitimacy is not as relevant because Europe's legitimacy has always been rooted in political messianism – the true mobilizing force of European integration.

"In political messianism, the justification for action and its mobilizing force derive not from process, as in classical democracy, or from result and success, but from the ideal pursued, the destiny to be achieved, the 'promised Land' waiting at the end of the road. Indeed, in messianic visions the end always trumps the means." (Maduro

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112 What Weiler refers to also as "telos legitimacy": "whereby legitimacy is gained neither by process nor output but by promise, the promise of an attractive Promised Land" *idem* page 337;

113 The "panem et circenses approach to democracy". Refining his earlier views, he no longer thinks that "outcome legitimacy explains all or perhaps even most of the mobilizing force of European construct." *Idem* page 343;

According to Weiler, political messianism, as penned in the Schuman Declaration, was the birth of the European project, as it gave rise to aspirations of a certain idea and ideal of Europe[114]. Although he focuses mainly on the Schuman "manifesto", it is easy to imagine an anthology of speeches and writings from the many founding mothers and fathers of the European Idea, like Spinelli[115], Churchill[116], Hirschmann[117], Jean Monnet, Spaak[118], and Veil[119], to name just a few.

In fact, the words of Simone Veil seem so present in many of the narratives and political statements addressing the European crisis:

"We all know that these challenges, which are being felt throughout

Europe with equal intensity, can only be effectively met through solidarity.

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114 "A compelling vision which has animated now at least three generations of European idealists where the 'ever closer union among the people of Europe, with peace and prosperity an icing on the cake, constitutes the beckoning promised land."; (Maduro and Wind 2017, 347)

115 Who together with Ernesto Rossi wrote the "Manifesto of Ventotene" in 1941 while under house arrest. The manifesto called for a free and united Europe;

116 Who on several occasions passionately advocated for a federalist United States of Europe;

117 One of the founders of the European Federalist Movement along with Spinelli;

118 The Spaak Report "was the basis of the Intergovernmental Conference on the Common Market and Euratom in 1956' see https://europa.eu/european-union/sites/europaeu/files/docs/body/paul-henri_spaak_en.pdf

119 Simone Veil was the first president of the first directly-elected European Parliament, and the first woman president of any EU institution. In her speech she famously said that "the challenge of peace, the challenge of freedom and the challenge of prosperity, (…) can only be met through the European dimension." See https://www.cvce.eu/content/publication/1999/1/1/174d384d-d5c7-4c02-ad78-b1f6efc9740a/publishable_en.pdf

Beside the superpowers, only Europe as a whole is capable of taking the

necessary action which is beyond its individual members in isolation.

However, in order to take effective action the European Communities must

unite and gather strength. (...) If the challenges facing Europe are to be met,

we need a Europe capable of solidarity, of independence and of

cooperation.[120]"

But sadly, prophetically and inevitably[121], the EU's original political messianism has failed to deliver the promised land, and that failure has brought about the collapse of the EU's normative legitimacy, and strong resentment against the integration project itself[122]. Weiler recognizes that failure is within the very nature of political messianism, which is be best understood as a catalyst for more permanent normative structures, and never intended to replace them. At this unique crossroads Europe requires one or the other. The integration project requires a new political messianism, or more permanent

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120 Speech by Simone Veil (Strasbourg, 17 July 1979), available at: https://www.cvce.eu/content/publication/1999/1/1/174d384d-d5c7-4c02-ad78-b1f6efc9740a/publishable_en.pdf

121 *"part of the very phenomenology of political messianism is that it always collapses as a mechanism for mobilization and legitimation. It obviously collapses when the messianic project fails. When the revolution does not come. But interestingly, and more germane to the narrative of European integration, even when successful it sows its seeds of collapse. At one level the collapse is inevitable, part of the very phenomenology of the messianic project. Reality is always more complicated, challenging, banal, and ultimately less satisfying than the dream which preceded it. The result is not only absence of mobilization and legitimation, but actual rancor."* (Maduro and Wind 2017, 351);

122 The "global wave of populism" that reverberated throughout 2016 certainly had an impact in the demise of Europe's original political messianism, but as we shall see failure is a necessary condition of political messianism. Regarding the populist movements in 2016 see: https://www.washingtonpost.com/news/worldviews/wp/2016/12/19/the-global-wave-of-populism-that-turned-2016-upside-down/?noredirect=on&utm_term=.1ec71566d849

normative structures on which to anchor its legitimacy.

It is unclear what Weiler thinks regarding this, as he devotes less than a full page to what should be the answer to Europe's future. It seems unlikely that a new political messianism would be possible, seeing that the necessary supranational and even intergovernmental reservoirs of legitimacy, credibility and capability are depleted.

The answer seems to be that the EU might require hard loyalty from the member states themselves – "it will be national parliaments, national judiciaries, national media, and, yes national governments who will have to lend their legitimacy to a solution which inevitably will involve yet a higher degree of integration[123]". The only doubt that remains is if the member states are able to take such a step, and Weiler ends his narrative with precisely this question[124].

Maduro's new equilibrium and soft loyalty.

Maduro's narrative starts with the same realization, that the foundational equilibrium supporting his constitutional pluralism thesis has been shattered[125], but, unlike Weiler, Maduro believes that a new equilibrium is not only possible but might actually solve Europe's legitimacy crisis. Maduro finds this new equilibrium in his unique interplay between exit, voice and loyalty, where loyalty is molded in very

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123 This will entail the "primacy of the national communities as the deepest source of legitimacy of the integration project" *idem* page 351;

124 "What do we do if we find that those national reservoirs are running low and in some cases even depleted?" *idem* page 351;

125 Idem page 328;

different terms than Weiler envisioned it and relies on what Maduro calls systemic voice.

Weiler's hard loyalty seems to demand an act of volition, faith and allegiance – a kind of rollcall to European integration that asks, very much like Weiler does in his classroom, "are you with me?!". Maduro's soft loyalty is different, it is not empirically binary - yes or no - it is normative in nature, it is the product of our estimation of our ability to influence the integration project, and therefore it can be measured and, more importantly, it can be affected and incentivized by rules, values and processes[126]. Loyalty depends heavily on what Maduro will identify as systemic voice.

Maduro starts his approach by asking "what kind of rules, values or processes are necessary to secure to all EU citizens an equal estimation of influence?"[127]   The answer relates to Maduro's new conception of systemic voice which is tethered to three necessary conditions: a systemic identity between the fundamental values of the EU and its member states; the creation of a platform for ideological-based proxy politics, as opposed to state-based proxy politics – a new form of truly direct representation[128]; and a fluid majoritarian system which prevents the homogenization of winners and losers[129], and limits zero-sum outcomes[130].

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126 Borrowing from Hirschman, Maduro defines loyalty as "the result of the extent to which a member estimates his or her possible influence" (…) meaning, "the estimate of their ability to influence the organization (in our case, the EU polity)" idem page 329;

127 idem page 329;

128 "A deliberative and institutional system favoring proxy politics (where national majorities can be more often than not replaced by cross-national ideological majorities" idem page 330;

129 "This guarantees to any citizen part of the minority in a particular decision a chance to be part of the majority in a different decision." Idem;

130 "Since those that compose the majority know that they can in the next deliberation be part of the minority and have therefore,

Maduro does not expand much further on this broad conceptualization of systemic voice beyond these three requirements. It is now up to the constitutional and intergovernmental structures of the EU to find this new equilibrium according to the guidelines and constraints of systemic voice. Even if it does, this new equilibrium might bring about additional risks, such as the increase of selective exit, and the increase of national constitutional challenges to the EU.

Assessment of the classic narratives.

Due to the importance of these orthodoxic narratives in the epistemological construction of the integration process, it is appropriate to offer the following brief thoughts before moving forward.

Were we asked to explain the content and the merit of these theories to a layman friend, without the rigidity and complexity with which the integration language and meta-language has evolved, we would simply say that these theories have incredible merit but at the same time are too intellectual. They work and operate within the confines of the minds of brilliant scholars who have given these issues unparallel thought, but they are built in reverse hoping to achieve a desired outcome, and they are built without getting their hands dirty in data, in empirical evidence, European realism, and without an honest exchange with the European commoners. I think our layman friend would understand.

By all means, legal ontology should be aspirational, and noble, but legal

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an incentive to internalize some of the interests of the losing minority." Idem;

epistemology must be ideologically neutral and open. Legal ontology should be Joseph Weiler, but legal epistemology should be more akin to Francis Bacon.

Criticism of the orthodoxy 1.0 has been well articulated over the years and have focused on a certain bias towards supranational governance to explain the integration process. Martinsen for instance notes how in "our reliance on the constitutional transformation of the Community legal order, we have tended to treat law and the role of the CJEU uncritically as instruments of integration, disregarding the more complex interplay of law and politics [131]". Criticism also questions these narratives' pro-integration bias (see Scharpf; Martinsen), praising the role of the CJEU when actively engaged in the construction of Europe, but overlooking occasions when "the court was ignored or constrained by political, administrative, and constitutional counteractions"[132].

With regards to the normative premises of the orthodoxy 2.0, several questions come immediately to mind. Even if we accept that loyalty can answer Europe's ontological question, it is hard to envision how it can answer Europe's epistemological question. What this means is that, even if we accept that loyalty can be a solution to the current European crisis, it is necessarily only a temporary solution.

But this is probably not the first criticism the orthodoxy 2.0 would be subject to in an open debate. The first question would be: why loyalty, why now? The more provocative scholars would not resist asking why loyalty was never properly considered

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[131] He further notes how "in our preoccupation with judicial power, we have neglected to study the various ways in which legislative politics may respond to law". (Martinsen 2015);

[132] Idem;

as part of the essential equilibrium of the integration process, of its normative legitimacy, or as an essential component of constitutional pluralism, even though it was a component of Hirschman's triad which heavily influenced Weiler's seminal piece. More provocatively still, if political messianism or systemic voice are such an important source of EU legitimacy[133], how have they been overlooked for so long in favor of input/output considerations?

The orthodoxy 2.0 presents a compelling upgraded narrative of European integration, but these questions raise the same concerns expressed in the past. Normatively, they demonstrate a bias towards integration, and Europe's constitutional ideal; epistemologically, they are engineered in reverse from that same desired outcome – the top down approach so characteristic within integration theory. The analysis of the causes of the European crisis is therefore narrowly construed, referring broadly to certain normative gaps and deficits within the EU's construct. The understandings of the challenges that Europe faces seem to be the product of a certain normative intuition, and not of an empirical analysis, or in contrast with the actual issues affecting the integration project. It is important to stress that this is not necessarily wrong, and that the normative analysis that the orthodoxy engage in is first among any equal. But it is a purposive analysis, it is grasping at refinements of previous concepts and structures to achieve the same desired outcomes, and in some cases, asking for a Hail Mary.

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133 Recall how Weiler states: "there is a third type of legitimation which, in my view, played for a long time a much larger role is currently acknowledged. In fact in my view, it has been decisive to the legitimacy of Europe and to the positive response of both the political class and citizens at large. I will also argue that it is the key to a crucial element in the Union's political culture." (Maduro and Wind 2017, 345);

Maduro's refined systemic voice asks as its first condition for a systemic identity between the fundamental values of the Union with those of its member states, however, the recent tensions between the EU and both Hungary and Poland, arguably more so than Brexit itself, highlight how systemic identity is not something that we can take for granted.

The EU is premised on values held to be so fundamental that they allow for no derogation. Those values, such as respect for the rule of law, human rights and human dignity are listed in article 2TEU. The Treaty has a specific mechanism – article 7 TEU, colloquially referred to as the EU's nuclear option - to impose the highest political sanction possible on Member States detracting from those values. Should a Member State be found in breach of article 2 TEU values, said member state might find its voting rights suspended in the Council. To this day, article 7 procedures have only been initiated against Poland (2017[134]) and Hungary (2018[135]).

The very first hurdle for systemic voice is facing a great challenge, but even hurdles two and three – a cross-national proxy voting system which allows for fluid, issue-based, majoritarianisms – require a level of supranational institutional support, and intergovernmental political accord that is currently almost unattainable[136]. Maduro's soft loyalty approach, one that continues to rely on constitutional pluralism, might just not be feasible.

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134 See http://europa.eu/rapid/press-release_IP-17-5367_en.htm

135 See http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0340+0+DOC+PDF+V0//EN

136 See footnote 106;

Weiler acknowledges fully that both modes of European governance are struggling to function efficiently, and that is perhaps why he foregoes a soft loyalty approach and doesn't revisit the equilibrium thesis. Weiler seems to suggest that, apart from an unlikely new political messianism, the only solution for Europe now lies with hard loyalty. As mentioned before, political messianism is only a temporary fix, as it is always self-defeating. Hard loyalty however requires an act of volition by the nation states themselves, and by their citizens, a sort of new and final *pouvoir constituant européen*. That need is perhaps the only one thing that truly does not transform, it's the only final solution, but has the will of the peoples of Europe for such a solution already been depleted?

Loyalty speaks to the possibility of the European peoples to willingly bear the cost of an imperfect integration process, and in that sense, it is a solution to Europe's current crisis. Nonetheless, loyalty *per se* would only provide a temporary fix, as it does not address the epistemological and ontological structural deficiencies that threaten the cohesion of the EU.

Finally, Weiler's somewhat pessimistic assumption is that the original political messianism is dead is based on a belief that the EU failed to deliver upon its promised land. Surely this can't be the view that we take away from over 60 decades of European integration, a history of human rights protection, of social and democratic development, of one of the most integrated and efficient internal markets ever created, and of shared hopes and ideas. If we never knew what the EU truly is, how can we measure what it has given us? It has failed to give us a European constitution, but maybe we never needed one to begin with.

1.3 A review of fringe narratives[137].

Joseph Weiler and the legal orthodoxy of integration theory helped spawn an insatiable interest in the construct of the European project and contributed greatly to the enrichment of this field[138]. They also inspired alternative narratives offering competing views of the integration process, narratives which provided their own premises on what comprises and sustains the integration process.

Scholars like Joerges, Lindseth and Isiksel have attempted to reconstruct the legal nature of the EU in different ways - as *conflicts-law constitutionalism, administrative governance*, and *functionalist constitutionalism* respectively. These and other works are relevant for several reasons. First, because they have been successful in identifying and addressing many of the criticisms of the classic narrative, and in resolving some of the paradoxes of European Integration. Secondly because they challenge the cognitive dissonance between Europe's classic legal narratives and the actual developments within the EU. Thirdly, particularly in the case of Isiksel and Lindseth, because they offer insights into the future of academic transnational statecraft, and they attempt to resolve the paradox between institution and market building[139].

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137 For the purposes of this project, I define fringe narratives as those who have offer a competing story of European integration, often challenging or simply improving upon the classic orthodoxy;

138 Neergaard and Wind comment on Weiler's broad influence: "there is little doubt that it was the 'EU Law in Context' approach itself – and probably Weiler in person who parked the interest in legal integration in Europe by political scientists". (Neergaard and Nielsen 2012, 279);

139 Lindseth and Isiksel are second generation EU scholars (i.e. scholars born into the classic narrative), both share many of the same classic references and influences; and yet both accept – to an extent – the EU's democratic deficit to enact constitutional governance. Instead of trying – as the classic scholarship attempted – to find different measures for legitimacy in supranational law,

Normative premises of the fringe narratives of integration theory:

As previously, I will start by highlighting the main features and premises of the fringe narratives, and attempt to isolate their normative and epistemological added value to the field of integration theory.

Challenging the premises of the classic framework[140][141] - an issue with categorization

Fringe narratives such as Joerges' have the merit of attempting to erode the classic theory "from the glorious past (and its) expectation that Europe's integration could, and indeed should, be accomplished through law"[142].

Isiksel and Lindseth rely on the functional imperatives of creating and maintaining the EU to reconstruct the framework of European Integration, based on their concepts of functional constitutionalism and administrative governance, respectively. Whereas Lindseth completely foregoes constitutionalism as a feature of EU Law, and in that sense breaks completely away from the classic narrative, Isiksel attempts to give it continuity, with a more refined version of constitutionalism at a supranational level;

140 "such images of the Court, the legal order and their role in the integration process have been under challenge, from both within and outside the legal academic community. (…) the assumptions of the integrative potential of law that were inherent in many lawyer's accounts have been questioned." Jo Hunt and Jo Shaw p 94;

141 "there has been a significant questioning of the 'heroic' vision of the Court, and of the existence of an inherently integrative constitutionalisation process – not everyone subscribes to the fairy tale of Luxembourg." Jo Hunt and Jo Shaw p 96; "recent scholarship often transcends the Court-centred emphasis of early years of EU legal scholarship." Jo Hunt and Jo Shaw p 96; "such an account has been demonstrated as being based on assumptions about the Court and the law which are open to question. Such assumptions have been shown to be partial and fallacious, as they overstate the integrative capacity of law, and posit a view of the case law as progressing ineluctably to a particular constitutional finalité." Jo Hunt and Jo Shaw p 101;

142 (Joerges and Glinski 2014, 25); Joerges clearly states elsewhere that his *conflicts-law constitutionalism* approach "was designed as a counter-move to the orthodoxy of European legal doctrines and an alternative to the mainstream of European constitutionalism, on the one hand, and a defense of the integration project against both the gradual destruction of Europe's welfarist legacy and its clandestine de-legalization, on the other – with the constructive ambition to defend the European commitments to democratic governance and the rule of law." (Joerges 2012);

As we have seen, the classic legal scholarship developed a theory of legal integration based on how the constitutionalization of Europe came about, through the judicial activism of the CJEU, and the preliminary reference system that enable it. From the emergence of what they found to be judicial constitutional doctrines, they theorized that the integration process was mainly driven by law – what became known and celebrated as the "integration through law" approach.

The legal orthodoxy took cases such as *Van Gend & Loos*[143]*, Costa v ENEL*[144]*, ERTA*[145], and *Internationale Handelgesellschaft*[146] and found that the CJEU had created four constitutional doctrines – of direct effect, supremacy, implied powers, and human rights respectively - that *de facto* created a European constitutional order[147], as the court itself recognized in *Les Verts*[148] when referring to the Community's "constitutional charter".

Recent narratives, while not necessarily questioning the importance of the EU's preliminary reference mechanism, and how important judicial doctrines resulted because of this unique system, do question however the significance of those doctrines, and how exactly they participate in the construct of Europe.

The fringe narratives question the normative categorization enacted by the classic

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143 Van Gend en Loos v. Nederlandse Administratie der Belastingen, 1963 E. Comm. Ct. J. Rep. 1.;

144 Costa v. ENEL, 1964 E. Comm. Ct. J. Rep. 614;

145 Case 22/70. Commission of the European Communities v. Council of the European Communities, 1971 E.C.R. 263;

146 Internationale Handelgesellschaft v. Einfuhr-Und Vorratsstelle Getreide und Futtermittel, 1970 E. Comm. Ct. J. Rep. 1125;

147 One of the most reproduced sentences in Weiler's Transformation explains how these doctrines "fixed the relationship between Community law and Member State law and rendered that relationship indistinguishable from analogous legal relationships in constitutional federal states" (J. H. Weiler 1991, 2413);

148 Parti Ecologiste "Les Verts" v. European Parliament, 1986 E.C.R. 1339;

narratives, and the assumption that these doctrines create a constitutional order that both drives and constrains European integration[149]. Peter Lindseth, in addressing how the constitutional thesis suffers from an error in categorization[150], argues that the EU legal order is administrative in nature, and the integration process is a stage in the development of Europe's supranational administrative governance[151].

They also question the role that the CJEU has played in the integration process[152], and Hjalte Rasmussen goes further, characterizing the Court as an anti-hero, highlighting the EU's problematic democratic legitimacy and its judicial activism, advocating for judicial self-restraint from the CJEU[153]. But even when not going as far as Rasmussen did, the fringe narratives weigh the CJEU's judicial doctrines within Europe's epistemological question, *i.e.* they measure how these doctrines actually affect the integration process, without the doctrinal draping of the classic narratives. In that sense they contribute to a more systematic understanding of the EU, categorizing events such as these as inputs to the integration process.

Finally, scholars like Lindseth further challenge the classic assumption – at least

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149 Matej Avbelj has challenged what he calls the practice of constitutional labeling. "Beyond constitutional nominalism, that is, beyond the pervasive constitutional labeling, what kind of constitutionalism are we actually talking about?" (Avbelj 2008, 2)

150 "To put it bluntly, European governance is administrative, not constitutional (…) with a ruling legitimacy still ultimately derived from the historically constituted bodies of representative government on the national level." (Lindseth 2010, 1)

151 (Lindseth 2010, 58);

152 Recall Lindseth questioning the weight of all supranational institutions in the legitimacy of the construct of Europe: "the legitimation of supranational regulatory power (…) has never been successfully located supranationally, whether in the elections to the EP, in the deliberations of the EC, or even, dare I say it, in the judgments of the ECJ, the ultimate bastion of a seeming supranational constitutionalism." Idem at page 19;

153 (Rasmussen 1986);

with regards to the orthodoxy 1.0 – that the source of the EU's legitimacy is to be found supranationally. They argue instead that it is the treaties that allow for and empower the integration process, proving once again that the construct of Europe is administrative and not constitutional[154].

Adopting a methodological shift from doctrinal legal research to functionalism;

Most alternative narratives of European integration recognize the methodological shortcomings of the classic legal theory[155], which relied on doctrinal interpretations of the CJEU's case law, in the black-letter law tradition[156]. Recent works, from scholars such as Isiksel and Lindseth, have shifted their methodological approach from interpreting the normative imperatives of the EU's supranational order to uncovering and understanding the functional necessities of European integration. Both authors have adopted a functional approach in deconstructing the legal nature of the EU, to develop their concepts of functional constitutionalism and administrative governance,

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154 Lidnseth argues that the legitimacy of the integration process "has been located, however tenuously, in the enabling treaties themselves, akin to enabling legislation on the national level, empowering the supranational exercise of regulatory discretion within the capacious limits defined by those treaties. (…) This empowerment and authorization is best understood as another expression of the administrative, not constitutional character of integration" idem;

155 De Burca: "The assumption that law does play a significant role in the integration process, and a role which generally furthers rather than hinders economic and political integration, is one which (…) has usually been made without thorough methodological inquiry or solid evidential backing." P 313;

156 Hesselink: "(…) traditional legal scholarship may be characterized as both positivistic and dogmatic.1 The internal perspective is the perspective of the judge. The aim is to become an oracle of the law. The ideal legal scientist is very similar to Dworkin's Hercules, 'an imaginary judge of superhuman intellectual power and patience who accepts law as integrity'. This explains why the method of legal research and the method of adjudication ('finding the law') have traditionally been assimilated." In "A European legal method? On European Private Law and Scientific Method" European Law Journal, Vol. 15, No. 1, January 2009, p. 21;

respectively.

Isiksel repurposes the constitutional thesis to serve the "functional imperatives of creating and maintaining an economic union"[157]. Isiksel argues that the EU's legitimacy claim is dependent on efficient governance of its constitutional machinery[158].

Lindseth's functionalism is tied in to his understanding of the sources of the EU's legitimacy. Having argued, as seen above, that the EU has failed to attain democratic or constitutional legitimacy "in its own right"[159], he concludes that the EU should be understood as having only mediated legitimacy – that it exercises powers that are delegated to it by member states, and that its autonomy extends no further than functionally delimited areas of policy.

Perhaps the greatest methodological shift from the classic orthodoxy is Joerge's novel approach, which was inspired by legal realism[160], by the conflict's revolution in America, and particularly by Curie's governmental interest analysis[161]. Joerges suggests

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157 Isiksel adds that the EU's imperative is to create "a policy space that encompasses a single market, monetary union, exhaustive fiscal coordination, and regulatory powers ranging from consumer protection to environmental standards." (Isiksel 2016, 7);

158 Recognizing that the EU's authority "does not comfortably map onto either liberal or democratic conceptions of constitutional legitimacy" – at page 6 – she argues that "the EU has produced a qualitatively distinct form of constitutional practice, one whose authority is justified by a claim to govern effectively rather than with reference to traditional principles of popular sovereignty and individual liberty" – idem at page 6. She then considers that "the use of constitutional mechanisms to augment the governing capacity (…) is not specific to the supranational domain. (…and) effective government is a ubiquitous but underemphasized justification for constitutional authority in the domestic context. (… however) the EU is distinctive for the degree of its reliance on this particular justification of constitutional authority." (Isiksel 2016, 8);

159 (Lindseth 2010, 1);

160 "the conflicts-law approach is not meant as an artificial juxtaposition to positive European law, but it does claim to take up the legacy of legal realism, and, hence, to articulate that law's "real life", to help us to see what the law "does". (Joerges 2010, 27)

161 "Joerges calls for an idea of European law as a type of supranational law of conflict of laws based on American conflict of laws methodologies" (Joerges 2005, 2)

reconfiguring EU law "as a new type of supranational conflicts law"[162],

Reframing the EU's legal order – providing alternative narratives of European integration

The methodological shift highlighted above has prompted some scholars to look beyond the established nominal constitutional labels of European integration and reframe the legal nature of the EU. As seen above, recent works have suggested various different categorizations for the EU's legal order, such as administrative governance[163] and functional constitutionalism[164]. Another narrative, and one of the most influential competing constructs of European integration from the legal camp, is Joerges' conflicts-law constitutionalism (c-l-c narrative)[165], a compromise between intergovernmentalism and federalism, what Joerges offers as the "third way"[166] for the European project.

Joerges's c-l-c builds upon Habermas' discourse theory of law[167], focusing on the conflicts between social and systems integration – *i.e.* between the demands of social normativity and regulatory discipline, and the demands of modern markets[168]. The core

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162 (Joerges 2010, 21);

163 Lindseth, Peter L. Power and Legitimacy. Oxford University Press, 2010;

164 Isiksel, Turkuler. Europe's Functional Constitution. Oxford University Press, 2016;

165 (Joerges, Conflicts-Law Constitutionalism: Ambitions and Problems 2012);

166 Joerges argues that "the sustainability of the whole European project seems to depend upon the construction and institutionalisation of a "third way" between (…) the defence of the nation state, on the one hand, and federalist or quasi-federalist ambitions, on the other." (Joerges 2010, 1)

167 "Conflicts-Law Constitutionalism (…) provides an adaptation of the discourse theory of law to the postnational constellation." (Joerges and Glinski 2014, 2)

168 Recall Joerges' example: "In the context of the establishment of Europe's internal market, standardisation was to become the prime example of such arrangements. Standardisation is at the crossroads of economic efficiency and social responsibility. The

assumptions upon which the c-l-c narrative was built are that: (1) European law offers the possibility to overcome the structural democratic challenges of the individual nation states[169]; and furthermore (2) the needs of the peoples of Europe can no longer be met in isolation by each member state, rather they require a collective response[170]. These core assumptions give rise to three types of conflicts within the integration process: vertical, horizontal and diagonal[171], that call for a "deliberative supranationalism" between political and societal actors.

Taking into account the disintegrative elements of European integration:

The assumption that European integration operates through an expansion of the scope of centralized supranational governance is a feature of the centrality of law thesis[172] that Shaw[173] challenged over twenty years ago. At the core of this assumption

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balancing of these concerns is a political activity, but one with which the political systems and their administrative bodies cannot cope with on their own, not even at national level, let alone in the European Union." (Joerges 2012, 2)

169 Joerges argues that "under the impact of Europeanisation and globalization, contemporary societies experience an ever stronger schism between decision-makers and those who are impacted upon by decision-making." (Joerges 2010, 21-22) but also, "as a consequence of their manifold degree of interdependence, the Member States of the European Community/Union are no longer in a position to guarantee the democratic legitimacy of their policies." *Idem* page 23;

170 Joerges identifies "the eroding potential of nation states to cope autonomously with the concerns of their citizens" – at page 2 – based on the fact that "European societies (…) experience – in many domains – that they are not, or are no longer, in a position to ensure responses to their concerns autonomously but instead depend on transnational co-operation" (Joerges and Glinski 2014, 32);

171 (Joerges 2005, 15-16)

172 Dehousse and Weiler: "integration must be regarded as a process, leading gradually, with the passage of time, to an increase in the exchanges between the various societies concerned and to a more centralized form of government." p. 246;

173 Jo Shaw: "breaking the hitherto immutable link between law and the integration process and by highlighting strong disintegrationist elements in the present EU legal order. Placing integration and disintegration side by side makes it easier to make

lies the pro-integration bias that has been discussed above. Joerges alludes to this bias when revisiting Majone's technocratic narrative envisioning Europe as a regulatory state, whose "operational code is to prioritize integration over all other conceivable values including democracy"[174]. Disintegrative elements of the European integration process have been for the most part overlooked by the classic orthodoxy, or summarily pushed aside and accepted as part of the unique construct of Europe, such as when Weiler, as if addressing with Majone's operational code of European integration, states that "democracy is simply not part of the original vision of European integration[175]".

The merit of the fringe narratives, and of Shaw's in particular, is that they question the focus of the classic integration's heroic, noble and glorious sagas on pro-integration elements[176] – which Shaw identifies as "consensus; unity and cohesion; centrality; legitimacy and authority" – and ignore what she terms as "disintegrationist aspects" such as "diversity and difference; fragmentation; disruption; illegitimacy and weakness"[177]. Shaw and others allow for a more informed and candid debate to take place, acknowledging the many tensions and opposing forces within the integration process.

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a realistic assessment the current state of the EU legal order." In European Union Legal Studies in Crisis? Towards a New Dynamic. Oxford Journal of Legal Studies Vol. 16, No. 2 1996, p 253;

174 (Joerges 2010, 21);

175 (Maduro and Wind 2017, 350);

176 Shaw states that "scholarship which highlights the alleged primacy of integration should not be able to claim the status of a privileged discourse" (Shaw, European Union Legal Studies in Crisis? Towards a New Dynamic 1996, 241);

177 (Shaw, European Union Legal Studies in Crisis? Towards a New Dynamic 1996, 240);

Assessment of the fringe narratives.

The fringe narratives offer us, in varying degrees of separation from and contrast to, alternatives views of the European integration process that question the fundamental premises of the constitutional thesis and the classic narrative. Lindseth for example accepts that "European governance is of course multilevel and perhaps even polyarchical", but he refutes Europe's *sui generis* nature and that it is "autonomously constitutional as conventionally supposed"[178].

Perhaps the two greatest contributions of these narratives are that: they acknowledge and move away from the pro-integration and pro-constitutional bias of the classic theories; and moreover, they are willing to accept that the integration process is not an idyllic fairy tale[179], it not always noble and heroic, it has the same tensions, doubts and self-interests that pervade national law and politics, perhaps even more so.

But much of the legal realism that inspires this project is still only normative in essence and continues to lack substantial empirical data and analysis. These narratives, much like their classic predecessor, are written in a sea of words, of highly developed normative language and meta-language sprinkled with sporadic judicial case-studies. Their openness to the functional necessities of the EU, to the dark-side of the integration story, their adoption of legal realism, and their embrace of European realism, gave us hope that they could escape a purely ontological or normative approach to the European project, and, particularly in addressing those same functional necessities of the European process, begin a systematic, bottom-up driven, empirical analysis of the forces

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178 (Lindseth 2010, xiv)

179 Hunt J., Shaw J. (2009) Fairy Tale of Luxembourg? In (Phinnemore and Warleigh-Lack 2009);

that shape the integration process.

1.4 Chapter ONE Conclusions.

European integration narratives from the legal scholarship are sophisticated and thoughtful, but they remain for the most part within the confines of legal doctrine, tied to a pre-conceived normative framework of Europe – that of a supranational constitutional order. Even when fringe narratives have managed to break away from the classic constitutional construct, and from its pro-integration bias, they still cannot unshackle themselves from the normative ambition of European integration legal scholarship.

These narratives, as Van Hoecke notes, end up following the same patterns as all legal doctrine: they "(study) law as a normative system, limiting its 'empirical data' to legal texts and court decisions", foregoing the "study (of) legal reality, law as it is.[180]".

These theories therefore leave the epistemological question unanswered as they fail to ascertain how integration comes about. For example, it is hard to deny the important

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180 (Van Hoecke 2011, 2) Van Hoecke characterizes these doctrines as hermeneutic disciplines, and summarizes them as follows:

"Legal scholars collect empirical data (statutes, cases, etc), word hypotheses on their meaning and scope, which they test, using the classic canons of interpretation. In a next stage, they build theories (eg the direct binding force of European Union (EU) law), which they test and from which they derive new hypotheses (eg on the validity, meaning or scope of a domestic rule which conflicts with EU law)" idem at page 11;

Van Hoecke does not dispute that legal doctrine is an empirical social science by its own right, quoting Alf Ross he recalls how "the interpretation of the doctrinal study of law (…) rests upon the postulate that the principle of verification must apply also to this field of cognition – that the doctrinal study of law must be recognized as an empirical social science" idem page 5. However, "legal scholars are often interpreting texts and arguing about a choice among diverging interpretations. In this way, legal doctrine is a hermeneutic discipline" idem page 4;

role that the CJEU's judicial doctrines played in the construct of Europe – constitutionalizing or otherwise – but those doctrines were but one aspect of the European integration process. One of the strongest criticisms we can make regarding the classic orthodoxy of EU law is that it has mistakenly correlated the constitutionalization process with the integration process, by characterizing the EU as a *de facto* and *de jure* constitutional legal order, when in fact the constitutionalization process was and is in tension with other processes of European integration.

This correlation, between constitutionalization and integration, leads to two others that are likewise mistaken. First that the CJEU was the hero of the integration process, and the second, subtler but also more misleading, regarding primacy. The fact that EU Law has primacy over national law does not entail that the constitutional process has primacy over other processes and areas of European integration. By focusing solely on the CJEU's judicial doctrine and the constitutionalization process, and by enlarging the scope of primacy to the constitutional order over other areas of European integration including the legal order, the classic narrative became less sensitive to other inputs and events shaping Europe's development.

To put it a simpler way, the classic narrative defines the EU's legal order as constitutional, and then correlates the constitutionalization of Europe with European integration. My argument is that the constitutional order does not fully encompass Europe's legal order, it is just one part of Europe's legal order, in tension with subsidiarity, with the intergovernmentalism, with EU positive law as negotiated and bargained through the Treaties, with national Constitutional courts, with the sovereignty of Member States, and with the democratic deficit that is owed to the peoples of Europe.

In turn, the legal order itself is in tension with Europe's political, economic and social orders.

Integration results from a complex interaction of competing processes and inputs, as will be explored in chapter three, and to understand it – as Lindseth notes - "scholars must take the national-supranational relationship as it is, not as they might wish it to be, in order to judge where European governance is and whither it is tending. It is not Eurosceptical to point this out[181]".

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181 See footnote 85 in (Lindseth 2010, 28) in which Lindseth recalls Rittberger's criticism of the classic literature and "on its focus on "redefining the standards by which European governance might be measured rather than asking why perceptions of a democratic deficit exist and what impact these then have an institutional design in the EU.";

CHAPTER TWO – POLITICAL SCIENCE NARRATIVES OF EUROPEAN INTEGRATION:

Introduction.

The previous chapter conducted a review of the integration through law[182] narratives and approaches to European integration theory – narratives that primarily view law as both object and agent of integration. This chapter will focus instead on narratives from the political science field, broadly defined, that have been presented over time largely from the subfields of international relations (IR) and political science[183].

As explained before in chapter one, both the challenges and the diminishing returns on presenting a rigid descriptive taxonomy of these narratives remain the same, if not further exacerbated by the often-common conflation between political sciences and IR[184]. This project's stated goals remain to inform the debate on the future of the EU,

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182 Meant here as a representation of the field of legal integration theory, and not in the narrower sense of the "integration-through-law" (ITL) project enacted by Mauro Cappelletti, Monica Seccombe, and Joseph Weiler, although as Azoulai has argued the ITL project "has had a powerful impact on the development of EU studies". See (Azoulai 2016, 449);

183 My purpose is not to question the standing of IR as an independent scholarly field, nor to construe it as a sub-field of political science. Political science, as referred to in this project, is used in its broadest sense as a discipline that focus on the local, regional and international practices of governments, state and other political actors. Although I wish to avoid the "complex arguments about disciplines, subdisciplines and disciplinary/subdisciplinary boundaries" that Rosamond has engaged in (Jorgensen, Pollack and Rosamond 2007), no serious academic overview of these narratives should proceed however before noting the vast contribution of IR to EU integration theory. Rosamond has written extensively on this topic - see primarily (Jorgensen, Pollack and Rosamond 2007, Chapter 1), but also (Rosamond 2000);

184 See *supra* – I agree with Rosamond and challenge the academic rigor of such a conflation. Nonetheless, some scholars might refer to these narratives generally as stemming uniquely or undistinguishably from either IR or political science;

and to inform the scholarly field of integration theory. As such it will focus on the premises that sustain these narratives, regardless of their methodological housing[185] [186], as they provide us with an understanding of how political science *sensu lato* has explained and mapped the framework of European integration. My belief is that, rather than focus on descriptive terms characterizing methodological choices, such as intergovernmentalism or neofunctionalism, it is more useful for the reader to understand, for instance, that what sets these narratives apart from the legal orthodoxy is that they shift the motor of integration from law to politics, or from law to power[187] [188]. It's this sort of analysis that shall be given primacy, focusing on their constitutive

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185 Brian Schmidt would argue that "is an intimate link between disciplinary identity and the manner in which we understand the history of the field" and he is right; nonetheless, the current crisis in the field of integration theory prompts us to look beyond disciplinary identity; (Carlsnaes, Risse and Simmons 2002, 16);

186 Additionally, as Rosamond notes, "the standard story of EU studies may be straightforward enough, but it can be organized in different ways and with different purposes" (Jorgensen, Pollack and Rosamond 2007, 9). Wiener and Diez for instance describe a "proto-integration period (that) predates the actual development of political integration", which includes Mitrany's functionalist theory of institutional design and early federalist theories, but surprisingly not Deutsch's transactionalism, followed by three phases: explaining integration (liberalism, realism, neolibrarlism); analyzing governance (governance, comparative politics, policy analysis); and constructing the EU (social constructivism, post-structuralism, gender approaches, etc…). Rosamond distinguishes between mainstream (where political science has primacy over her methodologies, and the EU is regarded as a polity like any other) and pluralistic (where multidisciplinary approaches are preferred and the EU is recognized as unique) models of studying the EU. Rosamond has published several articles on how different typologies (such as Hix, Pollack, Keeler, Jackson) might place certain scholars in different methodological camps. Rosamond himself will use different typologies to illustrate the impact of certain social sciences on the narrative construction. For instance Rosamond argues that we can delineate a certain period, which he calls the early manifestations of integration theory, which includes functionalism, federalism and transactionalism (akin to Wiener and Diez's proto-integration period) and which emerged out of International Relations "guiding problematique (puzzle), (…) the question of the avoidance of war" (Rosamond, Theories of European Integration 2000, 48);

187 "Political scientists' point of departure is almost always one of 'power' in the sense that they study and see courts and judges as having intentions, motives and a quest for power and influence when they act." (Neergaard and Nielsen 2012, 282);

188 The paradigms of law and of politics being the driving force of European integration will be reviewed in chapter four;

elements to be able to provide useful conclusions to the understanding of the scholarly field.

2.1 A review of the orthodoxy of political science integration theory

Perhaps the salient feature of the orthodoxy of political science was its concern with uncovering which institutional incentives (political capital, and power) or structural incentives (economic, social or cultivated spillovers) drive integration – which denote a more systemic understanding of the integration process.

Underlying these concerns was an uncertainty regarding the future of the nation-state, and regarding post-national forms of regional governance[189], which led to a much broader range of possible theoretical frameworks to be envisioned than were being discussed in the legal field.

As seen above, most legal narratives adopted the constitutional thesis, imbedding the EU with supranationalism (then debating whether it is dualist, monist, multileveled or quasi-federal). The classic orthodoxy of political science offers a broader framework: scholarly from Hoffmann to Haas; and structurally from intergovernmentalists to neofunctionalists or supranationalists[190].

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189 Zimmermann and Dur "the core normative issue behind the neofunctionalism versus intergovernmentalism debate was the question of whether the nation-state would and should have a future in the twenty-first century" (Zimmermann and Dur 2012, 5). But note also Rosemond who states that "there were two big political science issues here: the relationship between economics and politics and the future of the nation-state as a viable and desirable method of organizing human affairs in advanced societies" (Rosamond 2000, 1);

190 "The most long-standing of these was fought between intergovernmentalists and supranationalists" Zimmermann and Dur were referring to the fact that Haas' neofunctionalism envisioned "the creation of a central authority (that) would lead to the emergence of supranational trade associations, labour unions and political parties that would increasingly pursue their interests at the European

Despite this broader range of theoretical designs, as Wendt and later Rosamond note, the "great debate between neofunctionalism and intergovernmentalism" only disagreed on first order questions, while finding unity in all second order matters. This will become apparent when we see for instance how both theories adopted rationalist-utilitarian approaches but identified different actors and different incentives. These two theories disagreed on empirical records, "variables, processes and the hypothesized significance of different actors and institutions in the explanation of integration outcomes" but followed very similar paths with regards to "ontology, epistemology and methodology."[191]. The first order differences stemmed, as he himself suggested, by Haas's desire to challenge classic realism and its fetishizing of power. Haas wanted to provide an alternative between the realists and Kantian idealism[192].

The main premises of the political science integration orthodoxy.

Integration is fundamentally a process of actor-driven institutional politics.

The first premise, shared by liberal intergovernmentalists [193] and early

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level". (Zimmermann and Dur 2016, 5)";

191 Rosamond notes how there was broad metatheoretical and methodological affinity between these two fields: "neofunctionalism's ontology is "soft" rational choice: social actors in seeking to realize their value-derived interests, will chose whatever means are made available by the prevailing democratic order" and "liberal intergovermentalists would only disagree on the (… first order) questions of (a) which are the key interest-driven actors and (B) from what interests themselves are derived. But there would be no quarrel with the basic rationalist-utilitarian premises" (Lynggaard, Manners and Lofgren 2015, 25);

192 "NF was developed explicitly to challenge the two theories of IR dominant in the 1950s, classical realism and idealism. (…) I wanted to show that the fetishizing of power, the Primat der Aussenpolitik, was far less of a law of politics than claimed by these scholars (…) But I also wanted to show that the Kantian idealism that saw in more international law the road to world peace was as unnecessary as it was (and is) naïve". (E. B. Haas 2004, xiv);

193 "EU integration can best be understood as a series of rational choices made by national leaders. These choices responded to

neofunctionalists, rests on the assumption that integration is predominantly a process of institutional politics[194], where actors have "intentions, motives and a quest for power and influence when they act[195]". This assumption gave importance to the processes of political integration[196] and institutionalization[197], focusing either on the policy interests of national leaders (intergovernmentalism[198]) or the principal-agency incentives of a pluralist political society (Haasian neofunctionalism)[199] [200]. Grimmel has coined this the

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constraints and opportunities stemming from the economic interests of powerful domestic constituents, the relative power of states stemming from asymmetrical interdependence, and the role of institutions in bolstering the credibility of interstate commitments." Moravcsik, Andrew. The choice for Europe. Cornell University Press, 1998; p. 18; Haas goes further and claims that integration requires "full political mobilization via strong interest groups and political parties, leadership by political elites competing for political dominance under rules of constitutional democracy accepted by leaders and followers". In "Does Constructivism subsume Neo-functionalism?", (Christiansen, Jørgensen and Wiener 2001, 29, FN 2);

194 Recall Haas saying: "I disagree with Nye's argument that the notion of integration ought to be "disaggregated" into economic, social, and political components (…). Political integration, if that is what we are concerned about, is more important than economic and social trends; these are important because we think they are causally connected with political integration." (E. B. Haas 1970, 632, FN31);

195 (Neergaard and Nielsen 2012, 282);

196 "It should be clear that the classical phase of what is normally understood as integration theory was concerned with political integration" (Rosamond 2000, 13); See also: "Haas emphasized the deeply political character of integration, as we do." Stone Sweet (2012) p. 18;

197 "The logic of institutionalization has long been at work in the EU, and it is crucial to understanding integration as a dynamic process"; (Stone Sweet 2012, 16);

198 Rosamond then quoting Moravcsik: "the primary interest of governments is to maintain themselves in office … this requires the support of a coalition of domestic voters, parties, interest groups and bureaucracies whose views are transmitted, directly or indirectly, through domestic institutions and practices of political representation. Through this process emerges the set of national interests or goals that states bring to international negotiations." (Rosamond 2000, 137);

199 See Rosamond: "the process emerged from a complex web of actors pursuing their interests within a pluralist political environment"; and how Haas's neofunctionalism reinstates "political agency into the integration process" (Rosamond 2000, 55);

200 While Weiler's Transformation of Europe might have brought the importance of law to the study of the integration process by political science, particularly in the neofunctionalist camp - and with the equally seminal work of Burley and Mattli - the idea that

interest paradigm (Grimmel 2017), in which the "pursuit of interests" is seen as the motor of integration[201]. Simon Hix, as Rosamond notes, offers a similar account, in which "the EU is a political system involving various actors pursuing their interests in a classic Lasswellian game of 'who gets what, when, and how'"[202].

The premise of institutional politics and the quest for finding which actors affect the integration process, according to which incentives or constraints, was, and arguably still remains, the main focus of political science integration theory[203]. As Grimmel notes, "without being able to identify certain rational actors seeking certain benefits in participating in the integration process, an adequate explanation for the course of (political and economic) integration does not seem possible in classical integration theory" (Grimmel 2017, 165).

Integration is driven by a rationalist framework.

Often articulated in conjunction with the previous premise is the understanding that integration is an application of rationalist institutionalism[204]". The interest paradigm is

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integration remains a political process driven by rational and self-interested actors remains prevalent;

201 The interest paradigm, Grimmel notes, stems from a "broad consensus that the 'pursuit of interests' may be seen as a major driving force: identifying certain rational actors seeking certain kinds of gains and benefits is a vital part of most explanations for the procedure of the integration process (…) like (neo)functionalism, (liberal) intergovernmentalism, supranational institutionalism, or also parts of multilevel governance approaches" (Grimmel 2017, 165);

202 (Gower 2013, 37)

203 See Grimmel "The central question in integration theory aiming at an explanation for the course of integration was and is essentially this: which actors have been able to exert their interests vis-à-vis other actors while being subject to certain institutional constraints, and how did this foster the integration process? (…) (A)ctors interests and their calculation of advantages (…) are usually seen as the driving forces of integration." (Grimmel 2017, 165);

204 Moravcisk and Schimmelfennig, in (Wiener and Diez 2009, 67);Also see Moravcisk: "the fundamental actors in international

necessarily based on a rational actor assumption - narratives and studies conducted by political sciences assume that integration is driven by rational and self-interested actors, who act upon certain incentives and interests[205] [206].

In the neofunctionalist camp this becomes apparent in their neoliberal belief that "the benefits of integration would become apparent to domestically located interest groups who would lobby their governments accordingly[207]". Politics would therefore follow economics in what they deemed a spillover effect[208]. Intergovernmentalism, as Moravcsik argues, adopted a more neorealist view that "the primary source of integration lies in the interests of the states themselves and the relative power each brings to Brussels[209]".

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politics are individuals and private groups, who are on the average rational and risk-averse and who organize exchange and collective action to promote differentiated interests under constraints imposed by material scarcity, conflicting values, and variations in societal influence." In (Moravcsik 1997, 516);

205 Recall Haas: "Neo-functionalism stresses the instrumental motives of actors; it looks for the adaptability of elites in line with specialization of roles; neo- functionalism takes self-interest for granted and relies on it for delineating actor perceptions". (E. B. Haas 1970, 627); And also how: "(…) social actors, in seeking to realize their value-derived interests, will choose whatever means are made available by the prevailing democratic order. If thwarted, they will rethink their values, redefine their interests, and choose new means to realize them." (E. B. Haas 2004, xv);

206 The only conceptual divide is between realists/intergovernmanlists who frame integration as a zero-sum game, whereas neofunctionlists believe it to offer positive-sum possibilities. In Niemann and Schmitter's "Neofunctionalism", in (Wiener and Diez 2009, 48)

207 (Rosamond 2000);

208 Rosamond also notes that: "it has often been said that neofunctionalism contained within itself a conception of 'cultivated spillover' (Tranholm-Mikkelsen 1991), that is a specific theory of how, once created, supranational institutions act as strategic advocates on behalf of functional linkage and deeper/wider integration." (Rosamond 2005, 244); Stone Sweet finds that spillovers occur "when actors realize that the objectives of initial supranational policies cannot be achieved without extending supranational policy-making to additional, functionally related domains." (Stone Sweet 2012, 8);

209 Moravcsik, A. "Negotiating the Single European Act", in (Keohane and Hoffmann 1991, 75);

Integration is measurable through a series of empirical hypotheses – transaction-driven thesis;

Neofunctionalism and intergovermentalism build their theories on rationalist, actor-centered frameworks[210]. Both assume a series of national preferences (Moravcsik) or transnational interests (Haas, Stone Sweet) that drive interstate bargaining and institutional design[211]. Neofunctionalism, however, goes on to speculate an additional moment, where "integration produces unanticipated unintended, and often undesired consequences and escapes the control of the states[212]" which in turn create feedback loops that drive integration forward. These feedback loops result from a functional spillover effect[213]. Both theories, nonetheless, provide testable propositions, ranging from macro to micro, and micro to macro levels, on how integration proceeds.

Integration is concerned with processes not outcomes – form follows function thesis;

Classic narratives of political science shy away from conceptualizing what polity

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210 "all theories under scrutiny are actor-centered and rationalist theories, all of them make assumptions about preferences and negotiations" (Bennett and Checkel 2015, 111);

211 "neofunctionalism (…) does not dispute that the initial steps of integration match liberal intergovernmentalist assumptions about the centrality of exogenous state preferences d intergovernmental bargaining power." Idem p. 110; (Bennett and Checkel 2015, 110);

212 *Idem*, page 112;

213 "the externalities of integration in one policy create demand for integration in functionally adjacent policy areas"; *idem*. But see also Stone Sweet: "Feedback loops and spillover have been basic mechanisms of integration across the history of the EU". (Stone Sweet 2012, 10);

should emerge from the process of integration[214] [215]. Unlike legal scholarship, which attempted to provide a framework for integration to occur based on a certain notion of the European polity (whether as constitutional, federalist, or multilevel), political science focused on the dynamics that "would drive integration forward as a process[216]". Political science has mostly attempted to bypass the dependent variable problem in systems theory[217].

Assessment of the classic narratives.

In creating a framework that focuses on processes and inputs, the political science orthodoxy of European integration theory lays the foundations for a systems theory understanding of the forces that drive the integration process. They do however suffer from the same faulty logic as early economic and game theories, by assuming both actor and transactional rationality in integrational interactions. Perhaps the greatest criticism nonetheless is that they maintain a myopic or monochromatic understanding of

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214 "Both neofunctionalists and intergovernmentalists are more concerned with the process of integration than with the political system to which that integration leads". (Wiener and Diez 2009, 3); See also Rosamond: "the emphasis on actors and their (…) interaction was illustrative of neofunctionalists' emphasis on integration in terms of process rather than outcomes" (Rosamond 2000, 55)

215 Even recent restatements of neofunctionliams (see Stone Sweet for example), that suggest that the outcome of their theories presupposes the expansion of supranational governance, are not sufficient to shift this premise;

216 (Stone Sweet 2012, 7);

217 Rosamond summarizes the problem: "what is it that theorists are trying to explain when they contemplate the processes of institution-building and integration?"; Haas himself stated that it would be helpful to "clarify the matter of what we propose to explain and/or predict", and that "the task of selecting and justifying variables and explaining their hypothesized interdependence cannot be accomplished without an agreement as to possible conditions to which the process is expected to lead. In short we need a dependent variable". (Rosamond 2000, 11);

European integration, much like their counterparts in the legal field, by focusing primarily on politics and political inputs – in this regards they simply replaced the legal orthodoxy's focus on law as the agent of integration with politics.

2.2 Turning away from the classic orthodoxy – the fringe narratives, and the abandonment of the pursuit to produce a grand theory of European integration

Political science narratives have benefited from great scholarly attention over the years but have been analyzed and categorized according to different normative models[218] [219], producing different storylines to retell the same story[220]. As we have seen, neofunctionalism and intergovernmentalism constituted the basis of the classic orthodoxy of political science integration theory[221]. They were in fact, as Rosemand

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218 Rosamond also suggests that "different readings of the history of EU studies follow from the various oppositions that emerge from alternative models of the study of EU politics." (Jorgensen, Pollack and Rosamond 2007, 18);

219 We have seen the different taxonomies used to distinguish certain phases (Wiener and Diez, Keeler) or approaches (Hix, Cryer et al) within political integration history, and as stated earlier this project's concern is not to engage in an exercise that can only produce diminishing returns for this project's stated purposes;

220 Rosamond's article "The political sciences of European integration: disciplinary history and EU studies" is perhaps the best analysis of this phenomena in EU political science. "The task of writing disciplinary history is far from straightforward. Like all history, the composition of a narrative about a field is undertaken at a particular time and in a particular place – from a particular 'subject position' that may reflect certain biases

which in turn follow from a multiplicity of concerns that follow from those temporal and spatial coordinates." (Jorgensen, Pollack and Rosamond 2007, 7);

221 Rosamond in fact notes that "much of the academic work on the European Union remains under the spell of the classical debate between neo-functionalism and intergovermentalism" (Cini 2007, 118); and elsewhere, that: "these perspectives tend to reassert the importance of the 'national' versus the 'supranational'"; and more pertinently, that "the survival of the nation-state as the primary authoritative unit in European politics remains the most compelling question" (Rosamond 2000, 156);

suggests, "the only two 'theories' in the strict sense of the term[222]". Most of the ensuing

discourse regarding the EU echoed these narratives concern with first order questions

regarding the integration process – meaning: whether supranational institutions and

actors have taken over the integration framework away from the nation-state model, or

if the Member States are still in control through the intergovernmental process.

A shift occurred however in the late 80's and 90's, that *de facto* moved beyond the

empirical and normative scope of the classic political science orthodoxy, and ushered a

period of great interdisciplinarity. The shift represents a turning point in political

science, when classic first order questions give way to second order concerns, and when

a focus on methodology takes precedent over the creation of normative grand theories.

One way to summarize the scholarly change that took place would be to say that

European politics rejected the binary continuum of international relations, and adopted

new different methodological approaches, such as comparative politics, governance,

institutionalism and constructivism[223]. Another way to explain this shift would be to say

that the epistemological question regarding the construct of EU started taking

precedence over the normative question.

Wiener and Diez, and Rosamond argue that this shift came about due to the

evolution of the EU itself - a polity that increasingly defied traditional typologies as a

result of its complex institutional structure and expansion into new fields of social and

monetary policies. These changes brought about by the Single European Act, and then

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222 (Lynggaard, Manners and Lofgren 2015, 24);

223 Rosamond refers to these as mid-range theories - "turns" within the existing debate, for example, "the important neo-liberal institutionalist turn (…) that spawned Moravcsik's liberal intergovermentlist work"; citation;

by the Maastricht Treaty, would be seen by Moravcsik and liberal intergovernmentalism as a manifestation of intergovernmental bargains resulting from national preferences. Neofunctionalists on the other hand would celebrate the new spillover and institutional potentials with the expansion of the EU's sphere of action into social and monetary policies. Lastly, rational institutionalists would reaffirm how this period came about through the practices and interactions of the European institutions, namely the Commission and the CJEU [224] [225].

A different take on this period suggests that this shift results from the realization of the conceptual limits of the "old debate" between intergovernmentalism and neofunctionalism; and the scholarly limits of IR to account for this highly institutionalized, complex polity, with its own internal politics and actors that no longer necessarily fit in a binary spectrum of national versus supranational[226].

Finally, and perhaps of greater significance, these improved narratives emerged also from the conclusion that integration in itself is not necessarily the end-game or ambition of all these different actors[227]. The combined result of all these factors was a new period of broadened empirical scope and new critical perspectives [228] (Wiener and Diez;

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224 In any case, as Rosamond notes, "the EU has evolved into a peculiar form of polity or political system that does not really fit into any established template for understanding the state". (Cini 2007, 120)

225 This period coincided with: the Delors Commission, which is often celebrated as one of the most driven and successful in terms of European integration; and also, with the far-reaching policy impacts of certain CJEU decisions such as the Cassis de Dijon case;

226 As Rosamond notes: "International Relations is an academic discourse dealing with the polarities of nation-sates or superstates and envisages the state of integration as lying somewhere along a continuum between those two poles"; (Rosamond 2000, 157);

227 "Integration is not central to the everyday deliberations of actors working within this polity" (Gower 2013, 45);

228 As Wiener and Diez claim, this new phase "brought comparative and institutionalist approaches to the foreground of integration theory" (Wiener and Diez 2009, 11);

Rosamond).

The main contribution of these alternative or improved narratives is precisely their shift from first to second order concerns, which prompted a new understanding of European Integration. Once freed from theoretical considerations, and liberated from trying to further those same theories, these new narratives opened the hood of European integration and looked at the moving parts and components of its engine.

As a final consideration, and to start merging this analysis with this project's methodological proposal regarding European integration theory, this second phase of political science scholarship represents a shift to the focus on the epistemological inputs of integration, rather than their ultimate normative output. They reverse the top-down approach that was so characteristic of both classic theories within law and political science, an approach which is in line with this project's systems theory proposal, we can only discover the true nature of the beast[229] once we study and accept it as it is, rather than what we want it to be.

The main premises of the fringe narratives within political science

The institutionalist turn - why institutions and institutional dynamics matter[230].

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229 The search for nature of the (European) beast is a recurrent theme in integration theory scholarship. See Risse-Kappen in "Exploring the nature of the beast: International Relations theory and comparative policy analysis meet the European Union"; (Risse-Kappen 1996);

230 The practices and interactions within and among institutions impact, as Rosamand notes, "both political behavior and political outcomes (… by acting as) intervening variables between the preferences of actors and the outcomes of those actor's deliberations". (Gower 2013, 45);

The institutionalist turn in political science integration theory[231] comes about with the realization that institutions affect actor preferences and behaviors, and necessarily shape political outcomes. Political bargaining therefore has to account for what became known as the institutional variable [232] [233].

The constructivist turn – and how interests are socially constructed[234].

The constructivist turn in political science integration theory resulted from a critic of earlier rationalist approaches and its focus on material preferences to justify the integration process, such as the pursuit of economic integration. Constructivism argues that states evolve alongside the social structures that comprise them, and therefore both state and individual actor interests stem from processes of "social and linguistic interaction"[235]. Social structures replace rational-based theories to explain how actors will often act against their material self-interest to pursue community interests.

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231 Rosamond identifies three models within the institutionalist turn: rational choice institutionalism; historical institutionalism; and, sociological institutionalism. *Idem*;

232 Conceicao-Heldt describes this as follows: "when analyzing EU-negotiations the variable institutional setting also has to be taken into account, since the structure in which a negotiation takes place affects the scope of the bargaining outcome" (Conceicao-Heldt 2006, 287);

233 Conceicao-Heldt presents an insightful analysis on this topic within the EU's Common Fisheries Policy. See (Conceicao-Heldt 2006);

234 McCormick defines constructivism as "a theoretical approach that focuses on the social construction of interests and the manner in which they influence and shape institutions" (McCormick 2015, 24)

235 See Rosamond, who notes that "the focus of constructivism is on the role of symbols, norms, discourses, and belief systems in the processes of integration and EU governance"; and finds therefore that "the identities of actors, such as states, are not materially given" but "social constructed". (Gower 2013, 46);

The governance turn – why multilevel networks matters[236].

Perhaps the greatest critique of the classic dichotomy between intergovernmentalism and supranationalism, and the EU's binary modes of governance, came from the understanding that policy-making is enacted through differentiated networks and levels of authority - often mitigated or shared - as the proponents of multilevel governance suggest[237].

The governance turn demonstrates how, once again, updated narratives of integration theory from the political sciences camp start taking an epistemological interest in a systematic understanding of Europe outside of the normative confines of earlier theories. Multilevel governance is sensitive to the complex nature of the EU and its differentiated networks of shared authority.

Assessment of the fringe narratives.

The new approaches to European union studies are often referred to simply as "turns" within the scholarly debate, as seen above, *i.e.* the governance turn, the institutionalist turn, etc… While there is a vast literature on each of these methodological approaches, not much has been written about the characterization of each approach as a shift - in other words, why is it a turn, and a turn from what? If the objective was merely to signal a new methodological model or viewpoint they could

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236 "Governance is generally defined as being about the organization, steering, and coordination of social systems" (Gower 2013, 46);

237 Marks, Hooghe and Blank, as Rosamond notes, suggest that "the EU is a polity in which authority has been dispersed between levels of governance and political actors are mobile between the different levels. Levels of integration are also asymmetrical". (Gower 2013, 46);

have used the term "approach" as suggested – the governance approach for example. Instead, the history of European studies is now laden with turning points. It could very well be that the term was initially coined with no great aforethought, as a mere label synonymous to approach, and then gained almost universal acceptance. In the vast spectrum of possible taxonomies of political science stories, referring to a turn makes it easier to allow for a greater margin of specific scholars to be contemplated within the circular axis of each approach.

But the term, or rather the turn, is not accidental, it is in fact constitutive of two fundamental turning points. Each of these turns: (a) rejects the classic normative binary between intergovernmentalism and supranationalism; and (b) enacts a shift from a concern with normative ontology to methodological epistemology - as signaled by the abandonment of the pursuit to provide for a new grand theory of the EU, to focus instead on understanding how integration actually works.

Lastly, these turns within political science scholarship are not only constitutive of a turn from the classic orthodoxy, but a turn from a monochromatic approach to integration theory. They demonstrate how new approaches can: (a) operate under no specific continuum – independently from any particular normative theorization; and (b) operate concurrently with other approaches to fully understand the integration process.

2.3 Review of the crisis narratives from both law and political science

While a review of both the mainstream and fringe narratives of integration theory offers us a starting point to assess the epistemological foundations, successes and the failures of this field, a review of the crisis literature allows us to understand the current

ontological canvas within which the debate over the future of the EU is taking place. The central questions that most these narratives seem to ask are: what happened? How did we get here? And what now for Europe? I have opted to group the review of the crisis narratives from both the law and political science camps as they express similar ontological themes and epistemological concerns in answering these three questions.

Much like the second restatement of the classic orthodoxy from law, most of the crisis narratives start by acknowledging that the day of reckoning of European legitimacy has arrived. The failure of both supranationalism and intergovernmentalism in the governance of Europe, and the failure of output sources of legitimacy to overcome Europe's democratic legitimacy gap can no longer be ignored. The EU's legitimacy crucible is finally too heavy for it to bear, so once again we ask ourselves, what now for Europe?

Ontological themes and epistemological concerns expressed by the crisis narratives – what happened? How did we get here? What now for Europe?

We failed to pay enough attention to the right empirical inputs.

The main premises of political science integration theory rested upon the identification of certain empirical inputs – actor preferences and interests; institutional and social communication structures; network and governance models – that would determine or condition the integration process. The starting point of most of the crisis literature therefore focuses on understanding where that empirical assessment might have failed, and should now focus on instead.

It's the economy, stupid – the legitimacy paradigm and the (re)newed primacy of econometrics.

Ever since Scharpf[238] crystalized the concepts of input and output legitimacy, scholars from all fields have been wondering if and how the EU's effectiveness can attenuate or even replace its democracy deficit. The legitimacy paradigm of the EU has rested on the belief that output legitimacy could somehow replace input legitimacy, particularly through the EU's economic success.

Most of the crisis literature therefore focuses on key EU financial and monetary econometrics to explain the failings of the integration project and the current crisis moment. In fact, the EU's economy seems to share the spotlight of the crisis literature alongside the question of legitimacy - and in most cases is tethered to its legitimacy, as its greatest output source[239], and as its principal barometer for success, or failure.

The legitimacy paradigm – the belief that the EU's output legitimacy, and particularly its economic success, could mitigate its lack of input legitimacy - had not been empirically tested until now[240]. The current crisis period seems to shatter this paradigm, particularly as a result of Europe's output ineffectiveness in responding to the crisis [241], which seriously puts into question the sustainability of its frail

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238 (Scharpf 2003) referencing his celebrated 1970 work "Demokratietheorie zwischen Utopie und Anpassung. Konstanz: Universitätsverlag";

239 As Piattoni reminds us, because of "the inevitable compromises that must be struck at EU level often do not reflect any one group's or national constituency's preferences and because of the sheer difficulty in understanding who decides what (… traditionally) output legitimacy has been argued to be the most appropriate standard of EU legitimacy" (Piattoni 2015, 4);

240 Perhaps, as Grimmel argues: "due to the 'keep going!' mantra the EU has so persistently followed" (Grimmel 2017, 171);

241 Piattoni is one of many crisis scholars who highlight "the ineffectiveness of the Union in solving economic problems such as

legitimacy[242]. In this regard, Piattoni suggests that we should reverse the legitimacy paradigm, and recognize instead that the "precondition for EU effectiveness (output) is the perceived democratic legitimacy of its institutional architecture and decision-making procedures (input and throughput)"[243].

It's the politics… and the economy, stupid

One of the harshest consequences brought about by the crisis - "the reduction of policy space as a result of austerity policymaking" (Stefanova 2015) - resulted from the perceived politicization of the EU's response to the economic crisis[244]. The EU's legitimacy seems to be tethered not only to its economic success, but to its political capacity – as suggested by the legal orthodoxy 2.0. Several crisis narratives therefore focus on inputs that affect these two fundamentally interrelated aspects of legitimacy, which should be paid more attention to moving forward[245].

We failed to connect the dots, we were too busy focusing on individual approaches to EU integration theory.

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speculative bubbles, skyrocketing national debts, and sluggish economies" (Piattoni 2015, 5);

242 Piattoni makes a similar argument when she notes "any assessment of EU legitimacy based uniquely on its output effectiveness would run the risk of leading to fairly dismal conclusions" and that "the empirical argument that the EU is legitimate insofar as it is effective, therefore, cannot be the sole basis on which to pin its stability and sustainability". (Piattoni 2015, 5);

243 *Idem*;

244 Which Stefanova further argues "represents a major challenge for European societies and the functioning of democratic politics" (Stefanova 2015, 1);

245 To "preserve and safeguard at a time of crisis, and maintain a system of crisis response and transformation", Stefanova suggests the following: "we should focus our analysis on the EU institutional order, and especially on the Economic and Monetary Union (EMU), the capacity of public policy to provide public goods, and the quality of democracy in Europe." (Stefanova 2015, 2);

As we have seen, the second phase of political science integration theory ushered a new era of multidisciplinary approaches, paved the way for Europe's epistemological question to take precedence, and allowed for a better understanding of the integration system. However, and at the same time, it failed to promote the necessary interdisciplinary habits that a systems analysis would require. If we accept that this crisis is unique precisely because it affected all four areas of European integration[246], then we must conclude as Grimmel did that "there is no longer a superior form of rationalization in society but a multitude of perspectives of which one cannot say that one is superior to another[247]".

A great part of the crisis narratives now realizes that Europe can no longer address its malaises solely through isolated approaches nor through the single efforts of law, politics, the European economy or the European social construct. The EU is a unique polity where, borrowing from Luhmann's functional differentiation theory, "every change to a subsystem is also a change to the environment of other subsystems - whatever happens, happens in multiplicity[248]", as Grimmel has also noted[249].

The awakening to the realization that the European construct requires serious systematic understanding, as this project puts forward and develops in chapter three, could not be better stated than in Grimmel's narrative:

"every reaction within one of the 'big three' politics, economy or law – then again

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246 "EU's crises have unfolded in a functionally differentiated society, and have created distinct challenges to politics, economics and law at the same time (Grimmel 2017, 159);

247 (Grimmel 2017, 161);

248 (Luhmann, Theory of Society, Volume 2 2013, 4);

249 (Grimmel 2017);

creates different reactions (observations and communications) within the other

functional contexts. The result is a rather convoluted situation of mutual dependency

and interpenetration in the process of crisis management and problem resolution."

And "under such circumstances it seems highly unlikely that the European Union can

address major problems appropriately within the framework of either its political,

economic or legal community. On the contrary, it seems imperative that all three of

them play a specific role in crisis management at the same time."[250]

These first two considerations - that we failed to located the right inputs to European integration process; and we failed to adopt a systematic understanding of the EU - result from an effort to understand what happened, how the crisis unfolded and why was it so impactful. They tend towards Europe's epistemological question.

The last premise or theme that can be found in some crisis narratives, and that will be covered next, focuses on contributing to the debate on the future of Europe and asking how we can move forward and salvage the integration process[251]. They tend towards Europe's ontological question.

This crisis is unique[252], we need a grand theory, a new equilibrium, better paradigms, or loyalty.

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250 (Grimmel 2017, 161-162)

251 In some cases, it is phrased as a plea. See Stefanova: "policy makers and academics should be (…) asking the right questions – not just learning the lessons from the ways the crisis response was mobilized and implemented" (Stefanova 2015, 1);

252 Displacing Europe in this characterization – it is just possible that this crisis is even more unique – meaning suis geneirs - than the EU itself;

This premise is common in different accounts of the current European crisis moment, in both law and political science, and it stems from the realization of the uniqueness of this crisis[253]. Fabbrini has described it as the "litmus test" moment of Europe's institutional design[254]. Grimmel has noted – "the sheer quantity of challenges together with the EU's apparent weakness in crisis management has led to a 'crisis of the many crises', a 'meta-crisis' so to speak, that fosters centrifugal forces and weighs increasingly on the integration process as a whole[255]".

A new grand theory or a new equilibrium

Rosamond once suggested that giving up on the search for a grand theory of the European integration process was not necessarily a bad idea[256]. That perhaps was true as long as the premises and paradigms of European integration were sufficient – or at the very least, had not yet failed - in sustaining Europe's framework. The day of reckoning of the EU's legitimacy, of its epistemology, of its scholarship, has finally come, and those same premises and paradigms that upheld them have failed or have been deeply discredited.

Some scholars want to seize this opportunity to start afresh methodologically, to

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253 Several crisis narratives share the sentiment that "no critical event so far, from the empty chair crisis to the failed referendum on the EU Constitutional Treaty, has simultaneously affected all three domains of public life in the EU and its member states—institutions, policy process, and polity—as intertwined systemic developments." (Stefanova 2015, 1);

254 "The euro crisis has been a litmus test in terms of bringing the institutional properties of the EU to the surface" (Fabbrini 2015, xvii);

255 (Grimmel 2017, 170);

256 See Rosamond: "the abandonment of a quest for a general theory of integration may be no bad thing" (Gower 2013, 47);

finally uncover the systemic inputs that drive the integration process through bottom-up approaches. Meanwhile, others look back and suggest attempting the classic top-down approach, of forcing a new normative mold - a new grand theory - into the integration process, and perhaps covering it up with some icing – *i.e.* political messianism. But which grand theory? [257]

Bickerton, Hodson, and Puetter suggest a new intergovernmentalism grand theory (Bickerton, Hodson and Puetter 2015). Their theory addresses what they perceive to be the greatest integration paradox: how member states have pushed continuously for further integration while at the same time resisting transferring more authority to supranational institutions [258]. The Bickerton-Hodson-Puetter intergovernmentalism enunciates six concerns[259] that will ultimately shape the institutional design of this new grand theory. These concerns are at the core of the integration paradox, and are as follows: (1) deliberative intergovernmentalism seems to be the preference in terms of

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257 Fabbrini has noted how "the Euro crisis has (raised) the necessity of thinking of a new political order in Europe" (Fabbrini 2015, xvii) ; Stefanova suggests that "a type of 'one size fits all' reform may be necessary and a federal Europe may be in the making" (Stefanova 2015, 2);

258 These scholars note the following regarding the integration paradox:

> *Member states have pursued integration in this at an unprecedented rate and yet have stubbornly resisted further significant and lasting transfers of ultimate decision-making power to the supranational along traditional lines This paradox poses a challenge to scholars of European integration, who in spite of their differences over the economic and political drivers of integration rely on a shared definition of integration as involving a transfer of competences to supranational institutions (compare for example Haas 1964 and Moravcsik 1999a);* (Bickerton, Hodson and Puetter 2015, 4)*;*

259 They identify these concerns as hypotheses "which together seek to elucidate, explain and understand the institutional and normative implications of the integration paradox" (Bickerton, Hodson and Puetter 2015, 29)*;*

policy-building[260], and even when such deliberative practices are subject to legal constraints, such as in the *Kadi* case, they spur regulatory backlash[261]; (2) supranational institutions are not designed to achieve a true supranational governance model[262]; (3) delegated supranational authority is usually enacted through new intergovernmental inspired institutions[263]; (4) it is difficult to insulate domestic preferences vis-à-vis the EU from domestic discontentment with both national and European politics[264]; (5) it is increasingly difficult to disentangle "high and low politics"[265]; and (6) the current structure of the integration process leads inevitably to "a state of disequilibrium"[266].

Better paradigms

A grand theory might provide a new value-driven commitment to the integration

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260 The first hypothesis is identified as follows: "Deliberation and consensus-seeking have become firmly established as the key operative norms for EU decision-making" (Bickerton, Hodson and Puetter 2015, 29). "This deliberative intergovernmentalism is exemplified by the changing role of the European Council". (Bickerton, Hodson and Puetter 2015, 306); (Bickerton, Hodson and Puetter 2015, 29)

261 (Bickerton, Hodson and Puetter 2015, 307);

262 The second hypothesis is framed as follows: "supranational institutions are not hard-wired to seek eve closer union" (Bickerton, Hodson and Puetter 2015, 308);

263 The third hypothesis is formulated as follows: "where delegation occurs, governments and traditional supranational actors support the creation and empowerment of *de novo* institutions". These *de novo* institutions "often have an intergovernmental strand to their governance structure that is more conductive to member state control. (Bickerton, Hodson and Puetter 2015, 32);

264 Hypothesis four is formulated as follows: "problems in domestic preference formation have become stand-alone inputs into the European integration process" (Bickerton, Hodson and Puetter 2015, 33);

265 (Bickerton, Hodson and Puetter 2015, 313);

266 "A key claim of the new intergovernmentalism is that European integration in the post-Maastricth period is an unstable and contradictory process that is tending towards a state of disequilibrium". (Bickerton, Hodson and Puetter 2015, 314);

project, but there are other ways to restart the motor of integration - instead of value-driven, issue-driven. A new transformation is required, as Stefanova notes, one that does not focus solely on the successes and failures of crisis response measures, but that questions the premises and underlying assumptions that operated thus far[267].

We have seen how the paradigm of self-interest rationality has fallen - Brexit is a clear indicator of that, as it constitutes "clearly a no-win situation", where "there are no winners, only losers", as Grimmel puts it[268]. But it's not only that actors are no longer operating under a calculus of interests and advantages, it's that the crisis itself lends such calculations anathema to finding a solution and a way forward[269]. What is required therefore is a new paradigm with which to understand the integration process. But again, which paradigm? And do we not risk conflating this search with the search for a new grand theory?

Hard loyalty

If legitimacy is the concept most associated with the current downfall of the European project, then loyalty is the concept most heralded as its only rescue. From Weiler to Grimmel[270], scholars across both fields are hedging their hopes that loyalty

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267 Stefanova notes that: "the continuity versus change dichotomy recasts the crisis into an event of success or failure of transformation: either working within established models or introducing new tools of governance. Such dichotomous thinking does not change the underlying assumptions of actor – or structurally based theoretical thinking" (Stefanova 2015, 2)

268 (Grimmel 2017, 169);

269 "The nature of the crisis itself (…) is largely incommensurate with the interest paradigm of integration" (Grimmel 2017, 168); "the expectation that everyone can still expect more benefits than costs from the implementation of the measures to cope with the crisis is quite simply unsustainable" *idem* 169;

270 As Grimmel notes, these periods "demand a different type of reasoning (…) one that is demanding such practices like solidarity

will solve the EU's legitimacy deficit, but again we have to ask, which loyalty, and whose loyalty? Weiler seems to demand hard loyalty, an act of volition from the nation states, and the peoples of Europe themselves. Grimmel seems to echo at least part of this belief by suggesting that any solution must rely on promises of advantages to the integration actors[271].

Assessment of the crisis narratives.

While Grimmel is attuned to the "multiplicity" issue – what I argue constitutes the basis for a systems theory approach to European integration – curiously he seems less skeptical about the power of either law or economics to be a part of a solution for the current crisis. He argues that law could be more suitable for pursuing new issue-driven paradigms of European integration – better paradigms solutions - as law "has the potential to insulate against the direct influence of interest claims and pressure groups", were it not for the fact that "these questions call for public debates and other forms of deliberation other than the law provides"[272]. As for economics he is even more skeptical, claiming that economic approaches have "proven to be a dead-end of integration"[273]. Like Maduro, Grimmel concludes that it is up to politics to solve the

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and new common rules to cope with the issues ahead". (Grimmel 2017, 169);

271 As Grimmel suggest, we cannot "counter the crises by attempting to create a situation in which the solution of the crisis promises further advantages to those involved". (Grimmel 2017, 168). He notes that "the interest paradigm no longer applies as a regulative principle that enables one to resolve the crisis-laden challenges ahead" (Grimmel 2017, 169);

272 (Grimmel 2017, 171);

273 *Idemi;*

European crisis[274]".

Like Weiler, Stefanova suggests that this might be a unique opportunity for a new Milward moment. However, whereas Weiler 2.0 suggested a reverse Milward – one in which the nation states rescue the EU - Stefanova advocates for a renewed rescue of the EU by the nation states[275]. Both Weiler and Stefanova wish to save the European construct, but assess the legitimacy capabilities of both the EU and the member states differently. Weiler believes the EU's resources to be depleted, whereas Stefanova believes that the EU's capacity to solve the crisis might prove otherwise.

Fabbrini, in a more pessimistic or realistic tone, seems to believe that the construct of Europe as it is cannot be saved, which is not necessarily a bad thing. Using a comparative institutional approach he suggests a model of "compound democracy[276]", which would require furthering the institutional and legal separation between euro-area member states and the non-euro-area. This would finally recognize the different integrational interests by the different Member States, respecting those who wish to pursue solely an economic community and those who wish for further integration. He critiques the "dual constitution set up by the 1992 Maastricht Treaty", which imposes greater integration compromises than some member states are truly interested abiding

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274 He states that: "in the end, this leaves the main burden of resolving the EU's current problems to politics – and to politics alone (Grimmel 2017, 171);

275 She asks us to consider whether "the crisis further delegitimized the EU, or has the public realized that the EU is not a direct threat to national sovereignty and the welfare state but is rather another resource of crisis response, bailout, and opportunity; in short, a renewed version of the European rescue of the nation-state?" (Stefanova 2015, 3);

276 "A system of separate institutions sharing decision-making power" (Fabbrini 2015, 256) which he believes "is the only suitable model for those federations constituted through the aggregation of previously independent states and politically characterized by interstate cleavages". (Fabbrini 2015, xxiii);

by, and advocates simplifying the Lisbon Treaty, removing from it "all parts unconnected to single market policies" particularly those that promote "an ever closer union". His main argument is that "the functioning of a single market is incompatible with a loose form of economic cooperation"[277]. Once the institutional and legal separation is enacted and the Lisbon Treaty amended, the euro-area member states can pursue a compound union[278]. What is crucial in this construct is that it requires "a political act consciously made by national political leaders who are engaged in mobilizing and involving citizens in support of their choice"[279] – perhaps a new form of compound political messianism. Like Grimmel, Fabbrini awards primacy to politics in solving Europe's current malaise – the "European compound should be founded on a political compact treaty".[280] Like Stefanova, Fabbrini says that this new political compound should have "constitutional significance, declaring the federal union purpose of the aggregation." Like Weiler, Fabbrini seems to embrace the need for a messianic model, in which "leaders lead (…) their legitimacy derives from winning the minds and the hearts of the citizens towards their project. A compound union requires a leaders-driven contest if it is to succeed" (Fabbrini 2015, 287).

2.4 Chapter TWO Conclusions.

Like their counterparts in law, political science narratives of European integration

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277 (Fabbrini 2015, 286);

278 He notes that the "European compound union should recompose supranational and intergovernmental institutions and interests in a new architecture able to keep them in balance through a system of separation of powers" (Fabbrini 2015, 287);

279 (Fabbrini 2015, 287);

280 (Fabbrini 2015, 287);

start by tackling the question of the normative construct of Europe. However, they then seem to all but abandon that pursuit in favor of Europe's epistemological question, driven by a desire to understand which actors and which interests participated in the integration process, and according to which communication structures, and which types and levels of authority. They represent a scholarly turning point that accepts that EU for what it is – whatever it might be – and focus rather on understanding this unique system, so that the levers of European integration become tangible and therefore susceptible to incentives.

The significance of this turning point in what is understood to be the second phase of political science methodologies cannot be understated. These new approaches abandoned the efforts to solve the normative intergovernmentalism vs. supranationalism debate, and focused rather on the systematic design and forces within the integration process itself.

The consequence, intended or not, was that these narratives all but ended a values debate within the EU political science field regarding Europe's normative construct – regarding what the EU should be[281] - and replaced it with an empirical analysis of the different (self, social, and institutional) interests by which the EU actors operate across a multileveled network of authority. In fact, one of the greatest added value of these turning points is that they ushered forth an even more prolific era of empirical analysis within the political science field, and in that regard further distanced themselves from

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281 The "integration' debate has fallen out of fashion in recent years. While European studies used preoccupied with the 'nature of the beast' (Puchala 1971), this approach his given way to a more pragmatic one that accepts the EU as simply 'out there' and seeks to investigate particular parts of it rather than reflect upon it as a whole". (Bickerton, Hodson and Puetter 2015, 12);

the legal scholarship. Empirical analysis became the standard by which all approaches were measured. Most of this empirical analysis was conducted, however, according to the metrics deemed relevant by the given approach or paradigm, failing for the most part, to account for the EU's issue of multiplicity, or systemic nature. Much like what happened with the legal narratives, their premises remained true until tested by Europe's systemic crisis.

What becomes clear with the crisis literature nonetheless is that, the abandonment of the values debate might have had a unintended and disastrous consequence. Much like Weiler now all of a sudden realizes the importance of Europe's original political messianism[282], it seems those old normative debates could also have been serving an important function, restraining the different and diverse European institutions and actors, tethering them to ulterior considerations other than self, socially or institutionally-interested rationality. Those values, and their normative structures, provided an essential agency for the European project. Without those values, then a search for a new equilibrium, a new messianism, and particularly a plea for hard loyalty, becomes more challenging. One of the more interesting crisis narratives of political science integration theory, focusing exclusively on semiotics and on the EU's communication strategy, demonstrates how the EU institutions, such as the European Central Bank, the European Commission and the European Parliament, are attempting to create a new messianism for Europe – a federalist paradise[283].

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282 Recall how Weiler says that messianism played a "much larger role than is currently acknowledged" (Maduro and Wind 2017, 343)

283 Salgo suggests that:

One of the greatest contributions by the crisis narratives is to demonstrate however that the values debate cannot be detached from a systemic understanding of the integration process, and that is perhaps why the European communication strategy is failing, and why Europeans are skeptical of these images and letters from paradise. The ontological question must be preceded by the epistemological question, the understanding of the systemic integration project, and the unravelling of all the remaining integrational paradoxes, such as the six-tier paradox identified by the Bickerton-Hodson-Puetter intergovernmentalism; Weiler's democratic deficit paradox[284]; and the legitimacy paradox to name a few.

"the EU's communication strategy aims to restore citizens' lost feeling of primordial idyll and being-at-home experience, thereby strengthening the messianic sources of its legitimacy and people's emotional allegiance to the European community. Tine analysis of the visual tools used by the European Central Bank, the European Commission, and the European Parliament will allow readers to gain a better understanding of the supranational elite's 'politics of transcendence'—their endeavors to transport Europeans from the profane overwhelming present to the imaginary realm of pristine harmony with the (implicit) promise of fulfilling citizens' longing for wholeness and sublime idyll. (Salgo 2017, 5)*;*

284 Weiler notes how: "The more powers the European Parliament, supposedly the Vox Populi, has gained the greater" (Maduro and Wind 2017, 342). In chapter four I will present data on the perceptions of voice by EU citizens;

CHAPTER THREE – WHAT DRIVES EUROPEAN INTEGRATION?

Introduction - Informing the scholarly field of European Integration theory.

"I should think that those of us in the field (of integration studies) would be rather embarrassed at the fact that after fifteen years of effort we are still uncertain about what it is we are studying" (Puchala 1971), and we remain uncertain, all these years later, still…[285]

One of the resounding take-aways from the current European crisis is its dual nature, both systemic and epistemological: a crisis over the future of the European Union, severely deepened by the realization of the crisis in our understanding of Europe's integration process. This realization might, at first, seem to lie with the fact that some of the most important premises of integration theory have recently been shattered. To put it simply, the conventional wisdom regarding the framework and the cohesion of Europe is at a loss to explain these recent developments. A more careful reading of the careful caveats, and the *obiter dicta* of EU integration narratives shows that this concern has been apparent for much longer, ever since scholars have come to realize the limitations of reductionism in European integration, and to call for more

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[285] We do not go as far as Puchala did in his criticism. Puchala notes that "in light of the reigning conceptual confusion in the realm of integration studies it is difficult to see why the field has acquired a reputation for theoretical sophistication". My research into the field of integration theory has found highly sophisticated empirical research works, and normative theories, all of which have brought us closer to understanding the EU;

interdisciplinary studies of the EU to take place.

Any debate over the future of the European Union must therefore start with an understanding of what drives the complex integration project – how all these legal, political, economic, and social components interact. Early integration theorists were concerned with this question when they asked what is the nature of the EU – what is "the nature of the beast"[286]? The framing of the question in this particular way, coupled with traditional social science reductionism[287], prompted an unintended mistake[288] that resulted in the early top-down approaches to integration grand-theories: when scholars, despite acknowledging that the EU was unique, *sui generis*, were trying to fit it within traditional legal or political typologies[289]. They were doing so by focusing on certain features that they had identified in the beast[290] – federalism, intergovernmentalism, multilevel governance; or from new hybrids of these typologies such as functional supranational constitutionalism, supranational administrative governance, conflicts law constitutionalism, and compound democracy. Working within the classic notions and underpinnings of "state" and "international organization", or in a hybrid structure that

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286 (Risse-Kappen 1996);

287 "In traditional social science, the usual proposition is that by reducing complicated systems to their constituent parts, and fully understanding each part, we will then be able to understand the world". (Miller and Page 2007, 27);

288 Already in 1971 Puchala acutely diagnosed the mistake, integration theory stated being discussed "in terms of what it should be and what it should be leading toward rather than in terms of what it really is and is actually leading toward"; (Puchala 1971, 268);

289 "The EU is certainly an institution sui generis in the sense that no other international organization has reached a similar degree of integration and regional cooperation. But this does not imply that we need an integration theory sui generis to explain the EU". (Risse-Kappen 1996, 56);

290 "Many of those who have tried to describe and explain international integration have been influenced in their intellectual efforts by normative preferences". (Puchala 1971, 268);

superimposes them both at points, or shifts from one to the other in different areas, the study of the EU was thus epistemologically constrained from the start.

Eventually, in political science, scholars moved away from trying to uncover the nature of the beast to accepting the elephant in the room, whatever it may be, and focusing instead on what they understood to be its most important aspects or drivers – rationalist actor preferences, realist institutional politics, and neoliberal market demands, to name a few. This signaled a move away from integration grand theories to what have been referred to as middle range theories (see Rosamond[291]). Still, Puchala's early criticism of integration theory continues to apply today - "each blind man (…) touched a different part of the large animal, and each concluded that the elephant had the appearance of the part he had touched" (Puchala 1971)[292]. The political science shift from grand theories to middle range theories attempted to bypass the issue of whether the elephant was state like (federalist) or an international organization (intergovernmentalist), focusing rather on bottom-up approaches to understand what induced this unidentified elephant to walk, what influenced its behavior, what nourished, or what deprived it. These considerations furnished us with important added value understanding of the internal operations of the EU[293] but were still conditioned by

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291 "The retreat from integration as a guiding problem was also bound up with a heightened discipline-wide suspicion of the prospects for all-encompassing grand theory and an embrace of the middle range. The core idea of middle-range theory is that it is domain-specific; that phenomena such as the EU are broken down into component processes and subparts, each of which is comparable with functionally equivalent processes and subparts in other contexts". (Rosamond 2007, 247);

292 Echoing similar concerns, Plaza i Font has recently noted how "no consensus exists on the very nature of the European Union, and the EU scholars have proposed very distinct interpretations of the meaning of the European Union and on the most appropriate basic unit of analysis, most times confronting each other." (Plaza i Font 2016, 34) – this is also a criticism of reductionism;

293 As Rosamond notes: "Middle-range analysis, conventionally at least, imagines a range of theoretical debates at different levels

a lack of understanding of the polity itself. To carry the famous analogy further, what if the beast was not an elephant at all, let alone a mammal and an herbivore - perhaps we carry the analogy too far, yet it serves our purpose as we shall see in this chapter.

It is therefore time to reframe the initial question - what is the nature of the beast - without the constraints of reductionism, or the tired lens of traditional international law and its binary distinction between state and international organization. It is our firm conviction that no fruitful debate over the future of the EU can take place without an effort to finally understand the integration project. This comprises our first object, to inform the scholarly field of European integration theory.

3.1 Challenging traditional integration theory methodology

"Knowledge is the product of the understanding" (Lee 1943, 67)

In chapters ONE and TWO we have reviewed the main narratives of European integration and have argued how many of the foundational assumptions of those narratives – and of the understanding of the European Union - have fallen in recent times. A reasonable course of inquiry would suggest two hypotheses to explain our findings: (1) something is different, something fundamentally metamorphic has occurred that has reshaped the EU; (2) nothing is *per se* different, but rather our initial assumptions, and our foundational knowledge of the EU, were incorrect. Of course, we could argue that a combination of both hypotheses is also possible - hypothesis 3 *i.e.*

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or domains of the EU system, in which rival hypotheses are tested with a view to increasing the stock of scientifically valid knowledge." (Rosamond 2007, 247);

something is different, and we additionally acknowledge that our foundational understanding of the EU was wrong all along - however that would not be correct in our view, as we will attempt to demonstrate by playing out the different scenarios.

Two hypotheses to explain the current crisis of EU integration scholarship

Hypothesis 1 is the simplest explanation and in many ways the more comfortable one, where integration theory could merely reset itself, preserving the past understanding of Europe *avant* Brexit (A.B.), and starting anew for the future EU *depuis* Brexit (D.B.). We highlight this event, as the European crisis seems to culminate with the U.K. triggering Art. 50 TEU, the emergent event that suggests that something is for the first time, and forevermore, different - an integrational schism that separates two different polities, and two different integration periods A.B. / D. B.

Hypothesis 2 is more complex, and goes against the sound principle of Occam's razor. Brexit does indeed suggest that something is different within the EU – it is certainly not "business as usual", no one would argue - therefore the state of affairs would seem to negate the very start of this hypothesis, which claims that "nothing is *per se* different" (and that merely our initial assumptions, and our foundational knowledge of the EU were incorrect). But isn't this always the *prima-facie* case with emergence and emerging events, where "individual, localized behavior aggregates into global behavior that is, in some sense, disconnected from its origins" (Miller and Page 2007, 44)? Von Bertalanffy simplifies this as follows: "the meaning of the somewhat mystical expression, 'the whole is more than the sum of parts' is simply that constitutive characteristics are not explainable from the characteristics of isolated parts. The

characteristics of the complex compared to those of the elements, therefore appear as 'new' or 'emergent'" (Von Bertalanffy 1969, 55).

Hypothesis 1 does not answer Puchala's criticism and does not bode well for any future understanding of the "new" EU *depuis* Brexit. Unless Europe decides to: (a) adopt a formal constitution, and move forward towards a federalist structure (which is a possible future outcome under scenario 5 of the Commission's "White Paper on the future of Europe"[294]); or (b) recede towards being solely a single market (under scenario 2[295]); then something is different, but nothing changes in regards to our capacity to understand those differences. We remain unequipped to debate the future of Europe, for all other scenarios currently envisioned by the European Commission maintain the EU as the "unidentified political object" that Delors described in 1985[296]. Pursuing hypothesis 2 seems to be the correct course of action, and has the benefit of wielding the most rewards, but it requires us to rethink our methodological approach.

The importance of methodology in any scientific endeavor has long since been recognized. Our understanding of any subject is intertwined with how we study it: which

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294 "In a scenario where there is consensus that neither the EU27 as it is, nor European countries on their own, are well-equipped enough to face the challenges of the day, Member States decide to share more power, resources and decision-making across the board. As a result, cooperation between all Member States goes further than ever before in all domains. Similarly, the euro area is strengthened with the clear understanding that whatever is beneficial for countries sharing the common currency is also beneficial for all. Decisions are agreed faster at European level and are rapidly enforced." (Commission 2017, 24);

295 "By 2025, this means: The functioning of the single market becomes the main "raison d'être" of the EU27." (Commission 2017, 18);

296 "For we must face the fact that in 30 or 40 years Europe will constitute a UPO-a sort of unidentified political object-unless we weld it into an entity enabling each of our countries to benefit from the European dimension and to prosper internally as well as hold its own externally." (Delors 1985, 8);

frameworks and assumptions we use; which data we select, analyze and compare; how we collect, verify and interpret said data, and even how we ensure a continuous validation of our claims. All this affects our knowledge. The necessary symbiosis and dependency between methodology and knowledge is expressed in Lee's quote "knowledge is the product of the understanding[297]".

3.2 The EU beyond components, causations, and correlations.

We have shown that one of most common trends in integration theory, and particularly in the crisis narratives of the EU, is the call for more interdisciplinary studies[298]. We understand these calls as the realization that: a) the EU is a complex polity; and b) that it can no longer be studied nor understood solely by one method or discipline alone[299]. We want to expand on the first point, as it will have a bearing on

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[297] Lee goes on to assert that "the understanding is concerned with the interrelationships between things or events in our experience. (…) The scientific method is the method of seeking after knowledge in a systematic and orderly fashion. (…) The insistence on system and order is an attempt to guarantee that the purported knowledge is genuine knowledge." (Lee 1943, 67-68)

[298] "The complexity of EU affairs calls for research methods known from a number of disciplines and for the further development of cross- or transdisciplinary research designs. (…) the actual European integration process has now reached a point where more wide-ranging research strategies, designs and methods are needed" (Lynggaard, Manners and Lofgren 2015, 4);

"European legal integration provides an enduring challenge to social scientists and lawyers, who have not yet been able to establish the integration processes as a coherent scientific object". (Petersen, et al. 2008, 1);

"there is simply no single answer to questions such as: what is the legal constitutional nature of the EU, and what is the role of the law in the governance of the EU? (…) there remains significant scope for legal scholars to engage usefully in more constructive efforts towards theory-building, connecting their work more self-consciously and consistently to well-established or newly emerging currents of theory." Jo Hunt and Jo Shaw in (Phinnemore and Warleigh-Lack 2009, 107);

[299] Recall LoPucki "typically, the method limits the researcher's attention to a few aspects of reality and requires the researcher to represent them abstractly." (…) The disadvantage in restricting one's attention, however, is that it often screens out important aspects and leads the analyst to the wrong conclusion". (LoPucki 1997, 480);

how we understand and study the European integration. It is increasingly common for scholars to refer to the EU as a complex polity, or to mention that the integration process is complex, but what do they mean by "complex"? Most will use the term generically[300] - to refer to the composite character of European integration, to its intricate nature, or to both. Such a characterization however still falls within the classic reductionism paradigm: it merely acknowledges that there are several integrational components operating within the system. Their hope is that, through interdisciplinary studies, if we can understand the behavior of each component, we will understand the system as a whole. If this is true however, then the EU is merely complicated and not necessarily complex in the formal sense, as we shall see later in this chapter.

A systems theory approach to European integration[301]

> *A "system" is an ensemble of interacting parts, the sum of which exhibits behavior*
>
> *not localized in its constituent parts.* (Chen and Stroup 1993, 448)

There is another way to understand the EU's complex nature, one that stems from systems theory, and which we will adopt to sustain our methodological approach. We will argue further that the historically impalpable *je ne sais quoi* of the EU's uniqueness

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300 See Sawyer's criticism: "like 'emergence', the term 'complexity' has also been used somewhat loosely in the last decade". (Sawyer 2005, 3)

301 Bertalanffy, quoting Ackoff, explains why this approach is becoming increasingly popular, as it reflects the: "tendency in contemporary science no longer to isolate phenomena in narrowly confined contexts, but rather to open interactions for examination and to examine larger and larger slices of nature". (Von Bertalanffy 1969, 9);

– its long and elusive *sui generis* quality – is its adaptive complexity[302].

Systems theory[303] approaches to law are not new[304]. Several scholars (Luhmann 1993; Ruhl 1996, Roe 1996, LoPucki 1997, Geyer 2003, Webb 2004, Hornstein 2005, D'Amato 2014, Wheatley 2016, Belinfanti and Stout 2018) have written about the benefits of using these approaches[305]. Complexity theory is a subset of systems theory thinking[306] which "challenges the notion that by perfectly understanding the behavior of each component part of a system we will then understand the system as a whole" (Miller and Page 2007).

The advantages to adopt a systems approach to European integration seem apparent to us, precisely for the same reasons that we can extrapolate from the unanswered concerns, and the calls for interdisciplinarity of the crisis literature: (a) the EU is in fact a complex system, it is not reducible to, or intelligible as, classical international or supranational systems, nor traditional communication or interaction patterns within international relations; and (b) because within this composite system - of the economic, social, legal and political orders of the EU - linear, non-linear and emergent

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302 We will use the formal meaning of "system" and "complexity" within general systems theory. Recall: "complexity has its own terminology and draws on a range of disciplines and fields as sources for it" (Byrne and Callaghan 2014, 17);

303 Based on Von Bertalanffy's "general systems theory";

304 Wheatley argues that "Systems theory thinking is now mainstream in international law,1 reflecting not only the reality that international law is a "system", but also a recognition that systems theory as a distinctive methodology might help us solve, or at least make sense of, some of the practical questions that confront the discipline.";

305 While the approach has been used in International Law, instances of it on integration theory are still not that prevalent, although they do exist, see notably (Albert 2002), (Geyer 2003) and Grimmel, but also (Arena Ventura, Cavalcanti and Freitas de Paula 2006);

306 "Complexity theory is defined by Castellani and Hafferty (2009) as in essence an ontological frame of reference" (Byrne and Callaghan 2014, 57)

communication patterns and interactions require interdisciplinary expertise to analyze. A systems theory approach to European integration is the most precise reiteration of a true law-in-context methodology.

Is the European Union a system, is it a complex system, and why does it matter?

"Major schools of American legal theory have been so mired in reductionist thought that they have failed to see the system behaviours that throughout time have denied legal theorists the Holy Grail of a predictive model of law" (J. B. Ruhl 1996, 853)[307].

A "system is a regularly interacting or interdependent group of items forming a unified whole", as LoPucki notes, and to "analyze a system is to break it down into its constituent parts, to determine the nature and identity of its subsystems, and to explain the relationships among them"[308]. Systems can be simple, complicated, complex, or chaotic. The preciseness of these terms is of great use to anyone studying system components, and interactions between those components, for they require different methodological approaches[309]. Simple systems are easily knowable, because the causal

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307 Ruhl's criticism of reductionism is transferable to European integration theory and finds echo in Mittelstrass, who quoting Mainzer, has noted that even "the social sciences are recognizing that the main problems of mankind are global, complex, nonlinear, and often random" (Mittelstrass 2015, 45);

308 (LoPucki 1997, 483) but also see (Wheatley 2016, 580) "The argument from general systems theory is that we can think of any collection of interacting objects, actors or agents as a "system";

309 Ruhl as written about the ubiquitous of words such as system and complex in legal writings. "The legal system. It rolls easily off the tongues of lawyers like a single word-thelegalsystem-as if we all know what it means" (…) "of the tens of thousands of references to "the legal system" in legal literature,' few of the authors say anything about it as a system." "One thing over which many authors seem to agree, however, is that there is something "complex" about the legal system, using the two terms in close

relationship between their components is perceivable and predictable; complicated systems are still knowable but more difficult to describe, they require expert analysis, because the causal relationship between components is not self-evident; complex systems are not fully knowable[310], but the causal relationship between components is retrospectively coherent, and reasonably predictable; and finally chaotic systems show no knowable nor predictable causal relationship between their components. What this tells us is that reductionism is only useful to understand and master simple or complicated systems, it will never allow us to grasp complex systems, like the EU

Most of the narratives of European integration fall within the paradigm of reductionism[311], positing simple or complicated models or processes of European governance in which causal relations are predominantly linear, and deterministic (non-random) – where when x increases, y increases at a constant rate $(y = a * x + b)$, for example, how actor and institutional preferences alone can positively or negatively impact European integration. Linear models also reflect binary and "equilibrium-based" views of systems common to many social science theories (Buckley 2008)[312] and

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proximity as if to impart some deeper understanding" (J. Ruhl 2008);

310 "As a rule a complex state of affairs cannot be completely grasped, even when models are applied" (Mittelstrass 2015, 47);

311 Reductionism is another polysemous term, we use it here as the ontological and methodological tool favored by positivists, and logical positivists (J. B. Ruhl 1996), influenced by Descartes mechanical physiology theory (the clockwork or automaton universe, in Descartes, Treatise on Man), and Comte's idea that knowledge must stem from objectively observable phenomena. It also results from a Newtonian primacy of simplicity reflected in such quotes as: "Nature is pleased with simplicity, and affects not the pomp of superfluous causes" (Newton 1687, p. 398); and "Truth is ever to be found in simplicity, & not in the multiplicity & confusion of things" (rule no. 9 for interpreting the words & language in Scripture, in the untitled Treatise on Revelation);

312 Buckley notes that "idea that the dynamics of social systems were dominated by an equilibrium-seeking tendency had become entrenched in social thoughts ever since the great economist Vilfredo Pareto". (Buckley 2008);

present in European integration, most notably in Weiler, or in the theoretical framing of the EU within a linear pendulum between intergovernmentalism and supranationalism gravitating towards equilibrium[313] [314]. We are not the first to make this claim, Geyer has noted how integration theorists from Haas to Schmitter have struggled with the EU's complex nature, but have remained locked in binary rationalist and reflective constructions of Europe (Geyer 2003). Geyer's taxonomy might be different – as we have seen EU integration taxonomies frequently are, due to different approaches and different subject area starting points – but if we remove all conceptual window-dressing, the epistemological concern is exactly the same, a concern with the "traditional and increasingly out of date view of the linear nature of the natural sciences. It assumes that the natural world is inherently orderly, stable and predictable, and the epitome of scientific research is reductionism and the creation of universal scientific laws.[315]"

The process of European integration however is far from linear, orderly, stable or predictable, as the recent crisis has proven. It results from a dynamic and sometimes contradictory plurality of processes and subject matters linked to the efforts of integrating Europe's economic, politic, social and legal orders (Petersen, et al. 2008). Moreover, unlike any other polity, the EU doesn't have many of the systemic tethers

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[313] The characterization of the integration process as operating within a linear pendulum between intergovernmentalism and supranationalism, could more accurately be described as a pendulum whose sinusoidal waves operate between a linear spectrum.

314 As Plaza i Font reminds us, the leading "debate between liberal intergovernmentalist and supranationalism, assumes that the European integration process may only lead to two different (and mutually exclusive) modes of integration: either a kind of XX-XXI Centuries Westphalian system among the European States or, alternatively, the creation of (con)federal-like body, which would agglutinate into a single political unity a particular set of ex ante sovereign actors". (Plaza i Font 2016, 34-35);

315 (Geyer 2003, 16);

that shape and bind international states, at least not in the traditional sense. There is always at least one, and often more degrees of separation between the EU as a polity and its population, its territory, its sovereignty and even its governance – which are the 1st tier requirements of any state, their essential components. These degrees of separation further dilute and challenge the essential statehood values of legitimacy, identity and loyalty – the 2nd tier requirements, which measure and validate the 1st tier components[316]. This of course is an over simplistic, far from consensual, and even incomplete, run-through of the components and requirements that define what constitutes a state, but our purpose is not to engage in that debate.

We wish to merely highlight that, even if we could envision the traditional nation-state merely as a complicated system[317] - fully knowable - and therefore study it according to social science approaches under the paradigm of reductionism, the EU is *sui generis*. Schmitter's characterization of the EU as a "post-national, unsovereign, polycentric, non-coterminous, neo-medieval arrangement" (Schmitter, 1996, p. 26) reflects exactly why the EU is not as tightly bound to the same moors that define traditional states. Its democratic deficit for instance, or democratic degree of separation between the EU and its peoples, has made it necessary to invert the measure of its legitimacy from input to output. In its pursuit of output legitimacy however, the already polycentric community method has increasingly had to contend with the encroachment

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316 Identity, legitimacy and loyalty help us measure statehood by questioning if a group of people that share the same territory also share the same identity; if political sovereignty is institutionally and socially legitimate; if the relationship between those who govern and those that are governed is reciprocally loyal.

317 due to the knowability of all its components, and of the values that determine its processes – seeing as states are bound by things such as rule of law, systemic checks and balances, and some sort of popular representation and accountability;

of the council method and a new form of intergovernmentalism - what Curtin labelled as "executive dominance in European democracy" - particularly, if not unsurprisingly, after the European crisis (Bickerton, Hodson and Puetter 2015, 183)[318]. The measure and transparency of this polycentric decision-making process has been further muddled by the European Council's "behind closed-doors" approach, which as the European Ombudsman has recently stated, "inhibit(s) the scrutiny of draft EU legislation (and) undermines citizens' right to hold their elected representatives to account"[319]. Puetter has noted how "the institutional constellation in EU politics that is emerging after the euro crisis with the European Council at its center may further weaken the EU's ability to be politically responsive" (Bickerton, Hodson and Puetter 2015, 184). Our point is to illustrate how democratic and political accountability is far from linear in the EU, and has more degrees of separation than in traditional states.

But are there too many degrees of separation? Is the EU a chaotic system? Is it not only unknowable, but also unpredictable? Some, like Cohen, suggest that these degrees of separation are too profound, rendering any appearance of systematic cohesion superficial at best. Cohen has noted that "what is wishfully thought as the construction of Europe could be more accurately depicted as a series of heterogeneous and competing

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318 "It is part of the paradoxical character of post-Maastricht integration that the growing attention which heads of state and government devote to European Council proceedings" which is "a reaction to the repercussions that EU policy-making has for domestic politics."

319 Press release no. 2/2018, issue on the 13th of February, where "The Ombudsman specifically criticises the Council's failure systematically to record the identity of Member States taking positions during discussions on draft legislation, and the widespread practice of disproportionately marking documents as not for circulation, or "LIMITE"." This issue has prompted the Ombusdman to open an inquiry into accountability of Council legislative work (case OI/2/2017/TE) and to issue a Recommendation of the European Ombudsman in case OI/2/2017/TE on the Transparency of the Council legislative process;

enterprises – political, bureaucratic, legal, academic, economic, military – partially in tune with one another, partly autonomous and out of tune.[320]" What this suggests is a chaotic system, ultimately unpredictable and unknowable. Another scholar, Plaza i Font, makes this assertion quite clearly, by defining the EU as a "far-from equilibrium" chaotic system[321].

System approaches to integration theory are not new. In fact they are in many ways present in many of the classic narratives of European integration, and if we look closely enough we may yet find them present in all. Historical institutionalism, for instance, depicts the integration process as continuously oscillating between two competing and aspirational equilibrium states (supranationalism and intergovernmentalism), "without ever reaching none [*sic*] of them"[322]. The pendulum swings and shifts because ultimately actors are constrained by path dependencies, which lead to unanticipated consequences and gaps in their ability to control the integration process[323]. It could be

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320 Antonin Cohen;

321 In no uncertain terms, he states that "the elementary features of any chaotic system are present in the genesis and evolution of the European Union today" (Plaza i Font 2016, 36). He also notes how "Chaos theory warns us of the theoretical and empirical problems that may derive of approaching the EU political system as an ordered system, whose deterministic behavior may be predicted by reducing the ensemble's behavior to that of its parts" (*idem* 38);

322 "While liberal intergovernmentalism and supranationalism are ready to conceive it as a multistable system (…), with only two alternative states of equilibrium, historical institutionalism could be prone to conceive the European integration process as a far-from-equilibrium dynamical system". Also, "if one examines (the EU's) history closely, it turns out as a unique sequence of specific modes of integration each of whom may be featured in terms of proximity or distance to the liberal intergovernmentalism and supranationalism corresponding optimal equilibriums" (Plaza i Font 2016, 35);

323 "Gaps in member-state control occur not only because long-term consequences tend to be heavily discounted. Even if policy makers do focus on long-term effects, unintended consequences are likely to be widespread." (Pierson, The Path to European Integration 1996, 136) Note also how "actors may be in a strong initial position, seek to maximize their interests, and nevertheless carry out institutional and policy reforms that fundamentally transform their own positions (…) in ways that are unanticipated and/or

argued therefore that historical institutionalism sees the EU as an open system[324], both externally and internally[325], where sequencing and path dependence constrain the integration process[326] (Pierson 1996).

In the following sections we propose to expand on the benefits of adopting a systems approach to European integration; and on how a systems reading of past integration narratives can further support our claim, and at the same time assist us in creating a systems representation – model - of the EU integration process. We shall start however by arguing that the EU is a complex adaptive system.

The EU as a complex adaptive system

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undesired." (*idem* 126);

324 "An open system is defined as a system in exchange of matter with its environment, presenting import and export, building-up and breaking-down of its material components." (Von Bertalanffy 1969, 141)

Plaza i Font notes that "it's precisely this openness that permitted the European integration process to offset the inexorable process of gain of entropy (Laszlo 1995), by accommodating its organizational structures and establishing new patterns of interrelation among its components, as well as by facilitating the emergence of new bodies necessary to cope with the growing complexity" (Plaza i Font 2016, 36);

325 "it has long established continuous exchange flows with the rest of the international system, as the successive enlargement rounds proof [*sic*], but also because it has provided itself with paramount mechanisms that permitted the reformulation of the interaction patterns among its components". *Idem* 36-37;

326 Pierson states that "integration should be viewed as a path-dependent process producing a fragmented but discernible multitiered European polity". Pierson describes how "the notion of path dependence is generally used to support a few key claims: Specific patterns of timing and sequence matter; starting from similar conditions, a wide range of social outcomes may be possible; large consequences may result from relatively "small" or contingent events; particular courses of action, once introduced, can be virtually impossible to reverse; and consequently, political development is often punctuated by critical moments or junctures that shape the basic contours of social life" (Pierson 2000, 251) ; Historical institutionalism therefore, as Moravcsik has noted , "treat(s) sequencing as a more important variable" and views integration as "fundamentally 'path dependent'". (Moravcsik, Sequencing and path dependence in European integration 2005);

"Linear thinking and the belief that the whole is only the sum of its parts are

evidently obsolete" Mainzer[327]

As we have seen, systems theory approaches to law have been attempted before, and they are likewise present in studying societies and cultural systems[328] (Sawyer 2005) (Mainzer 2007) (Buckley 2008), and in the context of international politics (Snyder and Jervis 1993).

Four characteristics are usually to be found in complex systems (Boccara 2010, 4)[329]: (a) a large number of interacting elements or agents; (b) showing nonlinear self-organization[330]; (c) operating on "the edge of chaos"[331]; (d) and whose interaction can lead to emergence[332].

 If we agree that the European Union is a system, within the meaning of general

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327 (Mainzer 2007, 1);

328 "Common to all of these approaches is the basic insight that societies are complex configurations of many people engaged in overlapping and interlocking patterns of relationship with one another"; (Sawyer 2005, 1)

329 "a system (…), which consists of large populations of connected agents (that is, collections of interacting elements), is said to be complex if there exists an emergent global dynamics resulting from the actions of its parts rather than being imposed by a central controller". (Nio Boccara 3); See also Mainzer "The crucial point of the complex system approach is that from a macroscopic point of view the development of political, social, or cultural order is not only the sum of single intentions, but the collective result of nonlinear interactions." (Mainzer 2007, 373);

330 "complex dynamic systems, in which cause-and-effect connections are non-linear" (Mittelstrass 2015, 46)

331 See Sawyer: "complex phenomena are those that reside between simplicity and randomness, at 'the edge of chaos'. (Sawyer 2005, 3); or Miller and Page: "systems that are too simple are static and those that are too active are chaotic, and thus it is only on the edge between these two behaviors where a system can undertake productive behavior" (Miller and Page 2007, 129)

332 Sawyer defines emergence as "processes whereby the global behavior or a system results from the actions and interactions of agents". Boccara goes further and states that "that appearance of emergent properties is the single most distinguishing feature of complex systems" (Boccara 2010, 4);

systems theory, then it is a multi-agent complex adaptive system, with non-linear causal-effect connections, constantly on "the edge of chaos", where, borrowing from Ruhl we could say, "dynamical forces will inevitably lead to unpredictable, unanticipated behavior in a sociological system, and that such phenomena are necessary for the system to thrive and adapt" (J. B. Ruhl 1996, 1410).

Let's consider these four elements that denote the presence of a complex system in more detail and determine if they apply to the European Union's integration process.

The first element, the presence of a large number of interacting elements or agents, is easily met without much need for further proof. However if such proof was required, we can readily and easily rely on the overwhelming empirical evidence from the political science camp which, as seen earlier in chapter two, demonstrated the presence of individual, state, supranational, and institutional actors interacting within the integration process. These studies furthermore provide evidence of the actor preferences, and the multilevel structures within which they communicate.

The second requirement refers to demonstrable proof of nonlinear self-organization. Heylighen defines self-organization as "the spontaneous emergence of global structure out of local interactions" [333], a definition that seems to fit the neofunctionalist narrative of European integration where supranationalism is a product of spillovers, of regional interactions. With regards to non-linearity [334] the several narratives have highlighted how communication patterns within the EU are nonlinear

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333 (Heylighen 2008, 6);

334 Heylighen notes how: "processes in complex systems, on the other hand, are often non-linear: their effects are not proportional to their causes". *Idem*;

and how certain inputs often have disproportional effects. Joerges conflicts-law-constitutionalism, and Maduro's multileveled constitutionalism, are good examples of this point. Grimmel's concept of multiplicity relates to the disproportional effects within these non-linear processes, and in chapter four we will also have the opportunity to further analyze empirical evidence regarding perceptions on immigration versus actual impact of immigration in each member state, and how this data demonstrates complex non-linearity.

The third requirement should require no proof. Heylighen provides a compelling description of what constitutes being at the edge of chaos– "neither regular and predictable (…) nor random and chaotic (…) between rigidity and turbulence"[335]. That the EU operates, and has operated, on the edge of chaos is arguably one of the more consensual premises in all integration theory as discussed above – particularly due to what some scholars characterize as the EU's constant "state of disequilibrium"[336].

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335 Heylighen notes how:

> *complexity must be situated in between order and disorder: complex systems are neither regular and predictable (like the rigid, "frozen" arrangement of molecules in a crystal), nor random and chaotic (like the ever changing configuration of molecules in a gas). They exhibit a mixture of both dimensions, being roughly predictable in some aspects, surprising and unpredictable in others. This intermediate position, balancing between rigidity and turbulence, is sometimes called the "edge of chaos". A number of theorists have proposed that this precarious balance is precisely what is necessary for adaptation, self-organization, and life to occur, and that complex systems tend to spontaneously evolve towards this "edge"* (Heylighen 2008, 4);

336 In a recent article Hodson and Puetter refine their earlier assumptions:

> *"While not proclaiming disintegration as inevitable, new intergovernmentalism invites scholars to rethink traditional assumptions about European integration as being in – or tending towards – equilibrium in order to grasp more fully the pernicious political dynamics facing the EU. It sees the EU as being in disequilibrium, a term which captures growing societal tension in a political system driven by pro-integration consensus but shielded from growing public disenchantment with policy outcomes"* (Hodson and Puetter 2019, 3)

Longo and Murray go further and note how the EU was created and has been continuously shaped by crisis (Longo and Murray 2015).

The fourth element -emergence - is harder to prove. As Miller and Page note, "the usual notion put forth underlying emergence is that individual, localized behavior aggregates global behavior that is, in some sense, disconnected from its origins"[337]. A simpler way to understand emergence would be to focus on features or properties that arise out of a system, and that are not part of their original design or function. Emergence however is not a requirement of complexity, but rather that complexity may lead to emergence. Therefore we do not need to prove this fourth element to argue that the EU is a complex adaptive system. Nonetheless, it would be interesting to explore the possibility of emergent phenomena within the context of the EU, and there are at least two phenomena that potentially qualify. Andreouli et al. have recently suggested that Brexit is the manifestation of emergence[338]. Chapter four will discuss Brexit in great detail, so let's consider the second potentially emergent phenomena of the integration process – the EU's hypostatic constitutionalism – as discussed in chapter one[339]. The constitutional doctrines are not part of the original design and functions of the European Communities, but they evolve organically through the hypostatic trinity of: the solidarity envisioned by the Member States (ideals); the judicial review process they put into place which allowed for an unintended adjudicative process (structure); for the

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337 (Miller and Page 2007, 44).

338 "In this paper, we approach both Brexit and the social psychology of Brexit as emergent forms." (Andreouli, Kaposi and Stenner 2019, 6);

339See extensive footnote 67;

benefit of the peoples of Europe (organic inter-connectivity).

3.3 Modeling the European Integration process – an introduction.

"The success of a particular model is tied to its ability to capture the behavior of the real world." (Miller and Page 2007, 39)

So far, we have only been discussing one of the two main benefits of adopting a systems theory approach to European integration, which can be summarized as follows: by understanding the EU as a complex adaptive system, we can gain a deeper appreciation of the systemic interactions that shape and constrain the integration process, and uncover which forces and incentives compel integration or disintegration. This approach seems to answer most criticisms and the unsolved paradoxes highlighted by the current period and the crisis narratives, which call for such a systematic understanding of the EU to take place through interdisciplinary efforts.

The first benefit is therefore that it improves our understanding of the subject matter at hand, without normative biases – it answers the EU's epistemological question. The second benefit is perhaps even more important, and is linked to this project's second objective – to inform the ontological debate regarding Europe's future.

An accurate understanding of the integration process, and of the different political, social, economic and legal inputs that drive the integration process, allows us to create a computational model of that very same process[340]. It is not enough simply to say that

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340 As Brodland notes: "the goal of a computational model is to replicate the behavior of the system it parallels and to do so based on actual, known properties of the system components"; (Brodland 2015, 63)

the EU is a complex adaptive system, rather to reap the fully benefits of a systems theory approach to European integration, we need to create a representation of that system. The second application of this approach is that it allows us – through computational modelling – to predict the outcome of certain interactions within the system. The second application thus becomes instrumental to solve Europe's ontological question, by showing us not only what the EU is, but what it will take for it to become what we want it to be - computational models allow us to more accurately measure the feasibility of proposed solutions.

What is a model?

The most straightforward way to define what constitutes a model, in systems theory, is to say that it "is a simplified mathematical representation of a system"[341]. We have alluded earlier that traces of system approaches to integration theory could be found in many, if not all, of the classic narratives of European integration. The extent of this claim is only to suggest that each classic narrative could be read as a crude representation of what is perceived to be a simple or complicated system, where communication patterns are linear. We could further suggest that most narratives present integration choices as binary, with actors gravitating in one direction or the other, or towards equilibrium, within zero-sum or positive-sum games.

Our reconstructive analysis of the main narratives of European integration, conducted in chapters one and two not according to legal or political science

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341 (Boccara 2010, 6);

taxonomies[342], but according to the core assumptions of each "model", reflects a systems theory review of EU integration theory. Our objective in those chapters was not to produce, what by now should be acknowledged as a tired retelling of the great grand, middle, and mini theories of the even greater European integration scholars. That project has been exhausted, and what remains to be done is vastly more fruitful.

We need to understand the European Union, to create a truer representation of this complex adaptive system, and we have before us several earlier representations that, incomplete or inaccurate as they might be, still provide a wealth of knowledge and insights for future modelling attempts. They provide thoughtful analysis, albeit mostly qualitative rather than quantitative, of all the components of a system: (a) actors or elements; (b) communication patterns and interaction structures; (c) emergent events. Their isolated focus might be on only one of these components, *e.g.* on actors and their preferences (liberal intergovernmentalism); or on interaction structures and path-dependencies (historical institutionalism), *inter alia*, but their aggregate value is that they represent a starting point to a thorough modelling of the EU as a complex system. What is left to do is figure out what to discard and what to retain for evidentiary value.

Early IT models – an illustrative case study

Let's take Haas' treatise on neofunctionalism – "The uniting of Europe" - as a case study. Haas' integration narrative on "the Uniting of Europe" produced a model that has been recounted many times, and it goes as follows: through functional, economic,

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342 For the reasons already allude to in our introduction, but as will continue to become clear;

political and cultivated regional spillovers, individuals and groups start shifting their loyalty towards supranational institutions, for "loyalty to the established font of authority wanes as a feeling of separate identity takes possession of the group clamoring for new forms of political organization"[343]. The binary model starts taking shape: regional integration creates linear incentives to shift loyalties from national to supranational institutions.

It is a compelling argument, founded in an incremental syllogistic type of a (functionalist) logic[344]. It is based on "soft rational choice", where "social actors, in seeking to realize their value-derived interests, will choose whatever means are made available by the prevailing democratic order", in pursuit of "the utilitarian-instrumental human desire to better oneself in life" (E. B. Haas 2004, xv).

The gist of the theory is known and readily repeated by students and scholars of European integration alike, like a familiar mantra that is easy to learn and to recount. In fact, it has been retold countless time precisely in these terms, with the simplicity of a linear equation. The same crude model, with the necessary adaptations, could apply to Deutsch's transactionalism[345].

This model suggests a fully knowable and fully predictable system, and while Haas

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343 This occurs through an evolution of "national consciousness", and not despite it (E. B. Haas 2004, 3); "Regional integration was expected to occur when societal actors, in calculating their interests, decided to rely on the supranational institutions rather their own governments to realize their demands" (E. B. Haas 2004, xiv); "integration would proceed quasi-automatically as demands for additional central services intensified"; (E. B. Haas 2004, xv)

344 "functionalism and incrementalism (…) planning are key terms for describing the theory" (E. B. Haas 2004, xv);

345 Which "saw integration coming about through the increased communication and interaction across borders." (Wiener and Diez 2009, 8);

himself has had doubts about his initial assumptions, and even doubts about the relevance of neofunctionalism, this theory "has displayed impressive qualities of obstinacy and revitalization in recent years" (Rosamond 2000, 50). The model could be faithfully reduced to the following equation: $\epsilon > 1 \Rightarrow X(\epsilon) = S$ where ϵ represents the net aggregate effects of regional spillover effects, which, when they occur and are positive enact a shift of X loyalty from N national institutions to S supranational institutions[346]. The assumption, we recall, was that the net aggregate effects were incremental – for the spillover effects and dynamics of regional integration was a dependent variable[347] - and did not account for the same, but opposite, linear possibility that if $\epsilon < 1 \Rightarrow X(\epsilon) = N$. A more accurate mathematical representation of the neofunctionalist model should therefore have been[348]:

$$X(\epsilon) = \begin{cases} S & \epsilon > 1 \\ N & \epsilon < 1 \end{cases}$$

Most of the narratives of European integration, taken at their face value, could be just as easily reduced to such linear formulations, where core assumptions are construed through certain dependent variables in a linear model. Neorealism for instance, which

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346 Recall "(5) Deepening economic integration will create the need for further European institutionalization as more expansive integration will require greater regulatory complexity; (6) In other words, political integration is a more or less inevitable side effect of economic integration." (Rosamond 2000, 52);

347 See (Caporaso and Keeler 1995, 33), and in the same vein Rosamond "the early attempts at theorizing background conditions did tend towards treating spillover dynamics as a kind of dependent variable" (Rosamond 2005, 247). Haas himself later acknowledged that early Integration theories were "lamentably unspecific and inconsistent as to the dependent variable to which they address themselves. Nor are they clear with respect to the key independent variables which, in combination, are to result in the eventual condition which is described by the dependent variable." (E. B. Haas 1970, 613);

348 This would be a truer representation of what was initially thought to be the dependent variable;

influenced several integration scholars, assumed rationality of state interests/preferences as the integrational dependent variable - even with contradicting views on how those preferences arose[349], or if the outcome of those preferences would play out in zero-sum or positive-sum games. The theory was that each country C has a preference-value regarding the integration process, which constitutes the dependent variable, in addition to a bargaining power, which can be construed as an independent variable. The equation could crudely be represented accordingly:

$$\epsilon = \sum_c power_c \times preference_c$$

thus to compute the aggregate, each country's preference would be amplified by their respective bargaining power.

The instinct to create such models is laudable, but we shouldn't posit simple equations without validating them with actual data that takes into account all of the components of a system and their linear and nonlinear interactions according to communication patterns within the system (inputs and outputs). A reading of most integration narratives suggests precisely that, a sort of reverse engineering of a model taking into account what is perceived to be its most important dependent variable. This criticism is not new, Pollack for example has long noted how "rational choice theories are often formulated in abstract and empirically intractable ways, with heavy reliance

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349 As Rosamond notes, "classic intergovernmentalism (…) sees national interests arising in the context of the sovereign state's perception of its relative position in the states systems. For Moravcisck [Liberal Intergovermentalism], national interests are best viewed as consequences of a state-society interaction". (Rosamond 2000, 137); In the same vein, "Slaugther argues that state preferences are not fixed or autonomous but are the aggregation of individual and group preferences and that these preferences are the primary determinant of what states do" (Cox 2016, 155);

on unobservable factors and with insufficient attention paid to the difficulties of operationalizing the hypothesized variables" (Jorgensen, Pollack and Rosamond 2007, 34).

Going back to our case study on Haas' initial and groundbreaking neo-functionalism, the model created was based on the equation $\epsilon > 1 \Rightarrow X(\epsilon) = S$ as we have seen. But how did he come up with this equation? What constitutes its evidentiary basis? Who are the actors in the model? What are the communication patterns? While most scholars and students can recount the neofunctionalist premise to a tee, very few will recall, or perhaps even have read, "the Uniting of Europe", or how Haas reached the functionalist model for European integration. If the value of a model rests in its adequacy to represent a system, then the corollary of that is it must stem from all observable data without any *a priori* conceptions, and under no particular scheme of intelligibility[350], for otherwise, as Samuel notes, "it is the social end or function that provides the knowledge of the phenomenon" (Samuel 2014, 81). Instead of a true representation of a system, we are left with a reverse-engineered construct, where data is at best sifted through assumption bias, or procured to fit those assumptions.

Returning to our case study, how did Haas create his model? Who are the actors or elements in the system? *Prima facie* they are interest groups, political parties and governments interacting at national and supranational levels, but not all of them. As Haas soon notes, "it suffices to single out and define the political elites in the

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350 Recall Samuel, "a scheme of intelligibility is a term applied to the way natural of social facts are perceived and represented – the way they are 'read' by the observer – (…) functionalism is a scheme whereby a phenomenon (…) is analyzed in terms of what it does." (Samuel 2014, 81);

participating countries", who are specified as:

> *"the leaders of all relevant political groups who habitually participate in the*
> *making of public decisions, whether as policy-makers in government, as lobbyists*
> *or as spokesmen of political parties. They include the officials of trade*
> *associations, the spokesmen of organized labor, higher civil servants and active*
> *politicians."* (E. B. Haas 2004, 17).

These then constitute the actors within the system, the elites from within: (a) political parties; (b) trade associations; (c) trade unions; (d) member states; (e) supranational institutions;

To note, that the focus on elites is justified through "a combination of ignorance and indifference toward the issue of integration" by the other groups, although only one opinion poll, and only from one member State, is presented as evidence of this[351]. The reliance on data, or opinion polls, from merely one of the member states, usually France, is repeated a couple of times throughout the work.

Which empirical data did Haas collect regarding the actors of the system?

Haas's model is *a priori* set within a binary framework[352] that reflects "two major

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351 Haas justifies NF's focus on elites with: (a) the bureaucratic nature of European organizations (recall this is circa 1958); and (b) anecdotal evidence obtained from a French opinion poll that highlighted "demonstrable difference in attitudes held at the leadership levels of significant groups, as contrasted with the mass membership". The opinion poll shows that workers had a much worse understanding of the ECSC. (E. B. Haas 2004, 17)

352 The same binary framework, that shapes most of his analysis, is manifest in an early on distinction between two archetypes – international organization v. federation – in pages 34 et seq. The differences with regards to members, scope of tasks, methods of

opposing (doctrinal) trends"[353], nationalism and supranationalism, with integration occurring as loyalties shift from the former to the latter. The setting is important to note and to reflect upon as it influences Haas's selecting and study of the actors within the system, as follows: (a) ideology shapes and lends authority to the political community through loyalty; however (b) as "general estimates of the existence or absence of loyalty other than to the national state do not suffice"; (c) Haas proposes to consider "a number of indicators of community sentiment" (E. B. Haas 2004, 9).

Now, as Haas had framed his model in such terms, a binary system with competing loyalties for two different ideologies, it is only natural that he focused his attention on political elites – as opinion influencers and decision-makers – that could influence the collective sentiments, gathering support for nationalism[354], or openness towards Europeanism[355]. In search of such evidentiary data Haas produced mostly:

(a) a qualitative analysis of contrasting opinions by politics elites:

Giscard d'Estaing, then president of the French Chamber of Commerce (p.21); Ludwig Erhard, from Bonn's Ministry of Economics (p.22); German Chancellor

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decision-makings and the nature of decisions, will inform and condition discussions over the integration process;

353 The very first line and first words of this thesis condition the model and all data aggregation – "Two major opposing trends have come to characterize international relations at the end of the Second World War" (E. B. Haas 2004, 1);

354 Defined as "the values and interests common to groups with distinct ideologies, as applied to the doctrine uniting the citizens of modern states" (E. B. Haas 2004, 19)

355 Regarding Europeanism as a doctrine, it is important to note the following. Haas himself admitted that there was no such doctrine yet – "Is the movement for the unification of Europe in possession of a doctrine which performs such functions (meaning an integrative function, as with nationalism)? The evidence suggests that it is not. Yet the values and doctrines of the movement's constituent groups must be explored first in the effort to discover and establish clearly the pattern of ideologies which functions at the European level – beyond frontiers and national politics. From this pattern it may then be possible to abstract the collective doctrine" (E. B. Haas 2004, 20)

Konrad Adenauer (p.32); Minister President Karl Arnold of North Rhine-Westphalia (p.32); French Deputy Coste-Floret (p.32); an unidentified Dutch minister of Economics;

The nature and extent of Haas's qualitative assessment can be exemplified in the following quote: "Chancellor Adaneur, former Premier Arnold of North Rhine-Westphalia and French Deputy Coste-Floret see in supranationality the modern antidote to nationalism, sovereignty and egotism". Data selecting is tethered to the ideological framing of the system, and this also explains why mostly political elites are deemed to be more relevant actors, as the ideological question separates those elites, as Haas himself admitted, through ignorance or indifference, from other possible actors. In fact, we could and will argue that in Haas's model, ideologies constitute the real actors. Haas takes great pain to assert ideological trends by different political elites, but also as consubstantiated by several cited leading scholars and intellectual elites. The ideologies themselves, their crystallization and evolution, as the real actors in neofunctionalism.

(b) a qualitative analysis of contrasting ideologies by political parties, in the same vein as above:

Mouvement Republican Populaire (MRP) France (p.23); *Christlich-Demokratische* Union (CDU) West Germany (p.23); *Parti Social Chretien* Belgium (p.23); European-wide association of Christian-Democratic parties – *Nouvelles Equipes Internationales* (NEI) (p.24);

Where Haas reaches the following conclusion:

> *"among national political parties, there is plainly no unity of thought and even*
>
> *within these parties, the wide variety of emphasis makes it difficult to isolate an*

accepted body of rationally connected propositions which could qualify as

ideology. With the exception of the MRP in France, "Europe" is far too nebulous

a symbol to act as an integrating device for developing a political doctrine" (E. B.

Haas 2004, 27).

There is hardly any quantitative analysis to support this claim, with the exception of two empirical data sources from France alone.

In terms of transnational convergence of political parties Haas reaches a similar qualitative analysis: "temporary convergence of party motives and ideologies (…) Europeanism (…) continues to be a mixture of frequently opposing aspirations. Certainly, it is significant that a homogeneous movement combating such steps has also failed to materialize" (E. B. Haas 2004, 155). To support this claim empirically Haas produces one graph that reflects how each party within each country voted on the three supranational accords (ECSC, EDC and Euratom) –which Haas qualifies as statistics for "European majority" (E. B. Haas 2004, 156-157). Additionally, there is empirical data on: how national parties are distributed within the ECSC's Common Assembly between 1952-1956 (E. B. Haas 2004, 406-407);

(c) a qualitative analysis of support from trade associations[356] "drawn from the statements and aspirations of the chief national trade associations". In fact the only empirical data presented -at a national level - was again a French pool asking industrialists if the ECSC would produce a series of eight itemized changes, and showing that, in 1955, 80% of industrialists "wished ECSC success" (E. B. Haas 2004,

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356 In Chapters 5 (national level) and 9 (transnational level);

191). At a supranational level, the only data provided was for a breakdown of membership numbers by industry and member state for CELNUCO[357] (E. B. Haas 2004, 330).

(d) a qualitative analysis of trade unions, as "the attitude of labor toward integration depends on the economic and political conditions under which the unions of the ECSC country live and operate" (E. B. Haas 2004, 214). Haas produces empirical data on membership strength of ECSC unions, according to their affiliation[358]. Interestingly, the data shows that communist dominated unions had over 6 million members (the second largest group) but, according to Haas, "because of their unswerving opposition to integration between 1950 and 1957, the Communist-dominated unions are of no direct interest to this study" (*idem*). Haas actually critiques his own data by stating that these figures "tend to understate the weakness of the non-communist unions in France and Italy in the mining and metallurgical branches".

Which empirical data did Haas collect regarding the communication patterns and system interactions?

From actors, we shift to communication patterns and system interactions - "after defining the nature of political integration and examining the legal powers of the supranational system created to further the process, it will be our task to describe the major operations of this system during the first five years of its life" (E. B. Haas 2004,

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357 Haas had this to say about CELNUCO (European Liason Committee of Coal Dealers and Consumers) "no single interest group demonstrates the political spill-over effect of supranational economic institutions more clearly than CELNUCO.

358 Which are divided in five categories: (a) communist dominated; (b) socialist; (c) catholic; (d) protestant; and (e) other. (E. B. Haas 2004, 215);

60). Most of the very few empirical data can be found here, and relates to:

Page #	Empirical Data
p.61	Import duties immediately before the Common Market (per cent. Ad valorem) related to ECSC (coal, iron ore, crude and semi-finished products etc…)
p.63	Volume of Trade Between ECSC countries in Coal, Ore, Steel Products and Scrap Note: data collected from 1952 to the first semester of 1955
p.67	Commodities price increase over time - comparison variances between ECSC and non ECSC products + ECSC Production Development (in million tons) 1952 compared to 1956;
p.69	Choice of allocation of investment funds by the High Authority without conducting "any systematic surveys of investment plans" or establishing any long-term objectives in 1954
p.70	Yield and incidence of tax from 1952 to 1956
p.80-82	Statistics on industrial concentration by number of firms in coal, iron, steel mines and mills, steel enterprises, trusts; Statistics on authorized mergers; 1955-1956
p.86	Data refereeing to subsidies. Note: data solely for France
p.93	Funds allocated to labor readaptation and number of workers benefited Note: data refers to 3 countries only;

p.93	ECSC housing program – number of houses planned, amount of ECSC loan, number of houses completed;
p.96	Reduction of differential transportation rates to tackle trade discrimination
p. 285	Indices of relative trade acceptance – comparison between two years1913and 1954
p. 345-350	Consultative Committee Votes on Coal Price Ceilings;
376	Steel Industry: Comparative Wage and Working Conditions 1957
377	Mining Industry: Comparative Wage and Working Conditions 1957
378	Basic Wage Increases (in Coal and Steel industries): 1956-1957

Assessment of the case study.

Haas's treatise remains one of the most thoughtful and thorough empirical and normative analyses of the European integration process but falls short in creating an accurate model of that process. Haas's shortcomings are that he often conflates assumptions with inputs; and at times chooses one input as representative of that class of inputs. He also baises his model on a linear binary spectrum. The virtue of Haas's model is that it demonstrates the benefits of mapping the integration process to better understand outcomes of actor interactions.

Modelling requires a careful selection of all relevant data and variables that describe the state of European integration, as these will constitute the inputs to the computational

model[359]. A normatively induced cherry-picking of favored variables and inputs will negate the usefulness of the model, as it ceases to be an accurate representation of the system.

3.4 Creating a model that represents the CAS of EU integration – a proposal

"Effective models require a real world that has enough structure so that some of the details can be ignored" (Miller and Page 2007, 35).

Modelling complex systems can be challenging as Miller and Page note by using an analogy of models as road maps[360]. They argue that: (1) road maps must filter out a lot of unnecessary information in order to be useful[361]; and (2) paradoxically, the more information we add to our maps, the more we sacrifice their clarity.

With these considerations in mind, a common approach to modelling CAS is the reductionist approach. Reductionism focuses on making essential simplifications within the system to allows us to construct an effective representation of what we are

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359 As Brodland notes: "an important part of the modelling process is to choose (…) state variables". State variables "describe the current state of the model" (…and) "serve as the input to the computational model". "The purpose of the computational "engine" is to faithfully reproduce these interactions using mathematical relationships and computational algorithms." (Brodland 2015, 64)

360 The analogy is as follows: "Maps allow an enormous range of people to easily acquire, and productively use, information about a complex reality. We can use maps not only for making accurate predictions about how to manipulate the world (for example, to get from point A to B), but also to answer a variety of questions that were not part of the map maker's original inters." (Miller and Page 2007, 36);

361 To "minimize distractions and allow us to focus on the questions that we most care about. Good maps are those that have just barely enough details". *Idem*;

studying[362]. In addition to being able to simplify interactions within the system, CAS models must also be able to ignore irrelevant information[363], meaning that both these exercises require some knowledge of the system. It is always important to keep in mind that complex systems are a cosmos in themselves, comprised of *N* elements, and the purpose of modelling is not to account for all these elements, but to create functional representations of those systems.

Modelling complex adaptive systems such as the European integration process can be even more challenging, seeing that the EU permeates four distinct orders – the legal, social, political and economic orders. As mentioned above, the ability to create an effective model requires enough knowledge of that system, for the purposes of eliminating irrelevant information, and for the purposes of making simplifications of the interactions within the model. A basic understanding of the EU as a system therefore requires some expertise in those same subject areas. Without that expertise, any exercise in data selection and pattern simplification would be uninformed and useless. Without such knowledge the model would never amount to an accurate or effective representation of the system.

For that important reason alone, the purpose of this project is not to create a

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362 Brodland notes how simplifications bring clarity, and "are essential to effective model construction". He also notes how "selecting which simplifications to make in any particular situation and the choices involved in the other steps of model construction require knowledge and insight regarding the system; (Brodland 2015, 65);

With regards to simplification and the reductionist hypothesis, Miller and Page argue that: "if we can just get the right simplifications in the model, we will understand everything". (Miller and Page 2007, 41);

363 Note how: "this ability to ignore is a crucial component of scientific progress as it allows us, just like the parent trying to stop the endless regress of a three-year-old's "why" questions, to say "just because". (Miller and Page 2007, 35);

computational model of the European integration process, but rather to: (1) argue why such a model is both useful and necessary; and (2) offer some considerations as to the type of inputs and interactions we could select as being essential to create a representation of our model. A thorough modelling exercise, if enacted, would have to necessarily arise out of interdisciplinary cooperation, with the insights of experts from all fields. Still, it is a pursuit very much worth undertaking.

Having argued why such a computational model would be instrumental in addressing both Europe's epistemological and ontological questions, I will now turn to the types of inputs that should be considered.

Inputs to the European integration process.

As we have seen above, modelling allows us to create a representation of the interactions between the agents that comprise a system[364]. That representation then can be used to perform a series of functions such as: test hypotheses; reveal new ways of understanding the system; and trace chains of causation, among many others (Brodland 2015). Agents within a system interact with each other through the exchange of matter, or energy, or information such as is the case with social systems like the EU. Being an open system however, the EU not only exchanges information within itself, but also with its environment. Inputs are the information, energy, and matter that enter the

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[364] "Another fundamental feature is that complex systems consist of many (or at least several) parts that are connected via their interactions. Their components are both distinct and connected, both autonomous and to some degree mutually dependent. (…) The components of a complex system are most commonly modeled as *agents*, i.e. individual systems that act upon their environment in response to the events they experience." (Heylighen 2008, 4);

system from the outside, and they serve two functions: they initiate the input-throughput-output cycle that reactivates the system; and they "furnish signals to the (system) about the environment and about its own functioning in relation to the environment"[365] – the process of feedback - which allows the system to adapt or self-correct .

The empirical analysis conducted mostly by the political science narratives of European integration have already identified several of the inputs to the European integration system. As suggested previously however, these inputs have traditionally been carefully selected and considered in isolation under normative premises, or to prove certain assumptions. In that regards, these past exercises analyzing certain inputs to the European integration process failed to adopt a systems theory approach and failed to consider the EU as a complex system. Still, the vast and thorough empirical analysis from integration narratives, written by experts from different fields, allow us to overcome this project's limitations[366], and suggest which inputs might be crucial to model the integration process.

An important caveat bears mentioning with regards to the subsequent input analysis. The present division between the four areas of European integration is used solely to present our analysis in an orderly and organized fashion. It is important to bear in mind that such divisions are but artificial distinctions, made up walls that do not necessarily reflect how all agents and elements fit within the system, and how they communicate

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365 (Katz and Kahn 1966, 22);

366 Recall above, and how A thorough modelling exercise, if enacted, would have to necessarily arise out of interdisciplinary cooperation, with the insights of experts from all fields;

and interact with each other[367]. Traditionally we have thought that each actor dawns a certain hat (political, economic, judicial or social) and acts with a linear scope[368], but within a system, communication patterns and interactions permeate all areas and processes of integration. For example, and to illustrate how these divisions are not always rigid, let's consider the inputs provided by national referenda on European issues. When: (i) they are enacted voluntarily by the member states – *i.e.* they are not required by any internal legislative or constitutive provision, or externally by Treaty obligations; and when (ii) they have non-binding effect, do they reflect a political input to European integration? Or is their advisory or mere consultative nature to be placed under the social column? We could easily advocate for both options: (a) it is a political indicator as it conditions communications and perceptions between member states, and even the referendum has no legal binding force, it still holds politicians accountable to their constituents in the long run[369]; *a contrario* (b) not required and non-binding referendums are but opinion polls, indicative of social cohesion or social discord towards the EU, regardless of it they may or may not bear political costs, they are a social indicator of proximity or disenchantment with the integration process.

Below are some examples of the political, economic, social and legal inputs to the European integration process. This is by no means an exhaustive list, on the contrary, it would be easy to produce many more examples for each area of integration. The below

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367 In fact, it would not be incorrect to present our data by any other thoughtful, or even random division;

368 Early narratives of European integration following these divisions. Legal narratives privilege legislative or judicial actors and award primacy to their decisions, while narratives within the political science camp focus on political actors.;

369 The argument is that the possible electoral costs of compliance or noncompliance with public opinion, clearly expressed through a referendum, will create a *de facto* binding force;

examples hope only to illustrate how complex the integration system is, and how inputs can no longer be considered in isolation. Integration theory should recall that the EU is, as Grimmel notes: "a common and enduring framework that not only comprises political, but equally legal, economic and societal integration, based on a set of shared values and practices"[370].

Political inputs to European integration.

We have seen how politics have been construed as the agent of European integration; but also, how the EU's political legitimacy is its greatest crucible. Unsurprisingly then, a vast amount of research has been poured into to considering which political inputs are crucial for the success – or failure – of Europe.

Some of the data collected with regards to the political inputs to the integration process are as follows:

Table 1 Examples of Political Inputs to the Integration Process by the Integration Literature

Political loyalty between MEPs and their home state. *MEP's loyalty to member state's interests despite partisan allegiances – as measured through roll call votes between 2004-2009 in the EP*	(Fabbrini 2015, 163)
Rise and strength of populist parties. *Studying populism in European party systems between 2000-2013;*	(van Kessel 2015)

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370 (Grimmel 2017, 226);

through electoral results; interviews; and surveys	
Public Support for EU Financial Assistance Programs. *Measured through opinion polls during the different bailout moments; also polling on perceptions of political parties' competence; politicians approval ratings;*	(Stefanova 2015)
Levels of politicization; and position on constitutive issues. *Measured through numbers of protest events and participants; levels of politicization in electoral politics by country and period;*	(Hutter, Grande and Kriesi 2016)
Levels of political participation. *Measured by the frequency of eight types of political participation: vote; petition; boycott; contact; worked association; demonstration; campaign badge; political party.*	(Keil and Gabriel 2013, 224)

One of the most interest studies "measuring party positions in Europe" has been enacted by the Chapel Hill Expert Survey (CHES) group[371]. For each European country,

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371 Polk, Jonathan, Jan Rovny, Ryan Bakker, Erica Edwards, Liesbet Hooghe, Seth Jolly, Jelle Koedam, Filip Kostelka, Gary Marks, Gijs Schumacher, Marco Steenbergen, Milada Vachudova and Marko Zilovic. 2017. "Explaining the salience of anti-elitism and reducing political corruption for political parties in Europe with the 2014 Chapel Hill Expert Survey data," *Research & Politics* (January-March): 1-9.

Ryan Bakker, Catherine de Vries, Erica Edwards, Liesbet Hooghe, Seth Jolly, Gary Marks, Jonathan Polk, Jan Rovny, Marco Steenbergen, and Milada Vachudova. 2015."Measuring party positions in Europe: The Chapel Hill expert survey trend file, 1999-2010." *Party Politics* 21.1: 143-152. Note:

> *"The Chapel Hill expert surveys estimate party positioning on European integration, ideology and policy issues for national parties in a variety of European countries. The first survey was conducted in 1999, with subsequent waves in 2002, 2006, 2010, and 2014. The number of countries increased from 14 Western European countries in 1999 to 24 current or prospective EU members in 2006 to 31 countries in 2014. In this time, the number of national parties grew*

experts evaluated national party positioning on European issues such as integration, ideology, and policy issues.

For the purpose of our project we have extracted data from their reports relating to the question:

"How would you describe the general position on European integration that the party leadership took over the course of [year]?"
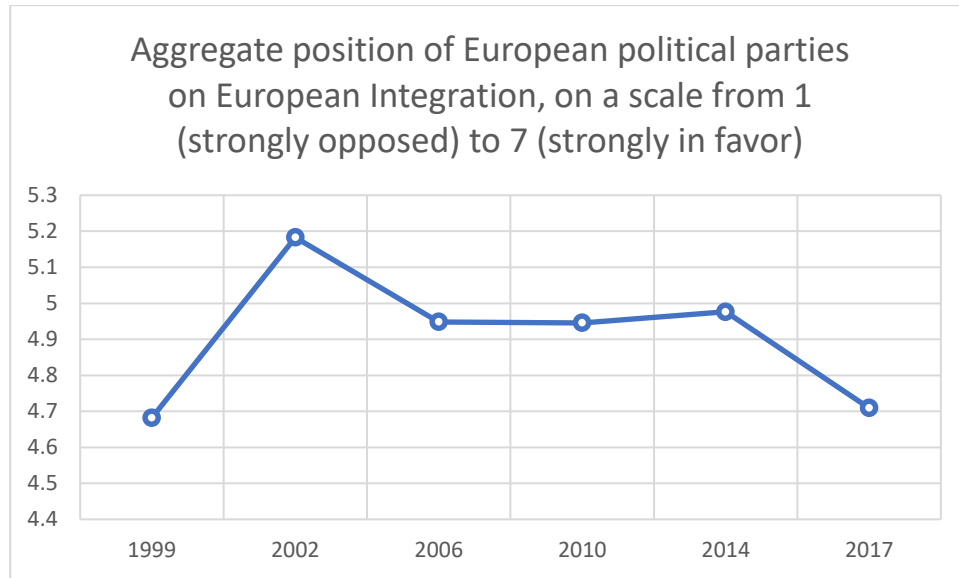
Answers are on a scale of 1-7: 1=strongly opposed to European integration; 7-strongly in favor of European integration. We have aggregated over all political parties and all countries. Note: not all countries have data for 2017[372].

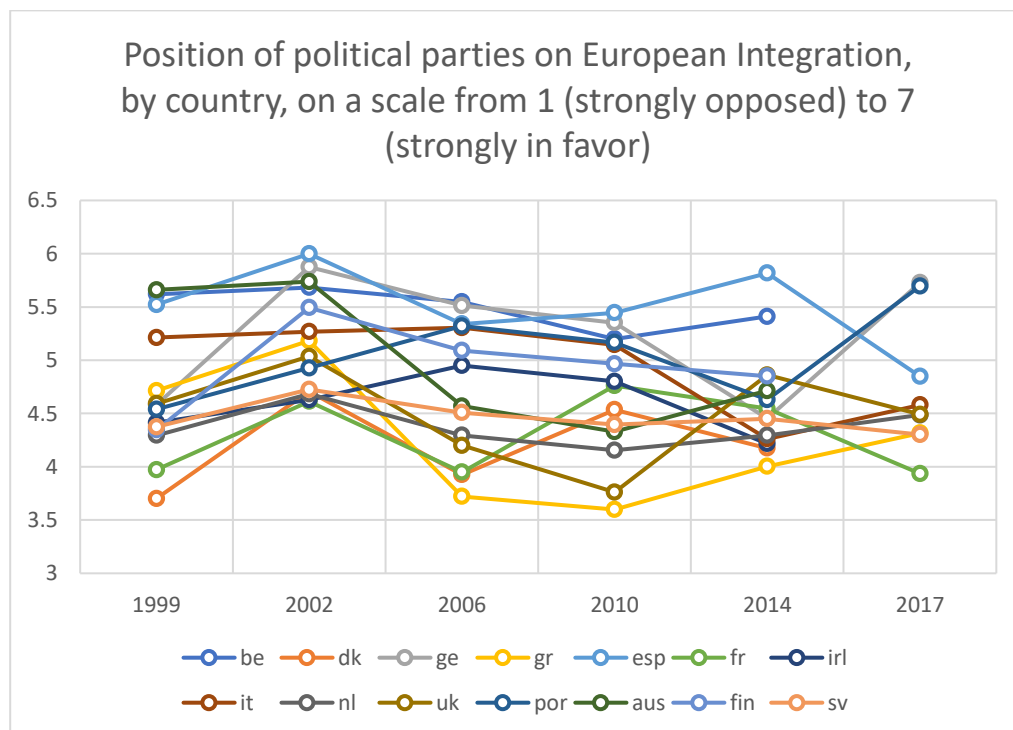*Table 2 Aggregate position of European political parties on European Integration*

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from 143 to 268. The 2014 survey includes all EU member states, plus parties in Norway, Switzerland, and Turkey";

372 Datasets available at https://www.chesdata.eu/1999-2014-chapel-hill-expert-survey-ches-trend-file-1

Aggregate position of European political parties on European Integration, on a scale from 1 (strongly opposed) to 7 (strongly in favor)

Note: 1=strongly opposed, 7=strongly in favor. Aggregate over several countries, surveys taken for the years 1999, 2002, 2006, 2010, 2014, 2017.

Table 3 National party positioning on the issue of European Integration

Position of political parties on European Integration, by country, on a scale from 1 (strongly opposed) to 7 (strongly in favor)
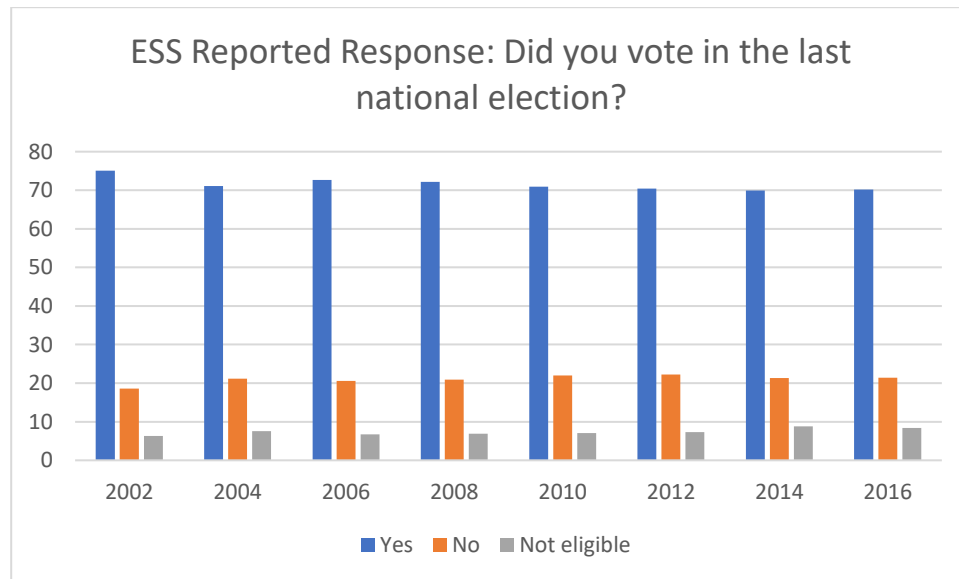
Note: Chapel Hill Expert Survey: national party positioning on the issue of European Integration. Individually by country, for select countries.

The CHES surveys also includes data contrasting party ideology and support for European integration. One of the results they uncovered was that:

> "while in 1984 the relationship between left–right ideology and support for the EU was largely linear, from 1992 until 2002 the association resembles an inverted U-curve where opposition towards the EU is found on the left-wing and right-wing poles of the political spectrum (Hooghe et al., 2002)."[373]

Another important metric that is often measured relates to political participation, both at the national and the European levels:

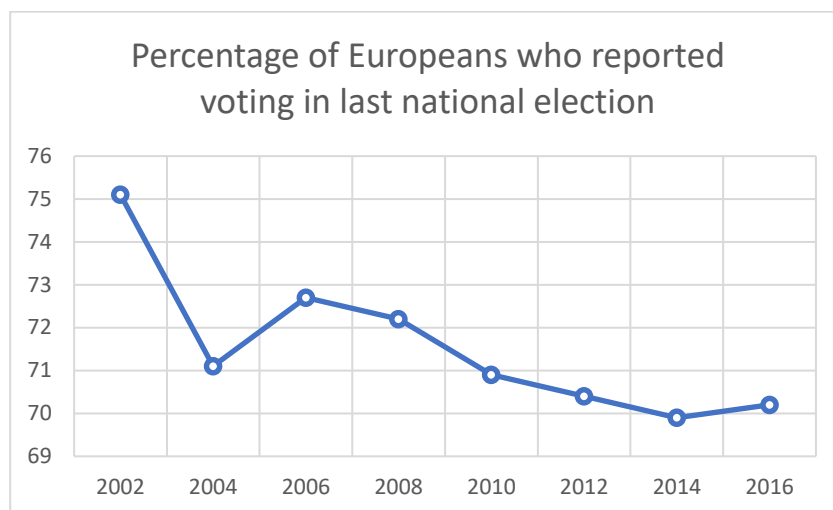*Table 4 ESS survey on voting trends within national elections.*

ESS Reported Response: Did you vote in the last national election?

Note: "Voted in last election". Options: Yes, No, Not Eligible to Vote[374]

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[373] In (Bakker, et al. 2015, 144);

[374] Source: European Social Survey (ESS) http://www.europeansocialsurvey.org/

Table 5 Percentage of European who reported voting in the last national election
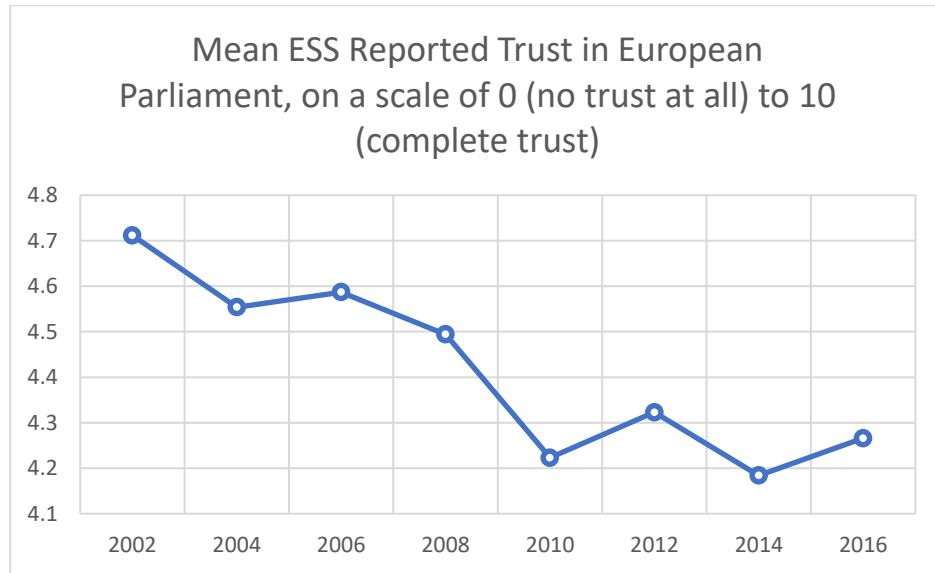

Percentage of Europeans who reported voting in last national election

Note: Those who answered "yes", I voted in the last election

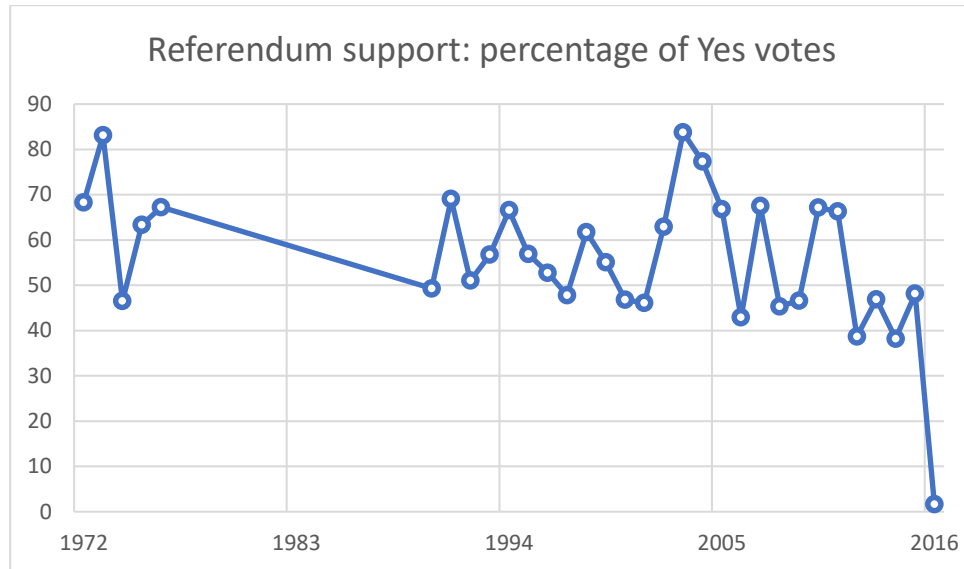Other political inputs relate to perceptions of trust regarding the European institutions.

Table 6 ESS Reported trust in European Parliament

Mean ESS Reported Trust in European Parliament, on a scale of 0 (no trust at all) to 10 (complete trust)

Note: "Trust in European Parliament" - source: ESS. Users responded on a scale of 0=No trust at all to 10=complete trust. Reported score is an overall (aggregate) score, computed as a weighted average of the results.

One of the most significant metrics perhaps relates to the outcome of public referendums on European integration.

Table 7 Referenda on European Integration.

Referendum support: percentage of Yes votes

Note: Referendum data. Percentage of "Yes" votes

The following table provides a more detailed account of the same data:

Table 8 Results and turnout of Referenda on European Integration

Data on Referendum's relating to European Integration				
Year	Country	Yes	No	Turnout	Object
1972	FRANCE	68.30	31.70	60.20	Enlargement of EEC
1972	IRELAND	83.09	16.91	70.88	Accession to the European Union
1972	NORWAY	46.50	53.50	79.00	Accession to the European Union
1972	DENMARK	63.30	36.70	90.10	Accession to the European Union
1975	UK	67.23	32.77	64.62	Accession to the European Union
1992	DENMARK	49.28	50.72	83.05	Ratification of the Maastricht Treaty
1992	IRELAND	69.05	30.95	57.31	Ratification of the Maastricht Treaty
1992	FRANCE	51.04	48.96	69.70	Ratification of the Maastricht Treaty

1993	DENMARK	56.74	43.26	86.47	Ratification of the Maastricht Treaty
1994	AUSTRIA	66.58	33.42	82.35	Accession to the European Union
1994	FINLAND	56.89	43.11	70.79	Accession to the European Union
1994	SWEDEN	52.74	47.26	83.32	Accession to the European Union
1994	NORWAY	47.82	52.18	89.04	Accession to the Europen Union
1998	IRELAND	61.74	38.26	56.20	Ratification of the Amsterdam Treaty
1998	DENMARK	55.10	44.90	76.24	Ratification of the Amsterdam Treaty
2000	DENMARK	46.79	53.21	87.60	European Monetary Union
2001	IRELAND	46.13	53.87	34.79	Ratification of the Nice Treaty
2002	IRELAND	62.89	37.11	49.47	Ratification of the Nice Treaty
2003	HUNGARY	83.76	16.24	45.59	Accession to the European Union
2003	CZECH REPUBLIC	77.33	22.67	55.21	Accession to the European Union
2003	ESTONIA	66.83	33.17	64.06	Accession to the European Union
2003	SWEDEN	42.91	57.09	82.57	European Monetary Union
2003	LATVIA	67.49	32.51	71.45	Accession to the European Union
2005	FRANCE	45.33	54.67	69.37	Ratification of the EU Constitution
2008	IRELAND	46.60	53.40	53.13	Ratification of the Lisbon Treaty
2009	IRELAND	67.13	32.87	59.00	Ratification of the Lisbon Treaty
2012	CROATIA	66.27	33.13	43.51	Accession to the European Union
2015	GREECE	38.69	61.31	62.50	Bailout Referendum
2015	DENMARK	46.89	53.11	72.00	Opt-Out (Justice and Home Affairs)
2016	NETHERLANDS	38.21	61.00	32.28	EU-Ukraine Association Agreement
2016	UK	48.11	51.89	72.21	EU Membership

| 2016 | HUNGARY | 1.64 | 98.36 | 44.04 | Migrant Quota |

This is by no means an exhaustive list of all the political inputs to the political integration process, but they serve to illustrate what types of information can be analyzed to create a computational model. The greatest challenge in interpreting these inputs is that with regards to some issues - such as participation in national elections and support for national parties on the one hand, and public support for European integration on the other - the reasons that lead voters to provide positive or negative feedback to the system are not necessarily related to the issue for which they have been called to vote upon. We have seen that one of the criticisms of the EU is its political gap, and how citizens often feel that there is no avenue for them to voice their discontentment and impose the political costs of what are perceived to be bad decisions at the EU level. This discontentment however might end up manifesting itself at the national level, where the price of EU decisions will be imposed upon national elections, and upon national politicians. Conversely, discontent with national politics and policies might lead voters to voice their anger towards their own government when being called to decide on EU related matters.

The EU's political gap, understood to be its lack of adequate accountability and representation structures, allows for these lines to be easily blurred with, and with a most unfortunate consequence which is that the inputs that the system receives are not always an adequate representation or measure of how it is functioning.

This issue has been recently aggravated by what Hutter, Grande and Kriesi refer to as the politicizing of European integration, and particularly of the Euro crisis debate

(Hutter, Grande and Kriesi 2016). According to these scholars, "the European integration project has become the object of controversial mass politics"[375]. Hutter et al argue that this politicization is one of the contributing causes of the current crisis moment[376].

Economic inputs to European integration.

As noted previously, the legitimacy of the EU has often rested on the belief that output legitimacy could somehow replace input legitimacy, particularly through the EU's economic success, a premise which is the basis of Gabel's "utilitarian model of public support for European integration" (Gabel 1998). Gabel postulated five different hypotheses to explain what legitimizes public support for the EU, and under his utilitarian model he posited that public support for the EU is linked to the welfare gains that arise out of the integration process[377]. More recently, Guerra and Serricchio found that the utilitarian model still holds true particularly in Eastern European countries[378]. In contrast, they found that for Western European countries, public support for the EU is drawn from political cues, class participation, and a sense of community, with Italy

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[375] (Hutter, Grande and Kriesi 2016, 4);

[376] (Hutter, Grande and Kriesi 2016, 5);

[377] "EU citizens in different socioeconomic situations experience different costs and benefits from integrative policy; that these differences in economic welfare shape their attitudes toward integration; and consequently, that citizens' support for integration is positively related to their welfare gains from integrative policy" (Gabel 1998, 336);

[378] In (Stefanova 2015, 285);

being the only exception to this rule[379].

While the focus on econometrics has been a constant in the political science narratives of European integration, with regards to their legitimizing output function, they have gain renewed and increased attention after the Euro crisis, arguably more so than any other type of indicators, as we will see later on in this section.

But even if economic inputs were not tethered to the EU's normative legitimacy, they would still be important due to the very nature and structure of the European economic and monetary project. Sometimes it is easy to forget that, alongside its original political messianism and universalist ideals, the EU shares its genesis with neo-liberal economic aspirations (Dymski)[380]. In pursuit of those aspirations, the structure of the EU changed drastically after the 1992 Maastricht Treaty, which several scholars note as a crucial turning point in the dynamics of European integration (Bickerton, Hodson and Puetter 2015)[381] (Bitzenis, Karagiannis and Marangos 2015).

In anticipation of the launch of the EU's common currency – the Euro - the Maastricht Treaty imposed increasingly converging macroeconomic ratios to the

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379 *Idem*;

The political cues and class participation model is based upon Inglehart's "silent revolution in the domain of political values" as developed by Gabel, "as a proposition on the role of socioeconomic conditions surrounding their formative, or preadult, years" in shaping citizens political attitudes" *idem* at 272;

The sense of community model builds upon Hooghe and Mark's study on "the role of exclusive identity for public attitudes towards the EU. People holding multiple territorial identities are more likely to support the EU". *Idem* at 273;

380 In "NAFTA and the EU as neo-liberal Mechanism Designs", where he notes: "as an economic union, the core premise of the EU was to use a common currency (the Euro) to generate a large domestic market, encouraging investment and economic development throughout the Eurozone". (Bitzenis, Karagiannis and Marangos 2015, 20);

381 Bickerton, Hodson and Puetter talk about European integration in two moments: before and after Maastricht;

member states, with regards to debt-to-GDP and price inflation rates, [382]. These convergence criteria for Euro membership are reinforced by the 1997's Stability and Growth Pact (SGP) [383], which strengthens the monitoring and coordination of the Maastricht Treaty's national fiscal and economic policies, constraining Member States national budget deficits to at most 3% of GDP; and national public debt to 60% of GDP. Macroeconomic indicators therefore became an essential part of the integration process, as a measure of its success, further entangling the EU's normative legitimacy with its economic outputs.

When the 2008 subprime crisis hit it caught the EU largely unprepared for its ramifications. Maduro notes how there are two competing narratives to explain the impact of the financial crisis in the EU[384]. According to the first narrative, the Members States were to blame, due to their "irresponsible fiscal policies and lack of economic competitiveness"[385]. Supporting this narrative is the fact that in 2007 seven of the then twelve Eurozone member countries – Austria, Belgium, France, Germany, Greece, Italy and Poland - had national debt ratio's higher than 60%, then the prescribed Maastricht

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382 As Dymski notes that these measures were designed to encourage "convergence prior to the launching of the common currency". He also notes how:

"Limits on participating nations' budgetary excesses were supposed to harmonize national growth rates. These rules guarded against fiscal 'free riding' by member states; they also largely precluded Keynsian macroeconomic stimulus packages. The idea was that a disciplined Eurozone could achieve convergence via both the increased mobility of capital and investment and the proper management of national fiscal policy". Idem.

383 "The Stability and Growth Pact (SGP) is a set of rules designed to ensure that countries in the European Union pursue sound public finances and coordinate their fiscal policies". https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/stability-and-growth-pact_en

384 In the forward to (Adams and Larouche 2014);

385 *Idem* at page 1;

and SGP requirements. As Arestis and Sawyer note, "with the onset of the financial crises and the Great Recession, budget deficits rose sharply", which led to claims that it was the Member States failure "to constrain budget deficits in the mid-2000s, which were to blame for the debt crisis and which placed limits on the ability of governments to respond to the Great Recession"[386] [387]. The monetary and financial interdependence created by the Euro quickly made the financial issues of those states soon became a problem for all[388] [389].

The second narrative presents a more thorough analysis. It challenges the fiscal irresponsibility of the Member States premise[390] [391], and looks instead at the systemic

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[386] (Bitzenis, Karagiannis and Marangos 2015, 113);

[387] Adams, Fabbrini and Larouche offer a counter argument, pointing towards a systemic deficiency of the design of the EMU:

"the original setup of the EMU placed too much faith in markets or, more precisely put, in the benevolence of markets and the readiness of market actors to accept the no-bailout clause at face value. Certainly, the influx of capital into the weaker eurozone members throughout the 2000s show that many market actors believed that no eurozone member would be allowed to fail. Many speculators bet - successfully as it turned out—that the no-bailout clause would not ultimately stand." (Adams and Larouche 2014, 2)*;*

[388] As Maduro notes: "Capital flight from those Member States is a simple consequence of those irresponsible fiscal policies and underlying economic problems. But, in the meanwhile, the interdependence generated by the euro resulted in the financial problems of those states becoming a problem for all." (Adams and Larouche 2014, 1);

[389] As Dervis and Mistral note: "the economic crisis that started in Greece in late 2009 quickly spread to Ireland and Portugal and then to Spain and Italy". (Dervis and Mistral 2014, 1);

[390] As Papadimitriou and Wray argue: "while the story of fiscal excess is a stretch even in the case of the Greeks, it certainly cannot apply to Ireland and Iceland, or even to Spain". (Bitzenis, Karagiannis and Marangos 2015, 48)

[391] Rossi argues:

"contrary to well-established beliefs, the euro-area crisis did not originate in excessive public spending and 'sovereign' debt. The Greek public debt and deficit figures with respect to the country's gross domestic product (GDP) been clearly fudged both before and after Greece joined the euro area, but: the tiny weight of this country within the European Monetary Union (EMU) excludes that these problems can have any causal relationship with the euro-area crisis that burst at the end of 2009" (Bitzenis, Karagiannis and Marangos 2015, 143);

deficiencies of the fiscal and monetary structure of the EU, particularly after the Maastricht Treaty and the creation of the Euro[392]. These systemic deficiencies result, among others, from:

- "neo-liberal policies particularly as regards both labor and capital markets" (Rossi)[393];

- "forming a monetary union without a sufficient political union (…) seeing that the currency union and the Maastricht Treaty alone did not have strong enough enforcement mechanisms to ensure adequate banking and fiscal restraint" (Dervis and Mistral 2014, 2). In this same vein Rossi notes how the euro "is a currency without a state"[394];

- the EU's "failure to internalize the democratic consequences of the interdependence in the EMU" (Maduro)[395];

- Europe's "dual monetary system" – where within the Eurozone, Member States can benefit from free capital mobility, and a stable currency, but in which monetary policy is dictated by the ECB; and outside of the Eurozone, Member States follow "the contemporary or post-Bretton Woods monetary system which allows capital mobility and flexible exchange rates in order to preserve the independent monetary policies of the countries". (Kondeas)[396]

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392 Rossi goes further as suggests that the origins of the EU's financial crisis lie "within the euro area" itself. In (Bitzenis, Karagiannis and Marangos 2015, 145);

393 (Bitzenis, Karagiannis and Marangos 2015, 143);

394 (Bitzenis, Karagiannis and Marangos 2015, 145);

395 (Adams and Larouche 2014, 8);

396 (Bitzenis, Karagiannis and Marangos 2015, 212);

- the limited powers of the ECB when the Euro was launched: "the European Central Bank occupied the space of a central economic authority and insurer but lacked the mandate and powers of a central bank." (Dymski)[397] Additionally, with regards to the limited powers of the ECB, "primary law does not vest the ECB with the power to finance Member State deficits (known as the no-bailout clause, Article 125 TFEU) and does not allow it to act as a lender of last resort for eurozone banks." (Baroncelli)[398] [399].

Some of the recent narratives on EU integration highlight these systemic deficiencies, which were further exacerbated by the EU's 'econocentric' response to the crisis moment - which by awarding primacy to economic policy measures, has been criticized for contributing to further delegitimize the EU [400].

This criticism is particularly acute with regards to the EU's "one-size-fits-all" approach as enacted through the "Fiscal Compact" policies which were introduced by

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397 (Bitzenis, Karagiannis and Marangos 2015, 20);

398 (Adams and Larouche 2014, 130);

399 Sotiropoulos, Milios and Lapatsioras on the ECB: "the ECB is an unconventional central bank in its origin, being without the backing of a uniform fiscal authority". (Bitzenis, Karagiannis and Marangos 2015, 74);

400 See (Stefanova 2015) (Bitzenis, Karagiannis and Marangos 2015);

the Treaty on Stability, Coordination and Governance (TSCG) [401] [402] [403]. These policies imposed strict obligations regarding debt-ratios, balanced budgets, and a requirement to incorporate said measures into the Member's States national constitutions. It is this requirement, that Adamas, Fabrini, and Larouche refer to as the "constitutionalization of European budgetary constraints", that "represents a major and unprecedented development, which raises formidable challenges on the nature and legitimacy of national constitutions as on the future of the European integration project"[404].

Several books have been written that exhaustively analyze the economic inputs to the EU's crisis, based on the premises of either or both narratives: that the crisis resulted or was aggravated by irresponsible Member State polices; or that it resulted from the deficiencies within the frail institutional framework of the European Monetary Union[405],

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401 The TSCG was formally concluded on 2 March 2012 and entered into force on 1 January 2013. The Treaty's main provision – article 3 - requires a balanced budget rule to be imbedded in national legislation "alongside national surveillance (by an independent monitoring institution) and a correction mechanism (in case of deviation) (…) Out of the 25 Contracting Parties to the TSCG, 22 are formally bound by the Fiscal Compact (the 19 euro area Member States plus Bulgaria, Denmark and Romania)". Source: https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/economic-and-monetary-union/how-economic-and-monetary-union-works_en

402 "It was not long before the siren calls for fiscal consolidation arose, spurred on by spurious claims of 'expansionary fiscal consolidation' and the now discredited claims that debt ratios threatened the economy. (…) Within the Eurozone, fingers were pointed at the failures of the Stability and Growth Pact (SGP). European leaders decided at a meeting in Brussels 8/9 December 2011 to adopt tighter rules on budget deficits and stricter enforcement of those rules. The 'fiscal compact' rules are now embedded in the inter-government Treaty on Stability, Coordination and Governance with the budget rules written into national constitutions or equivalent." Arestis and Sawyer in (Bitzenis, Karagiannis and Marangos 2015, 113);

403 "During the crisis, EU bodies devoted serious attention to advancing European initiatives to promote fiscal responsibility" Appel and Block in (Stefanova 2015, 107)

404 (Adams and Larouche 2014, 1);

405 Sotiropoulos, Milios and Lapatsioras note: how "the European Monetary Union (EMU) is a sui generis monetary union: one without a central authority possessing the typical characteristics of a capitalist state". (Bitzenis, Karagiannis and Marangos 2015,

and was worsened by the EU's irrational econocentric responses.

Sotiropoulos, Milios and Lapatsioras[406] reframe these two narratives as expressing "reflective causality"[407], and "structural causality" respectively, and offer an additional distinction between the two. They argue that most of the EU's immediate responses to the crisis were based on the premises of the reflective causality, which was born out of a "moralistic kind of reasoning". Reflective causality narratives characterized the economies in deficits as "'profligate', 'reckless', and 'incontinent' living 'beyond their means'" [408], therefore viewing these imbalances as "bad macroeconomic development". Paradoxically, as the scholars note, these same account imbalances before the crisis "were welcomed as the optimum means to support and accommodate the catching-up process between European 'core' and 'periphery'"[409]. Dervis and Mistral reiterate this same argument, that the same policies that were condemned post-crisis, were hailed as a sign of the success of the Euro[410].

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67);

406 In "Addressing the Rationality of 'Irrational' European Responses to the Crisis: Political Economy of the Euro Area the Need for a Progressive Alternative", in (Bitzenis, Karagiannis and Marangos 2015);

407 Which "targeted the economies in deficit as solely responsible for the imbalances because of private sector dis-saving, public sector dis-saving, or both." (Bitzenis, Karagiannis and Marangos 2015, 68);

408 These narratives argued that: "when an economy faces current account deficits (or reductions in its surpluses), it is a sign of 'imprudent' and 'reckless' domestic behavior both of the private (firms and households) and public sectors." Idem;

409 Idem

410 They note how:

> Interest rates inside the eurozone converged surprisingly rapidly, as if membership in this monetary union was a sufficient condition for an immediate equalization of sovereign creditworthiness; credit conditions became so favorable that growth in the periphery countries where there were more "catch-up" opportunities—those that would shortly become crisis countries—was particularly strong; Spain for example, was not far from being called a new economic miracle. As late as December 2008, the Economist published a spectacular assessment of what had been achieved,

The reflective causality has two consequences: (a) by overlooking the structural causalities and deficiencies of the EU's monetary and fiscal policies, and by assigning blame to the Member States, it introduced a lofty political and social European stigma against countries who deviated from neo-liberal austerity reforms – in an expansive moral hazard argument; and (b) it created social tensions and divides between fiscally "responsible" and fiscally "irresponsible" member states – and national citizens - creating or furthering divisive stereotypes between, what were too soon forgotten to be, the sisters and brothers of the European project[411].

The economic inputs to European integration have thus this dual characteristic: they measure the success of the integration project with regards to an important part of its (monetary and fiscal) functions and aspirations; but they also have become intertwined with the question of EU's normative legitimacy, both as a measure of output legitimacy and, more recently, also as a measure – or as a stabilizer/destabilizer - of Europe's cohesion and its shared identity. In the absence of a strong normative alternative, they risk becoming determinative in the further construct, or failure, of the European project.

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calling the "euro at ten" a "resounding success" and confirming to its readers the belief that the single currency had proved "demonstrably durable". (Dervis and Mistral 2014, 1)

411 Dervis and Mistral note how: "*in the eyes of many German voters, the Greeks were not only seen as having mismanaged their country: they were "sinners" who had betrayed the contract between the members of the European Monetary Union*". (Dervis and Mistral 2014, 4)*;*

In the same vein, Papadimitriou and Wray:

"The picture of the debtors that the Germans, especially, want to paint is one of profligate consumption fueled by runaway government spending by Mediterraneans. The only solution is to tighten the screws. (...) Ironic as it was Germany that originally got the rules relaxed because its own slow growth period had caused it to chronically exceed Maastricht limits on deficits and debts. And it is all the more ironic that loosening the rules allowed Greece to build to the higher debt ratios that Germany now admonishes" (Bitzenis, Karagiannis and Marangos 2015, 47)

We have seen some examples of economic inputs, that have been selected overtime as essential to understanding the integration process. Below we can find further examples:

Table 9 Examples of Economic Inputs to the Integration Process by the Integration Literature
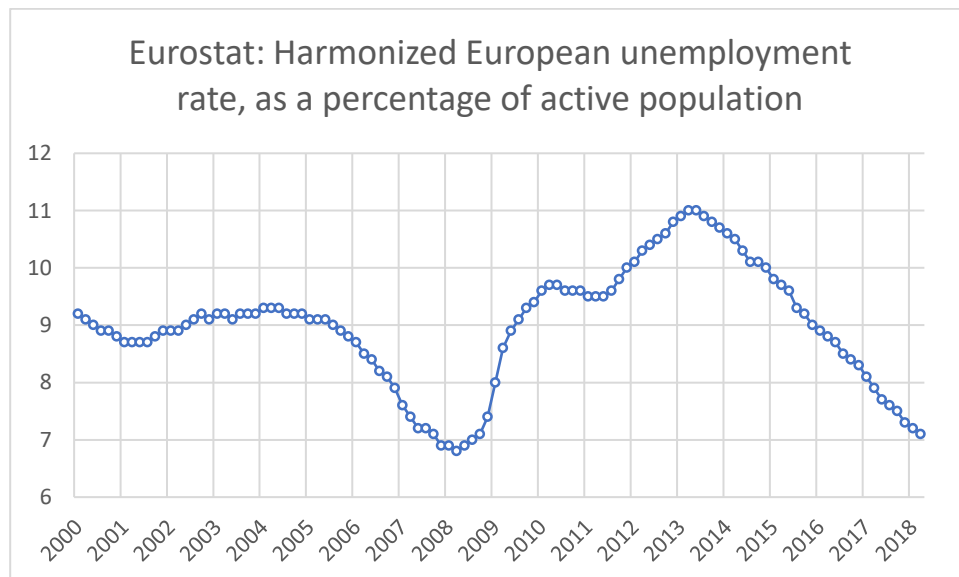
Key indicators for the euro area[412] *Information the most relevant economic statistics concerning the euro area.*	European Commission
Percentage change in GDP from previous quarter	(Stefanova 2015); (Dervis and Mistral 2014)
Budgetary positions of EMU member States	(Bitzenis, Karagiannis and Marangos 2015)
Public Support for: EU Financial Assistance Programs Enhanced Economic Coordination Deficit Reduction v. Job Creation	(Stefanova 2015)
European Unemployment Rate	(Stefanova 2015, 154; 298); (Dervis and Mistral 2014, 55); (Keil and Gabriel 2013, 9)

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412 Most recent indicators (March 2019) can be found at: https://ec.europa.eu/info/sites/info/files/economy-finance/key-indicators_2019-03-08.pdf

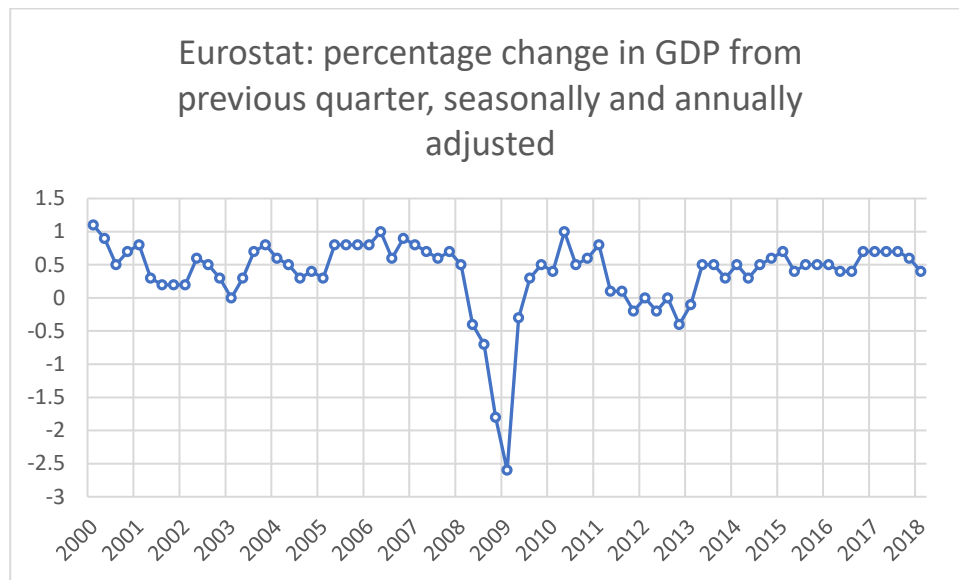| Government Debt as a % of GDP	(Bitzenis, Karagiannis and Marangos 2015)
Government deficit/surplus, expenditure, and revenue as a percentage of GDP	(Dervis and Mistral 2014)

Table 10 Harmonized European Unemployment Rate

Eurostat: Harmonized European unemployment rate, as a percentage of active population

Note: Harmonized unemployment rate over EU28, expressed as percentage of active population. Monthly data from Jan 2000 – April 2018. Source: Eurostat

Table 11 Eurostat: percentage change in GDP from previous quarter, seasonally and annually adjusted

Note: Chain linked volume, percentage change on previous period. Seasonally and annually adjusted. EU28. Quarterly data from 2000Q1 – 2018Q1. Source: Eurostat
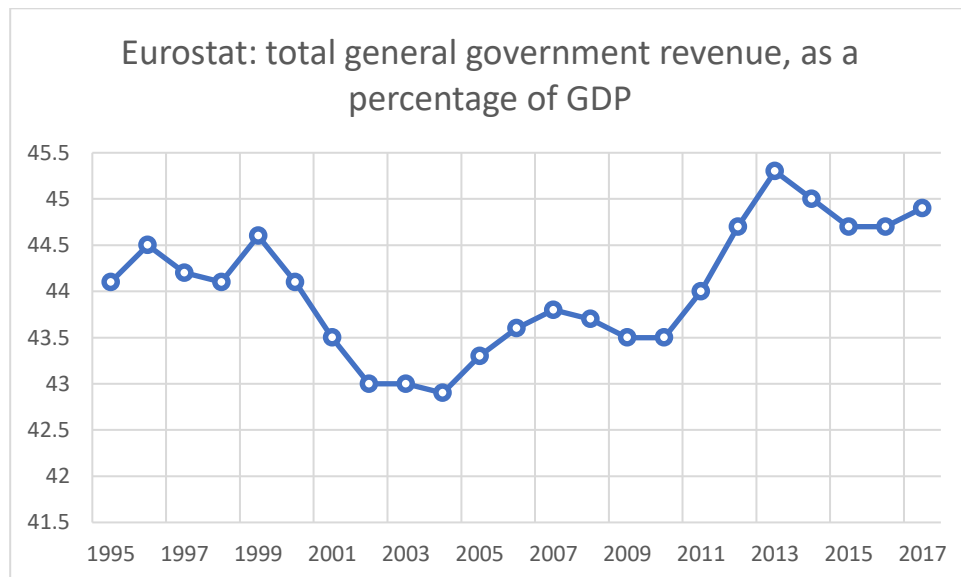
Table 12 Eurostat: government deficit/surplus, as a percentage of GDP

Table 13 Total general government expenditure, as a percentage of GDP

Table 14 Total general government revenue, as a percentage of GDP

Social Inputs to European integration.

While the role of sociology and social psychology has not been as prevalent in integration theory as law, politics and economics[413], its has nonetheless contributed greatly to the understanding of the EU through the study of the 'European Identity', enacted by such scholars as Katzenstein[414], and the IDNET project by Risse[415].

Issues of identity have further become tethered with issues of legitimacy, loyalty, and solidarity, and have affected the relationship and the trust between EU citizens and the EU. They also have contributed to the EU's crisis, particularly with regards to the issue (and acceptance) of immigration, as shall be seen in chapter four.

More recently, other social inputs to European integration have been gaining greater consideration within integration theory, as scholars increasingly acknowledge the role of other societal actors in shaping EU policies, actors who represent the preferences of both national and transnational social groups (Kaiser and Meyer 2013)[416].

Finally, social inputs become paramount with regards to the integration project

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413 Bourne and Cini note that: "sociologists have been much less visible in Eu Studies than lawyers and economists, and their direct contribution to EU Studies has been somewhat limited" (Bourne and Cini 2006, 5);

414 (Checkel and Katzenstein 2009);

415 (Risse and Maier, Europeanization, Collective Identities and Public Discourses 2010) and (Risse, A Community of Europeans? Transnational Identities and Public Spheres 2010);

416 These scholars argue that:

"various societal actors involved in network-type relations with national governmental and supranational institutional actors were often important for the formation of strategic political alliances, the definition of key political objectives and agendas as well as workable policy compromises. We hypothesize that societal actors provided the crucial glue for the EU's political fabric and its policy-making, even if they did not and still do not normally receive the same media attention as national governments after European Council meetings for example." (Kaiser and Meyer 2013, 2)*;*

when we consider a paradigm shift that has been enacted in recent decades, and become more determinative during the crisis, which is that European integration is no longer a project whose outcome depends on political elites[417]. As Guerra and Serrichio note, "European citizens' attitudes increasingly influence and constrain the process of European integration. (…and the current) crisis further widened the gap between mainstream elites and mass publics.[418]" With the added threats of populism, and globalization's discontent, social convergence within Europe becomes paramount. That social convergence depends on several different inputs that Mistral explores, inputs regarding education, poverty rates, life expectancy, social security, among others[419].

Here are some examples of social inputs to the integration process:

Table 15 Examples of Social Inputs to the Integration Process by the Integration Literature

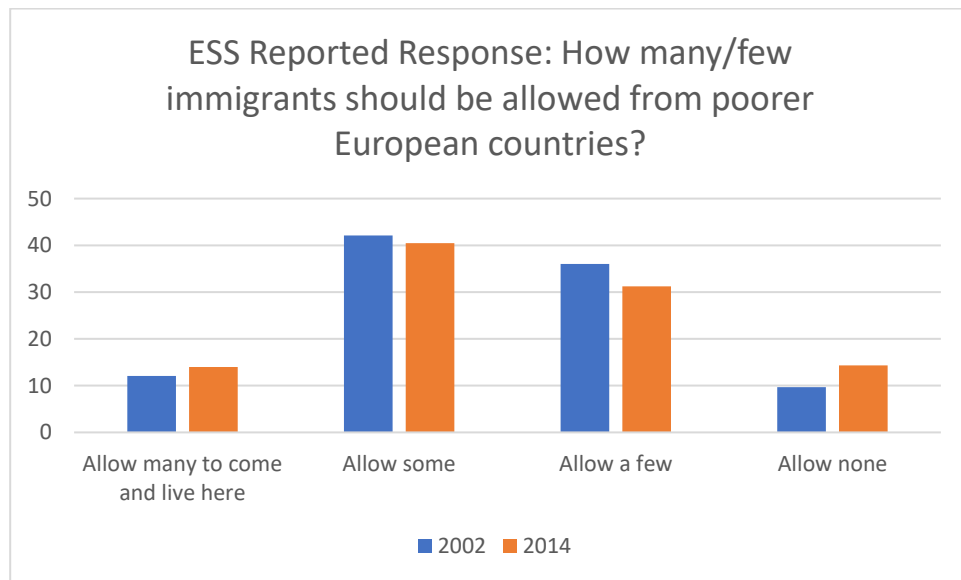|	
Attitudes towards immigration	(Keil and Gabriel 2013, 192)
Education statistics	(Keil and Gabriel 2013, 7); (Stefanova 2015, 154); (Dervis and Mistral 2014, 151)
Trust in Europe	(Keil and Gabriel 2013, 102);
Subjective General Health	(Dervis and Mistral 2014,

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417 (Hutter, Grande and Kriesi 2016, 3);

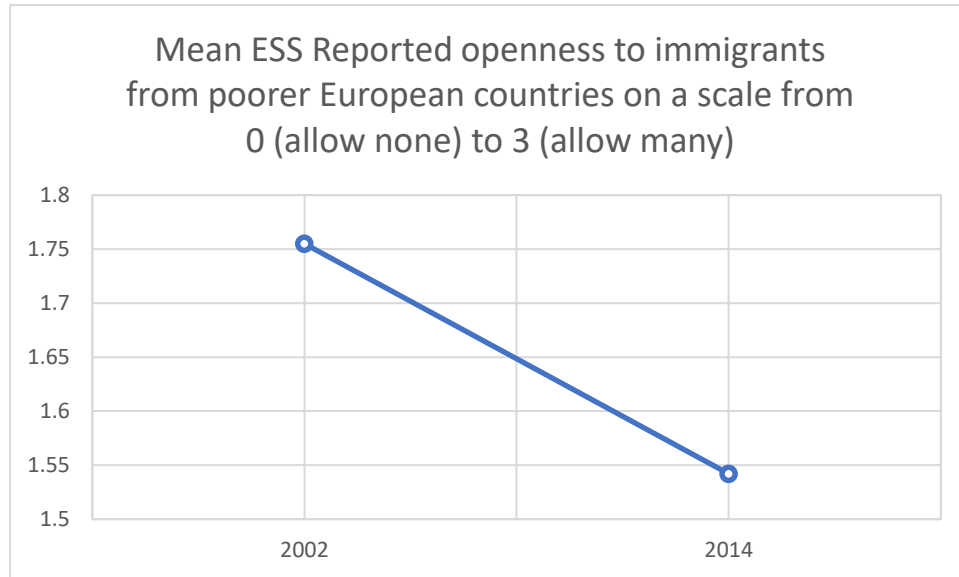418 (Stefanova 2015, 269);

419 (Dervis and Mistral 2014) Chapter 8;

	151)
At risk of poverty rate	(Dervis and Mistral 2014, 151)
Life Expectancy at Birth	

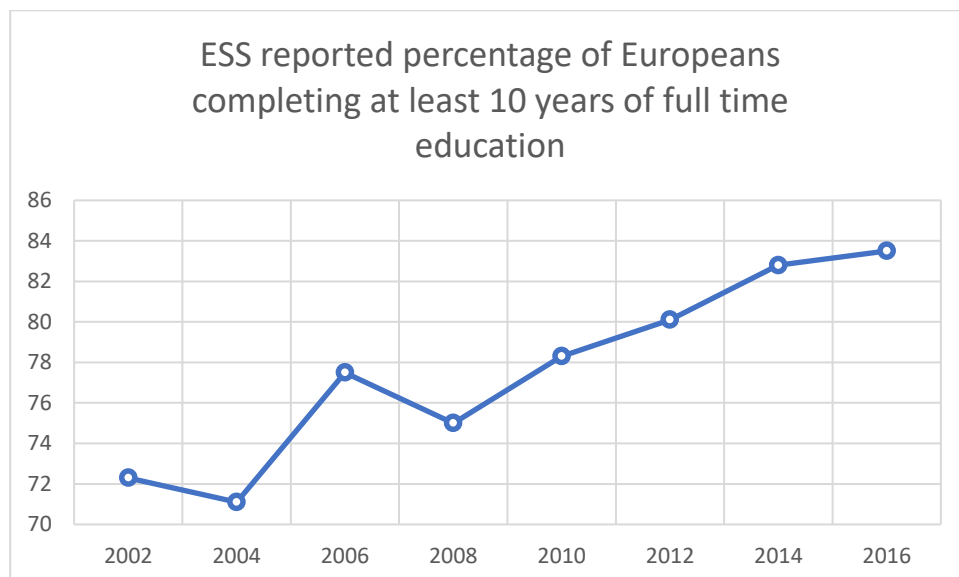*Table 16 How many/few immigrants should be allowed from poorer European countries*

Note: Overall indicator for how welcoming to poorer euro countries. 1=none allowed, 2=few allowed, 3=some allowed, 4=many allowed.

Table 17 Mean ESS Reported openness to immigrants from poorer European countries on a scale from 0 (allow none) to 3 (allow many)
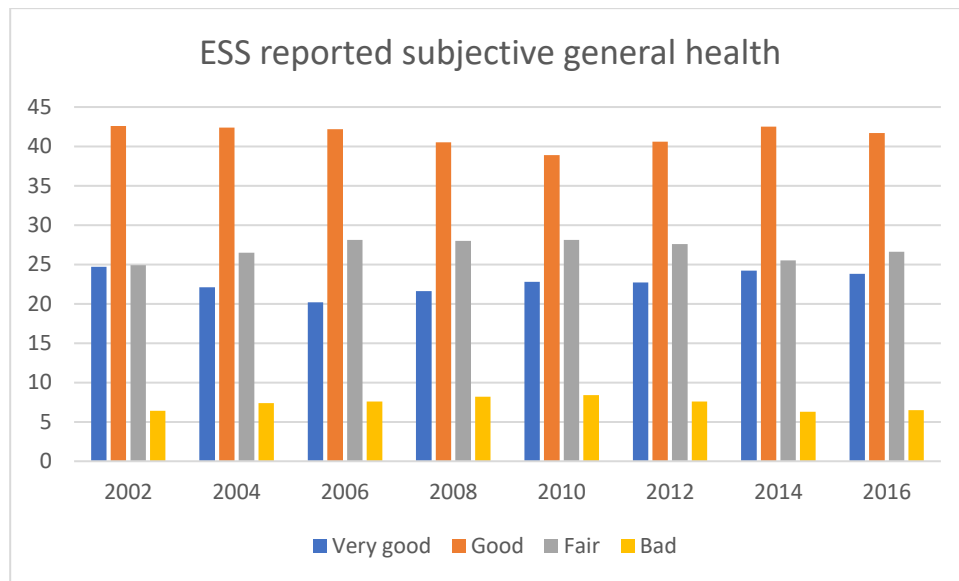

Mean ESS Reported openness to immigrants from poorer European countries on a scale from 0 (allow none) to 3 (allow many)

Table 18 ESS reported percentage of Europeans completing at least 10 years of full-time education

ESS reported percentage of Europeans completing at least 10 years of full time education
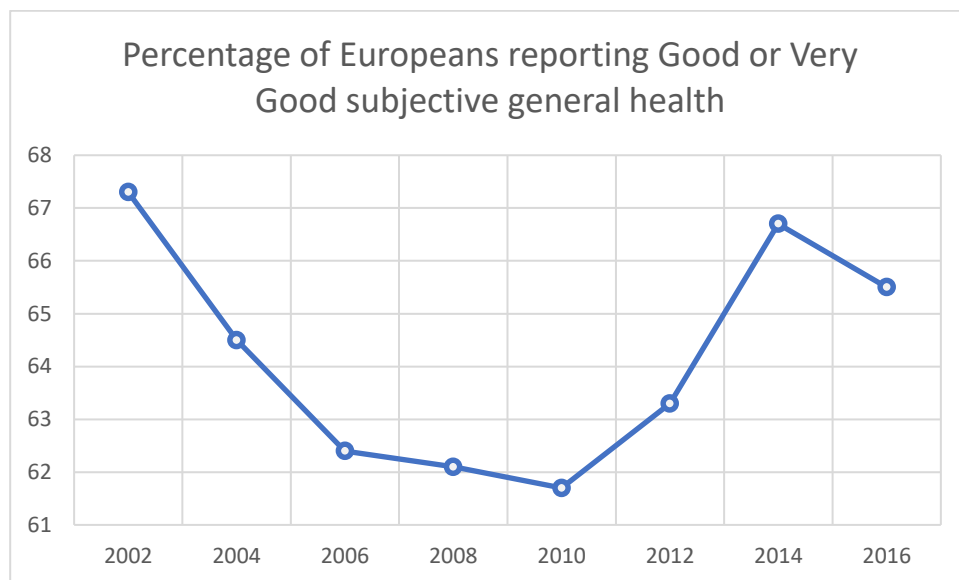
Note: Education statistics (can change to be whatever you want, e.g., at least 12 years

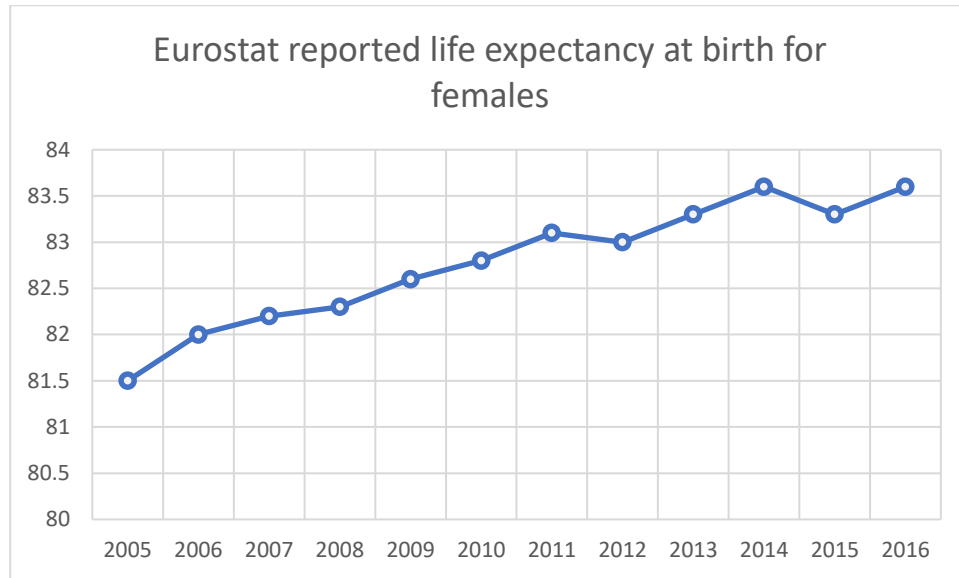*education, average number of years of education)*
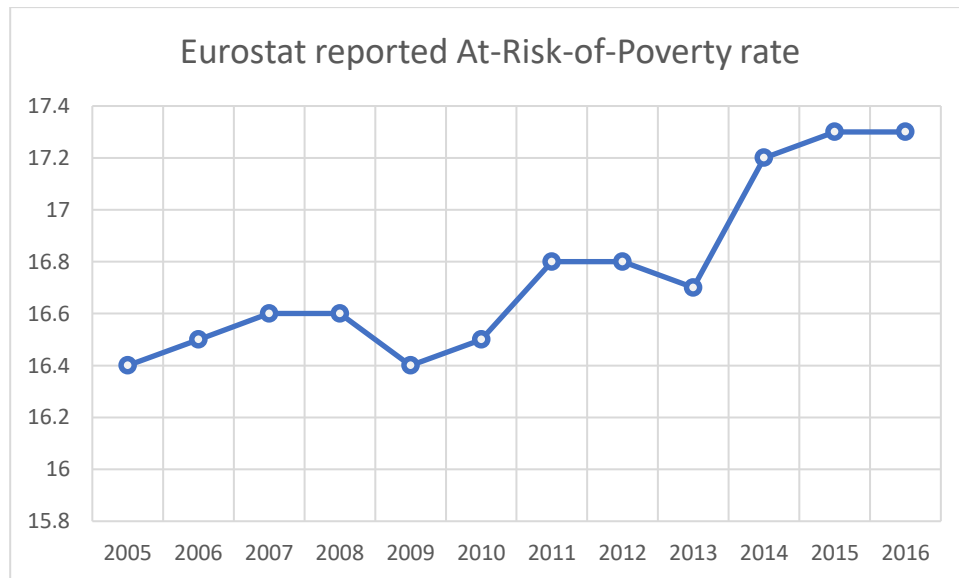
Table 19 ESS reported subjective general health

Table 20 Percentage of Europeans reporting Good or Very Good subjective general health

Table 21 Eurostat reported life expectancy at birth for females

Eurostat reported life expectancy at birth for females

Table 22 Eurostat reported At-Risk-of-Poverty rate

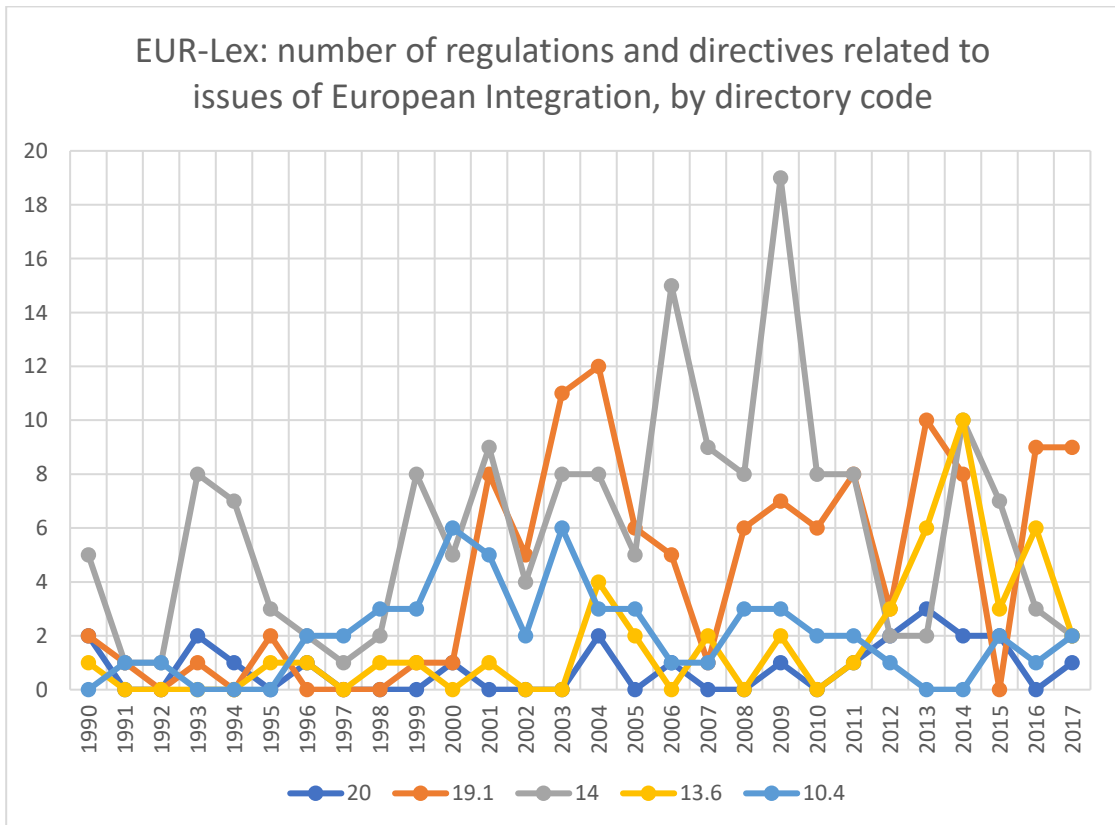Eurostat reported At-Risk-of-Poverty rate

Legal Inputs to European integration.

Table 23 Examples of Legal Inputs to the Integration Process by the Integration Literature

Data relating to Europeanization	
CJEU decisions	

Table 24 Number of regulations and directives related to issues of European Integration, by directory code

EUR-Lex: number of regulations and directives related to issues of European Integration, by directory code

Note: 1 Number of regulations and directives relating to the following topics since

1990. Number of regulations and directives relating to the following topics since 1990.
Directory codes:
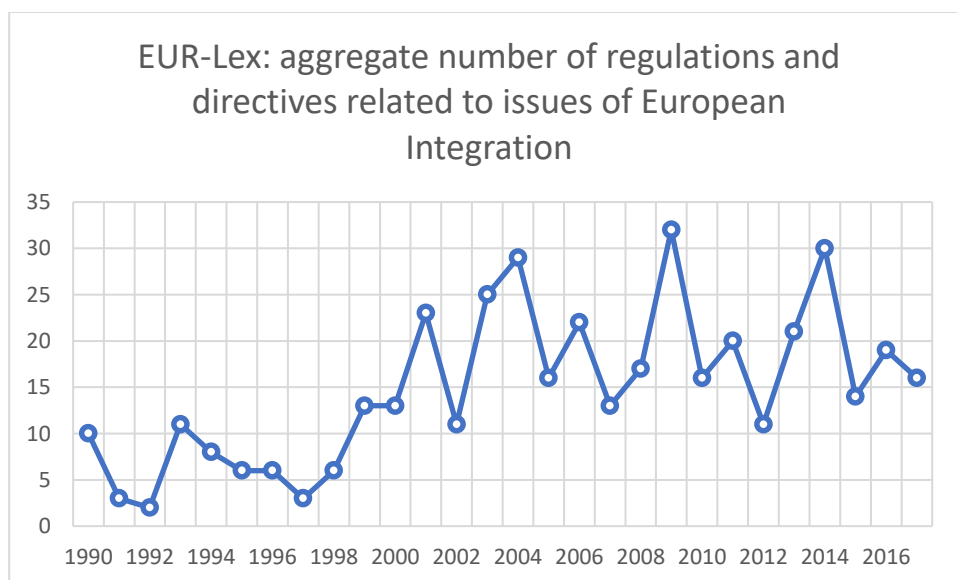*20: People's Europe, including Freedom of Movement of People and European Citizenship*
19.10: Free Movement of Persons
14.50: Coordination of Structural investments and 14.60: Economic and Social Cohesion Fund (they are aggregated under 14 in the chart)
13.60: Trans-European Networks
10.40: Free Movement of Capital

Table 25 Aggregate number of regulations and directives related to issues of European Integration

Aggregate inputs to European integration.

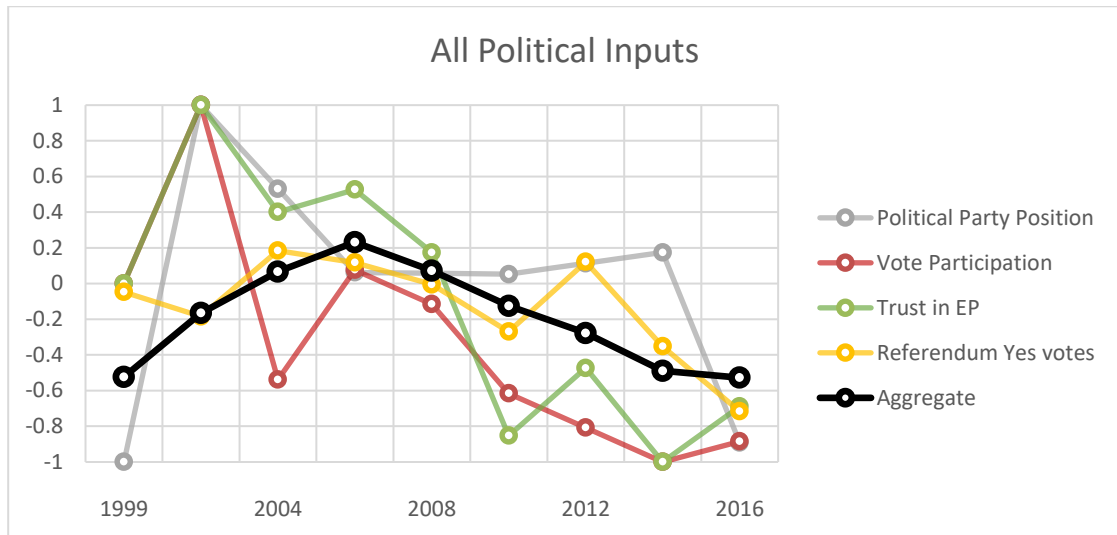*Table 26 All political inputs plus aggregate of political inputs*

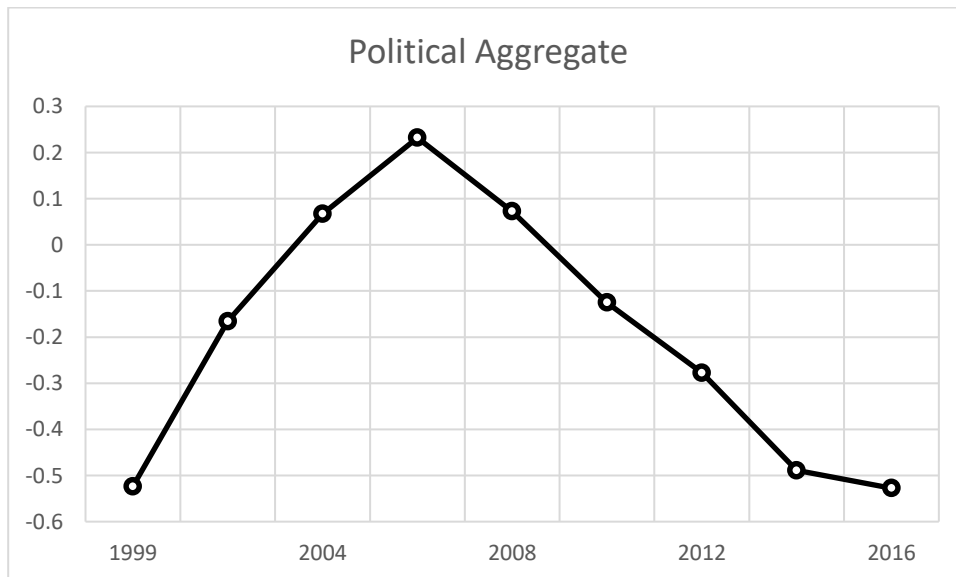*Table 27 Aggregate of political inputs to EI*

Table 28 All economic inputs plus aggregate of economic inputs

Table 29 Aggregate economic inputs of EI

Table 30 All social inputs plus aggregate of social inputs

Table 31 Aggregate of social inputs to EI

Table 32 All legal inputs plus aggregate of legal inputs to EI
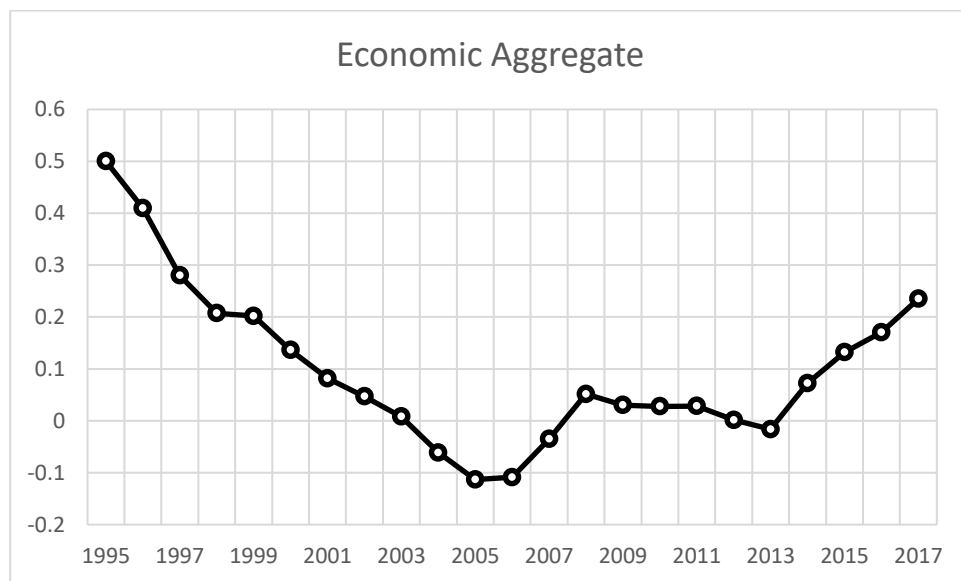

Table 33 Aggregate of legal inputs to EI

Table 34 Aggerate of all inputs relating to EI

Table 35 Total aggregate of EI inputs

Table 36 Aggregate of all inputs in the context of critical moments in the EU

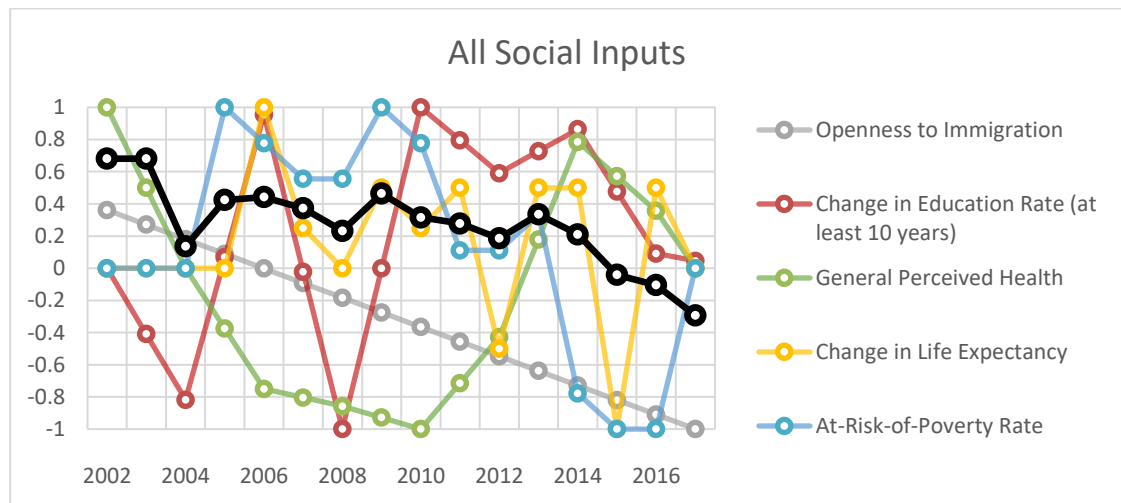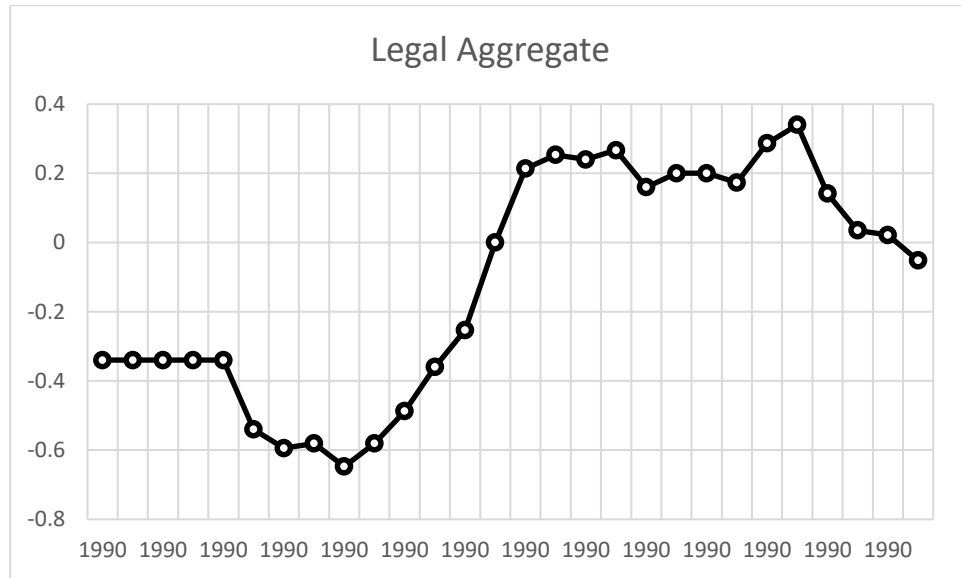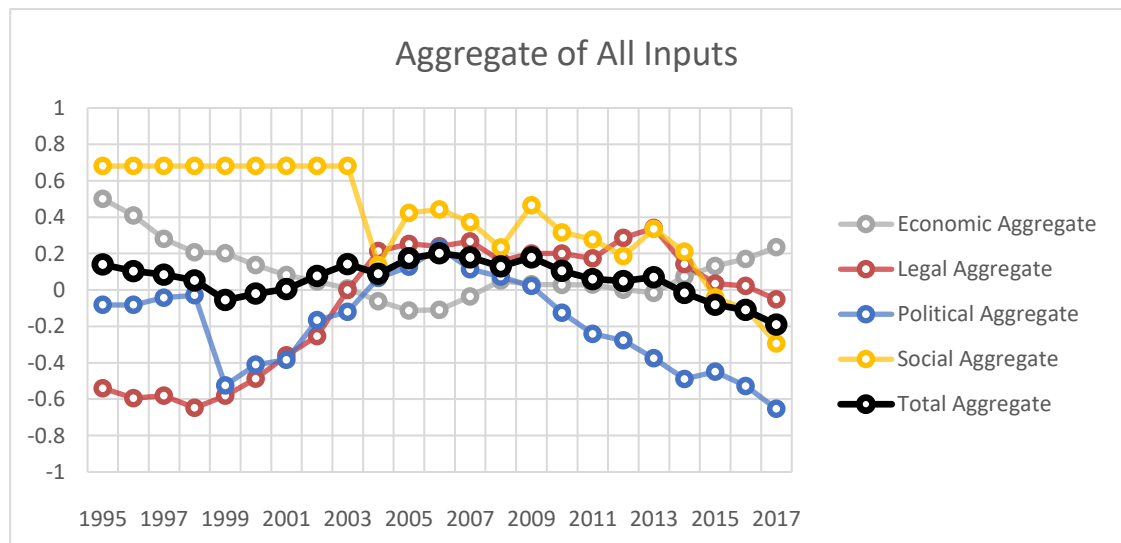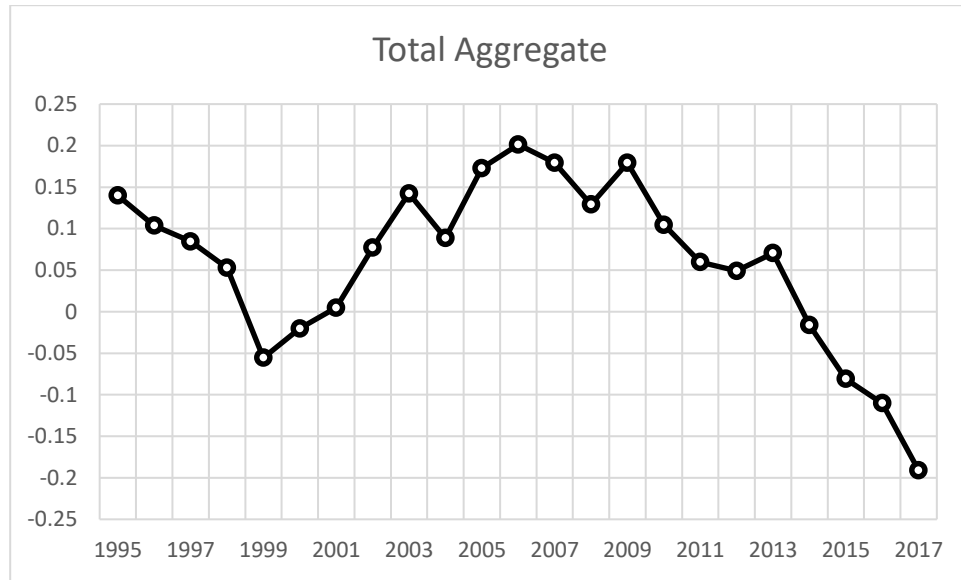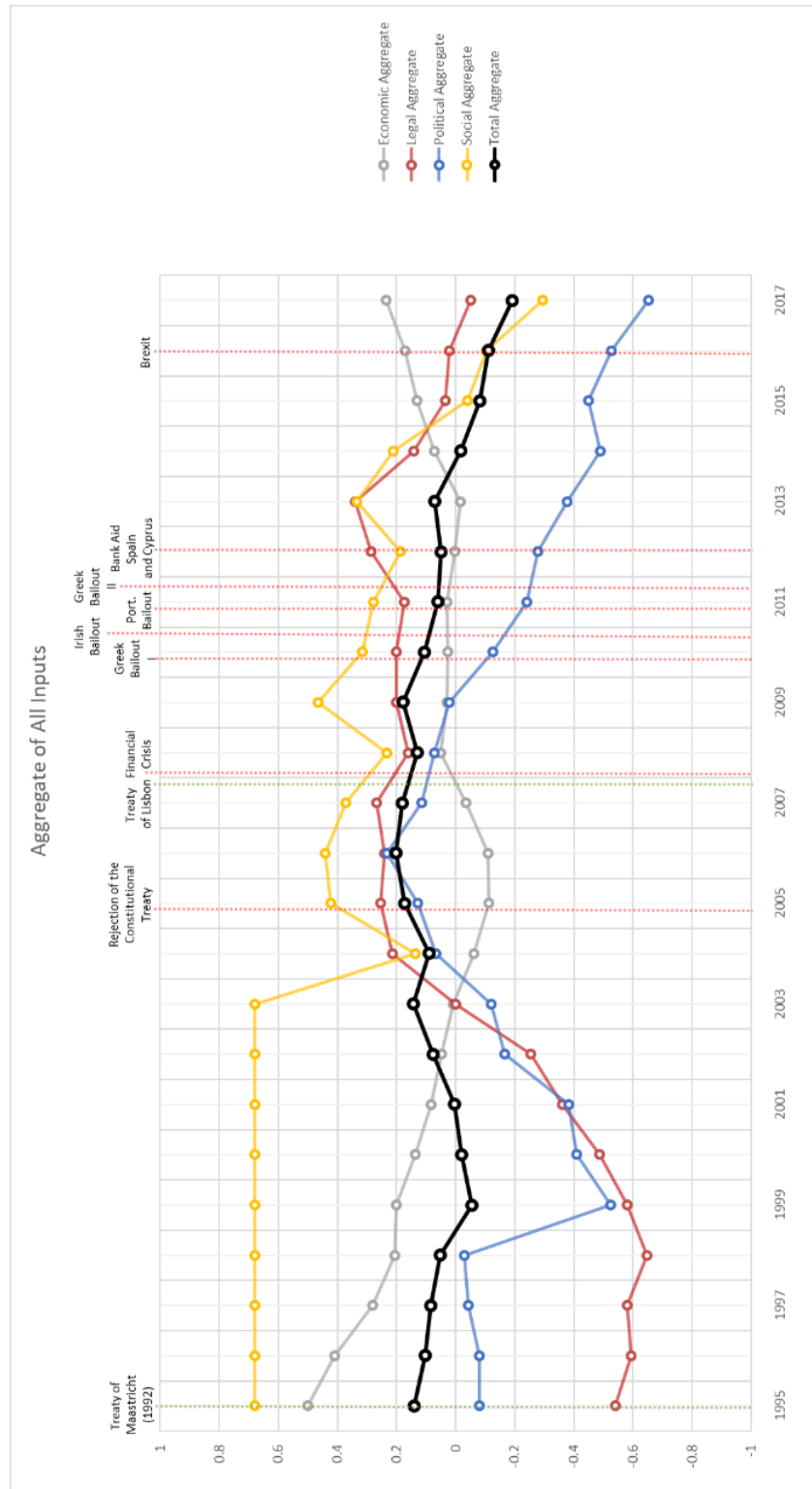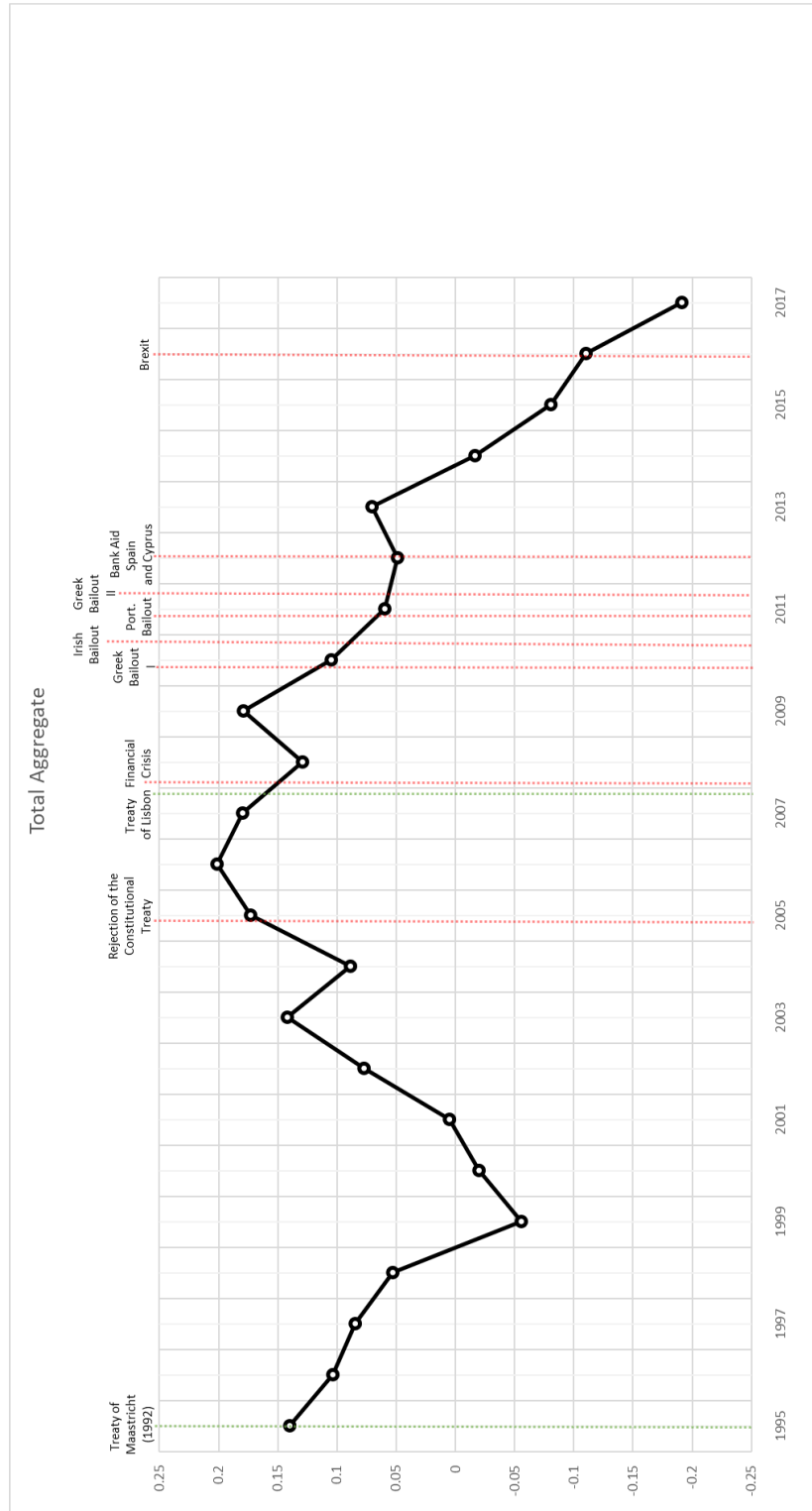*Table 37 Aggregate of all inputs in the context of critical moments in the EU*

Total Aggregate

Chapter THREE Conclusions.

"The underlying political, economic and social causes of the Eurozone

crisis demonstrate that the crisis defies a simple, one-dimensional solution."

(Longo and Murray 2015, 3)

The first objective of this research project was to suggest that the perilous crossroads where Europe stands is also a result of how we have failed to understand the integration process, and in that regards the limitations of integration theory are themselves an additional source of the EU's legitimacy crisis.

It is almost inconceivable to think that already in 1971 Puchala addressed what should be our collective embarrassment in our scholarly failures[420]. Twenty years later in 1991, Weiler reiterates how the integration process is akin to Schrodinger's cat with a twist, it's either dead or alive depending on who opens the drawer, the lawyer or the political scientist[421]. More recently, we have a vast spectrum of crisis narratives with contradictory theories on how the European Union has failed, and amidst those narratives the same old scholarly song and dance with regards to the EU's characterization[422].

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420 "I should think that those of us in the field (of integration studies) would be rather embarrassed at the fact that after fifteen years of effort we are still uncertain about what it is we are studying" (Puchala 1971);

421 "that lawyers were characterizing the Community of that epoch as a "constitutional framework for a federal-type structure,'" whereas political scientists were speculating about the "survival of supranationalism." (J. H. Weiler 1991, 2411);

422 Examples of conflicting characterizations: (Kaiser and Meyer 2013) and (Bickerton, Hodson and Puetter 2015). See also Kaiser and Meyer, who note that: "the financial crisis could encourage another round in the debate over the more intergovernmental or more supranational character of European integration and EU politics. However, this perennial debate, which still underlies a fair share of writing about European integration, has increasingly become fruitless." (Kaiser and Meyer 2013, 1)

Yes, the integration process is multileveled, multifaceted, occurring in different policy areas at different speeds in different countries, and it's greater than the sum of its part, but that does not entail that it cannot be studied and understood. If we accept that the EU is a complex adaptive system, then we can embrace new methodological approaches, such as system theory, and make use of new methodological tools, such as computational modelling, to understand, predict and promote the integration process. Surely Europe deserves this pursuit, or at the very least, Europe deserves better from its scholars. Moreover, it is hard to envision any fruitful debate over the future of the EU, such as the one that is currently taking place, without an information understanding of the integration process. Hard loyalty might require more than the member states, and the peoples of Europe, are willing to give at this stage; and a new political messianism will only go so far[423] before it gives way to renewed concerns of legitimacy and a cognitive dissonance between the peoples of Europe and their EU. A systems theory approach however gives true systemic voice to all agents of European integration and addresses both the legitimacy paradox and the cognitive dissonance issue of the integration process.

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423 Dervis on the original political messianism and the ensuing cognitive dissonance between the EU and its citizens:

> *"The Europe that emerged from the catastrophic first half of the twentieth century was like a dream come true. It embodied a transformative vision, it opened the way for decades of peace and prosperity; it first imagined, and then created, strong institutions. For a long time it had democratic legitimacy, not because the nature of the decision making mechanisms as such augmented democracy, but because the broad vision at the top was broadly in line with lie aspirations and the understanding of the citizens.*
>
> *The perceived decline in "democratic legitimacy" of the European institutions is due to a growing gap between what the citizens of Europe can understand, follow, debate, and take into account when voting, and the decisions and policies of their leaders and parliaments".* (Dervis and Mistral 2014, 176)*;*

With this approach we can solve Europe's epistemological question, and move beyond premises that, while looking only at parts of the integration process, categorically announce that: 'it's the politics, stupid' – such as in most chapters one and two narratives focusing on the EU's political gap; or that 'it's the economy, stupid' – such as part of the crisis literature seem to suggest. It's actually about the systemic interdependency between all areas of the integration process.

CHAPTER FOUR - WHAT REMAINS WHEN THE INTEREST PARADIGM HAS FALLEN?

Introduction – Informing the debate on the future of Europe.

> *"The most promising development that ever happened in millennial European history was the integration of Europe."* (Berend 2017, 1)

Europe's crisis results from an intertwined failure to resolve its epistemological and ontological questions - what is the nature of the EU, and what lies ahead for Europe[424]? Another way to phrase this would be to say that, by failing to understand itself as a polity, and by ignoring how the integration process operates, Europe is struggling to sustain its future, and to reinvent "the idea of Europe".

The stated goals of this research project have been: (1) to inform the scholarship of European integration theory, and therefore contribute to our understanding of the nature of the EU, and how it operates; (2) and at the same time, to inform the debate over the future of Europe, shifting our attention from how the integration unfolds, to why it should unfold, under which frameworks and values.

The rationale behind addressing Europe's epistemological question, before its ontological question, lies with the fact that when integration narratives fail to correctly consider the economic, political and social areas and inputs of European integration, a

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[424] The recent European crises have given us pause to consider that we still know very little about the European integration process; Gillingham argues further, as I do, that we need to "reassess the EU's past in an effort to discover what went wrong, how it might yet be righted, and what might come next". (Gillingham 2016, 3)

cognitive dissonance and distancing occurs between the peoples of Europe, their politicians, lawmakers, and their legal scholars. This leads to different perceptions of Europe, different expectations and a more strained dialogue between all actors and stakeholders. The cognitive dissonance between Europe and its citizens has been recognized both in the 2017 Whitepaper regarding the Future of Europe and in the EC's 2018 State of the Union address, as a major concern threatening Europe's cohesion, potentially limiting its future form and functions. As shall be discussed further down, the European Commission has been promoting a series of initiatives to reapproximate Europe to its citizens.

This cognitive dissonance at the same time has led to a mistaken discussion over the future of Europe, which is taking place asymmetrically and independently in all areas of European integration. In each area the discussion has different outcomes (i.e. what future for the monetary union, for the internal market, for the EU's external action and common commercial policy, among others), without a unifying or holistic answer to the correct discussion over the polity itself.

In chapters one and two we conducted a brief revisionist account of some of the most prominent theories of European integration, focusing on their foundational premises and the different legal, political, economic and social paradigms through which European integration was understood to operate. As we have seen, traditional legal narratives of European Integration suffer from a myopic methodological focus on legal or judicial doctrine and a law-centric approaches to domestic and supranational issues of autonomy, legitimacy and governance. The tenets they have held true for so

long are now in cognitive dissonance with the EU's reality[425].

More recent "improved narratives" of EU law have also been subject to criticism, either by focusing solely on the EU's functional necessities or by being unable to reconcile the EU's normative imperatives with the Unions actions during the current crisis period. Consequently, they remain insufficient to address Europe's complex and polycentric crisis.

Chapter three presented a different way of understanding integration theory, one connected to a systems theory analysis of the EU This method hopes to create a new baseline, both polycentric and interdisciplinary, to study the European Union, more specifically, how economic, social, political and legal forces coalesce to weave the mosaic fabric which is the European Union.

Finally[426], aiming to address the most pressing questions presently surrounding Europe, and pertaining to its future, Chapter four moves onto to this project's second goal, and considers what lies next for the integration project, and what is now the idea of Europe. As mentioned before, these are questions that should not be considered separately from a better understanding of the European integration[427], and this too is

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425 Gillingham notes how the main classic theories "rest on serious misperceptions that beg for correction";

426 Why spend so much time looking back? Why not put forward instead an aspirational framework for European integration that can soothe both academics and European elites? It is this project's belief that that would be akin to the proverbial plugging holes in a damn, and that such exercises and such scholarship have the same merit and outcome as the band that played on "nearer my God to Thee";

427 As historian John Gillingham states "The present crisis of the European Union makes it painfully evident that the history of the EU must be re-thought, re-cast, and re-written. (…) More is at stake than merely setting the record straight. At one and the same time vast and parochial, the existing research on the EU not only defines the current intellectual parameters of the subject and provides the language that shapes discussion: it also establishes the contexts of policy-making, guides political action, and opens

reflected in the recent efforts by the European Commission to foster more dialogue between all stakeholders. Europe's framework and future are no longer solely dependent on its elites and their aspirational values alone[428]; it is a complex adaptive system that requires a balanced address and redress to all areas of integration.

It is important to bear in mind however, that considerable noise and confusion surrounding the debate over Europe's future has recently been exacerbated by populist trends, and the growing discontent with globalization and universalist values. The Brexit vote, for example, may be regarded a byproduct of this new world order, and the subsequent and strenuous Brexit negotiations their testing ground. Whatever the outcome of these negotiations, all actors and stakeholders are keenly aware of the broader picture. In the end, Brexit might not benefit neither the U.K., nor even the EU, but only serve as a means to safeguard other interests, send a message, or to make a stand (i.e. from the EU's perspective, a most vehement deterrence for future exists; from the UK's perspective, to save political face over the party's decision to hold the referendum).

The question surrounding the future of Europe is therefore, in some ways, intrinsically linked to the outcome and the success of Brexit, for the following reasons. By shattering many of the long held, and essential paradigms of integration theory, such as the paradigm of exit and voice, (a) Brexit threatens both the cohesion of the EU and

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new sources of legitimacy." Page 1

428 Gillingham furthers the transnational statecraft criticism: "Directly or indirectly, the European Union has funded the bulk of the scholarly literature written about it. For most of its life, and even down present, the EU has also been the beneficiary of an ideology of Europeanism – a secular faith that it is an ordained agent of human progress. The many scholars, commentators, assorted experts, and like-minded journalists who have spent careers doing EU research are nearly all devotees of the Euro-cult.";

the existing framework of European integration. It prompts a new framework to be enacted, and a new balance of interests to be drawn. Moreover, by triggering Art 50 TEU for the first time, (b) Brexit will determine the political, legal and judicial roadmap, and transaction costs for future exits. Finally, precisely because of the high stakes of both (a) and (b), it is already evident that the Brexit negotiations go beyond the question of the UK's withdrawal from the EU and have to accommodate the additional transactional and political costs that would otherwise not be present but for these untested waters. Yes, as Grimmel has noted, "brexit is clearly a no-win situation (… where there) are no winners, only losers" (Grimmel 2017, 169), but still, the allocation of the bulk of that loss, or in other words, who bears the greater cost, will result from whatever deal can be negotiated between the UK and the EU.

Brexit is therefore not just about the UK's withdrawal from the EU, it's about political capital for each party vis-à-vis their constituents, for example, to the EU a good deal on Brexit can signal a clear end to the European crisis. Brexit however cannot and does not exhaust the question of future of the EU, even if it ends up conditioning the EU's scope of action or, through negotiated concessions, creating long-term path-dependencies within the integration process.

Chapter FOUR will address the different possibilities for the future of the EU, by tackling these and other issues as follows. Part ONE explores Brexit and its possible implications for Europe's future – before attempting to tackle the question of the EU (*de lege ferenda*), it is imperative to understand what our starting point is (*de lege lata*). Part TWO explores how the EU itself has recently envisioned its own future through a series of different initiatives and public consultations – the EU's introspective exercise

in reimagining the idea of Europe. Part three addresses the needs of a new grand theory of European integration, by asking what remains after the paradigm interest has fallen. Finally, part four takes the proposed systems theory approach into account to consider how to supplement the debate regarding the future of the EU, and how to implement a new vision of Europe.

4.1 Brexit and the EU *de lege lata*

If 2008 was the catalyst of the European crisis, then 2016 was its apotheosis. The EU's cohesion was tested beyond measure with the Brexit vote, and the now abated but still very present risks of Nexit, Frexit, Itealeave, and Grexit - although to be fair, Grexit should be more adequately remembered as an externally forced exit, and not an internally desired exit, perhaps with nickname Gretout[429]. The next couple of months will mark the final opportunity for the acceptance of the Brexit deal, and there are vastly different stakeholder interests at play. From the EU's perspective, this could mean an opportunity to close the chapter of the European crisis.

Can a line be drawn linking these two moments? Simplistically yes[430], although, as I have argued, it's always more complex than that. Depending on which lens you choose to adopt, Brexit can be traced back to as early as 1975 or as late as 2013. The UK joined the EEC in 1973 under Tory leadership, and the very first test to this decision came

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429 Although the hashtag used was in fact #grout;

430 This has been recently suggested by the UK's former Chancellor of the Exchequer, Lord Darling of Roulanish. Source: https://www.theguardian.com/business/2017/sep/13/darling-brexit-banking-crisis

when Labour took over power in 1974 and issued a referendum in 1975 – which ultimately proved that there was in fact a substantial support for ECC membership – 67% vs. 32%. In 1983, in its failed election manifesto, the Labour party promised to withdraw the UK from the EU within the lifetime of the following Parliament. 1993 saw an attempt from within the Tory party to challenge the signing of the Maastritcht Treaty, leading Tory prime minister John Major to call a vote of confidence from his own government. All major political parties promised a referendum on the 2004 Constitutional Treaty in their election manifestos, however such vote never took place as the Constitutional Treaty fell with popular referendums in France and in the Netherlands. In 2006 a non-partisan campaign entitled "better off out" was launched to promote the UK's withdrawal from the EU. The campaign was launched by the Freedom Association and enjoys political support from former and current Members of Parliament from all aisles. But it was ultimately on January 23rd, 2013, when the then Prime Minister David Cameron delivered the following speech on the EU that Brexit found its way to becoming a reality:

> *"I am not a British isolationist. I don't just want a better deal for Britain. I want a better deal for Europe too. (…) People are increasingly frustrated that decisions taken further and further away from them mean their living standards are slashed through enforced austerity or their taxes are used to bail out governments on the other side of the continent. (…) Today, public disillusionment with the EU is at an all-time high (…) They've had referendums promised - but not delivered. (…) The result is that democratic consent for the EU in Britain is now wafer thin. (…) It is time for the British people to have their*

say. It is time to settle this European question in British politics. I say to the British people: this will be your decision. (...) That is why I am in favour of a referendum." [431]

By uttering these fateful words David Cameron started a chain of events that he himself did not desire, the withdrawal of the UK from the EU, as is clear even from this very same speech, when he outlines his vision for a 21st century EU that would emerge from the crisis transformed with the help of Britain. He later campaigned fiercely for the UK to remain in the EU[432], and has subsequently acknowledged Brexit as a mistake[433] [434].

Many have suggested that the campaign promise to hold the referendum was a political strategy[435] to appease dissent within his own party and to not lose ground to the UKIP[436]. It was a political gamble, of high reward and (seemingly) low risk, as

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431 January 23rd, 2013 EU speech - Prime Minister David Cameron discussed the future of the European Union at Bloomberg https://www.gov.uk/government/speeches/eu-speech-at-bloomberg

432 A campaign that was named "project fear". https://www.politico.eu/article/david-cameron-brexit-project-fear-economy-jobs-terror-warning-britain-leaves-eu/

433 https://www.ft.com/content/1b0ad01a-0132-11e8-9650-9c0ad2d7c5b5

434 "Despite his instinctive Euroskepticism and passionate opposition to the euro, he has never supported withdrawal." https://www.politico.eu/article/david-cameron-accidental-european-brexit-referendum-conservative-tory-euroskeptic/

435 "Peter Mandelson, former British trade minister and European commissioner, said: "History will remember David Cameron simply as the prime minister who took us out of the EU. I don't think there will be anything else. A man who took this tactical risk, which then turned into a strategic blunder." See https://on.ft.com/2DLgN5k

See also https://www.independent.co.uk/voices/brexit-david-cameron-didn-t-make-a-mistake-in-promising-an-eu-referendum-a7409006.html

And https://www.theguardian.com/uk-news/2016/jun/25/cameron-brexit-bet-drama-night-ripped-britain-apart-ukip-eu-referendum

436 "David Cameron feared he would be ousted as Tory leader if he did not commit to holding a referendum on Britain's

detailed by former Director of Communications to David Cameron[437].

The Brexit vote took place on 23 June 2016 and delivered an unexpected result. While almost all polls indicated that the margin between "remain" and "leave" was narrow, most polls and poll aggregations over time indicated that the UK would vote to stay in the EU[438].

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membership of the EU, his former communications chief has said. Sir Craig Oliver said Mr. Cameron would have been hit by a wave of Conservative defections to Ukip if he had not promised to give the country the opportunity of an in/out vote." https://www.independent.co.uk/news/uk/politics/brexit-latest-david-cameron-pm-feared-ousting-eu-referendum-commitment-conservatives-a8147961.html

437 In "Unleashing Demons: The Inside Story of Brexit" Craig Oliver reveals anecdotal facts about the Prime Minister's first reaction to his aides after the vote, which was " "Well, that didn't go to plan!". https://www.theguardian.com/books/2016/oct/17/unleashing-demons-inside-story-brexit-craig-oliver-david-cameron-review

438 "on the eve of the vote, the poll tracker was predicting a Remain victory by the narrowest of margins - 51 per cent to 49." Source: https://www.telegraph.co.uk/news/2016/06/24/eu-referendum-how-right-or-wrong-were-the-polls/

The Bloomberg poll showed 46.2% remain vs. 44.3% leave on June 22nd. They also presented a moving average: https://www.bloomberg.com/graphics/2016-brexit-watch/

The FT's poll of polls – "calculated by taking the last seven polls from unique pollsters up to a given date, removing the two polls with the highest leads for 'remain' and 'leave', and calculating an adjusted average of the five remaining polls, where the more recent polls are given a higher weight" – showed a 48% in support of remain, versus 46% support for leave on June 23rd 2016. Source: https://ig.ft.com/sites/brexit-polling/ An analysis of polling results since 2016 indicated the moving averages shown above.

Table 38 Time Series Polling Results on Brexit

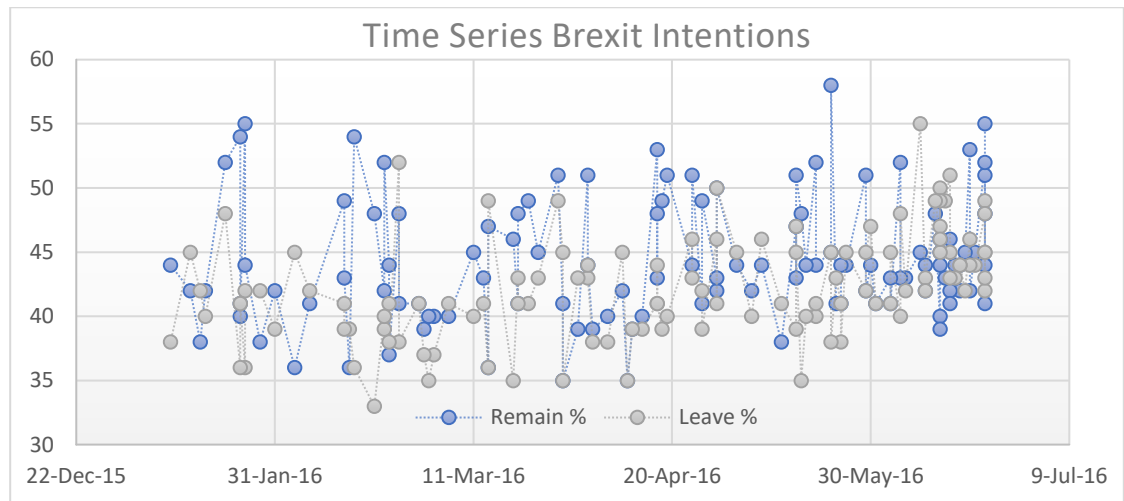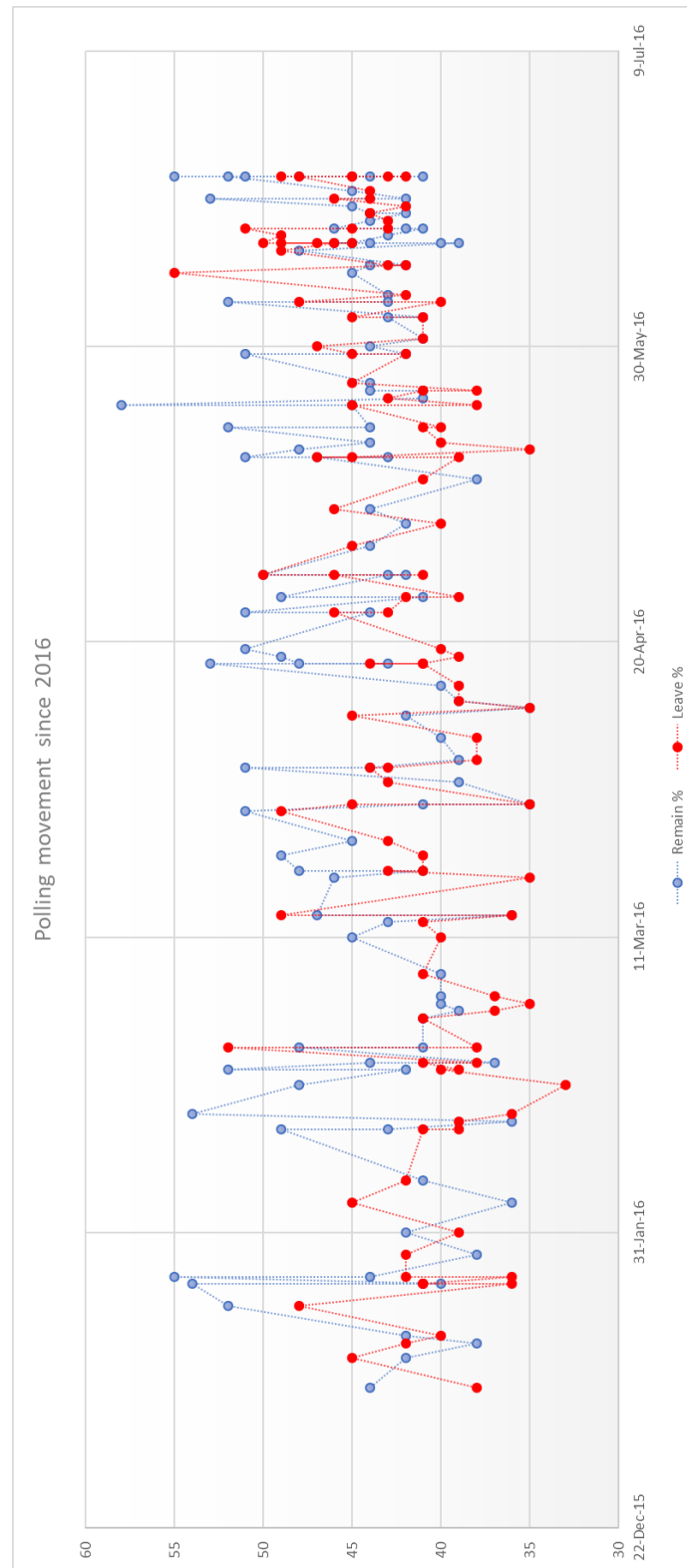*Table 39 Time Series Brexit Intentions (expanded)*

Polling movement since 2016

Betting firms were even more optimistic, placing odds on that outcome at nearly 90%.[439]

The unanticipated Brexit result prompted an urgent but informal meeting with all other 27 heads of state or government to discuss the "political and practical implications of Brexit[440]". This European Council meeting took place on June 28-29. Realizing that the outcome of the referendum pushed the EU into uncharted territories and represented an unprecedented challenge, the group of 27 reiterated that they were "determined to remain united"[441]. This meeting also served to start the important debate on the future of the EU, the first step of which would be to reconvene again on September 16th, 2016 in Bratislava to discuss concrete measures to that effect.

Bratislava Declaration – The EU remains an indispensable project.

Recognizing that this was "a critical time for (the) European project", leaders from 27 Member States met on September 16th 2016, to "diagnose together the present state of the European Union, (…) discuss (their) common future", and offer their citizens "a vision of an attractive EU they can trust and support [442]. The declaration starts by

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439   Sources: https://www.bloomberg.com/news/articles/2016-06-24/how-did-the-bookies-get-it-so-wrong-ladbrokes-tries-to-explain

https://www.nytimes.com/2016/06/25/upshot/why-the-surprise-over-brexit-dont-blame-the-polls.html?login=email&auth=login-email

440 https://www.consilium.europa.eu/en/meetings/european-council/2016/06/28-29/

441 https://www.consilium.europa.eu/media/20462/sn00060-en16.pdf

442 https://www.consilium.europa.eu/media/21250/160916-bratislava-declaration-and-roadmapen16.pdf

delivering a very powerful political message, that the European project "remains indispensable". The fact that one Member State had opted to leave does not diminish, nor threaten the importance of the EU towards safeguarding peace, prosperity and democracy amongst the Member States[443].

Cognizant of the key challenges facing the EU, the declaration issues a list on concrete measures to be taken in certain key areas, with an overarching concern of improving communication between the EU and its citizens and addressing their concerns regarding migration, terrorism, and economic and social welfare[444] [445].

In terms of migration and external border control: they discussed further implementing the EU-Turkey Statement to stop irregular migration flows from Turkey to Europe[446]; and engaging with third countries to procure joint efforts to reduce

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443 *Idem;*

444 These concerns have been highlighted in recent Eurobarometer polls as the most important challenges that the EU faces – *infra*;

445 "These objectives include:

- restoring full control of the external borders

- ensuring internal security and fighting terrorism

- strengthening EU cooperation on external security and defence

- boosting the single market and offering better opportunities for young Europeans"

Source: https://www.consilium.europa.eu/en/meetings/european-council/2016/09/16/

446 One of the main initiatives aimed at addressing the EU refugee and migration crisis, was the EU-Turkey joint action plan, activated on November 29th, 2015 and reiterated in the EU-Turkey statement, signed March 18th 2016. Measures included:

- *"All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey."*

- *"For every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria".*

- *"The fulfilment of the visa liberalisation roadmap will be accelerated with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016. Turkey will take all the necessary steps to fulfil the remaining*

immigration flows. Recognizing how the 2015 refugee crisis deeply threatened the institutional and political cohesion of the EU, Member States added that it is imperative not to allow for such uncontrolled immigration flows again. Immigration will be further discussed below, as the third and final threat to the future of the EU.

In terms of internal security, and the threat of terrorism, Members States vowed to increase cooperation and information exchange; to adopt and implement a Travel Information and Authorization System (ETIAS); as well as "a systematic effort against radicalization, including through expulsions and entry bans where warranted[447]". The ETIAS regulation[448] was adopted on September 12th and entered into force on October 9th, 2018. Similar to the United States ESTA mechanism, it allows the EU to "identify those who may pose a security threat before they reach the European Union and deny them the authorization to travel.[449]"

Finally, in terms of economic and social development: they decided to extend the

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requirements;"

- *"The EU will, in close cooperation with Turkey, further speed up the disbursement of the initially allocated €3 billion under the Facility for Refugees in Turkey. Once these resources are about to be used in full, the EU will mobilise additional funding for the Facility up to an additional €3 billion to the end of 2018;"*

- *"The EU and Turkey welcomed the ongoing work on the upgrading of the Customs Union."*

EU-Turkey Joint action plan: http://europa.eu/rapid/press-release_MEMO-15-5860_en.htm

EU-Turkey statement: https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/

447 https://www.consilium.europa.eu/media/21250/160916-bratislava-declaration-and-roadmapen16.pdf

448 Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorization System (ETIAS);

449 https://www.consilium.europa.eu/en/press/press-releases/2018/09/05/european-travel-information-and-authorisation-system-etias-council-adopts-regulation/

European Fund for Strategic Investment (EFSI)[450], due to its importance within the Investment Plan for Europe.

The EFSI 2.0 has since extended the mechanism until the end of 2020 and has raised available investment funds from €315 billion to €500 billion[451].

The Bratislava meeting was not only a declaration of intent, but more importantly it was a roadmap to the saving of the EU, a blueprint carefully tailored to the concerns of its citizens, more so than to the actual challenges Europe faces, as shall be argued below. The key metrics that drove the Bratislava agenda were based on Eurobarometer polls on "the two most important issues facing the EU at the moment"[452]. The agenda highlighted the six most important issues for its citizens, which can be grouped into three areas: external security (migration); internal security (terrorism, and crime); economic and social welfare.

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450 In the words of the Commission, the EFSI "aims to tackle the lack of confidence and investment which resulted from the economic and financial crisis, and to make use of liquidity held by financial institutions, corporations and individuals at a time when public resources are scarce." https://ec.europa.eu/commission/priorities/jobs-growth-and-investment/investment-plan-europe-juncker-plan/european-fund-strategic-investments-efsi_en#abouttheefsi

451 *Idem;*

452 https://www.consilium.europa.eu/media/23627/160914-bratislava-background-final.pdf

Table 40 Opinion Poll - Ttwo most important issues facing the EU (2010-2016)

What do you think are the two most important issues facing the EU at the moment?

Legend:
- Crime
- Economic situation
- Immigration
- The state of Member States public finances
- Terrorism
- Unemployment

The EU institutions have engaged in a careful communication campaign to renew the trust and confidence of its people, by addressing these concerns and by acting upon them – this is believed to be the roadmap to saving the EU[453]. This communication campaign has been delivered in two tiers: firstly by a focused acknowledging, branding and labelling of the perceived threats to the EU[454]; secondly, by addressing them, while at the same time reminding EU citizens that, yes, while inherently imperfect and flawed, The EU is still, and perhaps more than ever, essential to safeguard democracy, peace, the security of its peoples, and prosperity. Moreover, that the achievements of the EU represent the aspirations of many other countries and regions[455].

The purpose of the Bratislava summit was twofold: 1) to present an immediate and united response to Brexit, and to start cauterizing the EU disintegration process; 2) to start a more thoughtful and long-term debate regarding the future of Europe. While both objectives were born out of the crisis brought about by Brexit, they have since been

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453 Recall the remarks of the President of the EU Council at the Bratislava summit: ""I hope that the Bratislava summit will lead to the renewing of trust and confidence in the European Union. This will only happen if and when people realize that we are delivering on our promises through loyal cooperation between member states and institutions," https://www.consilium.europa.eu/en/meetings/european-council/2016/09/16/

454 migration, terrorism, and economic and social insecurity;

455 "*Although one country has decided to leave, the EU remains indispensable for the rest of us. In the aftermath of the wars and deep divisions on our continent, the EU secured peace, democracy and enabled our countries to prosper. Many countries and regions outside still only strive for such achievements. We are determined to make a success of the EU with 27 Member States, building on this joint history.*

The EU is not perfect but it is the best instrument we have for addressing the new challenges we are facing. We need the EU not only to guarantee peace and democracy but also the security of our people. We need the EU to serve better their needs and wishes to live, study, work, move and prosper freely across our continent and benefit from the rich European cultural heritage." Excerpt from the Bratislava Declaration;

disentangled by the EU. The debate over the future of the EU has taken place aside from Brexit negotiations and talks. The intent perhaps was to reiterate that the future of the EU does not depend on one Member State alone. Moreover, by isolating the UK from these discussions by the remaining 27, the EU has managed to increase its negotiation standing with the UK by proving that the EU is prevailing while the UK is, arguably, in turmoil.

The Brexit negotiation process – hard exit, soft exit, or no deal?

The Brexit negotiation process has been both convoluted and controverted, and public support has waned considerably. Recent opinion articles and even polls suggest an overwhelming desire for a second public consultation (Brexit vote 2.0) with a majority wishing now to remain in the EU[456]

The EU's initial position was that there should be a hard Brexit or no Brexit at all, to vehemently push back against the idea that "one can have the EU cake and eat it too", which was a claim by leave campaigners in the UK[457]. The President of the EU Council was very clear as to what the EU's stance would be in this regard[458].

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456 "U.K. voters would vote to remain in the EU by a majority of 54 percent if a referendum were held today, according to a poll of 20,000 people across every constituency in the country." 11/5/2018 Source: https://www.politico.eu/article/uk-poll-predicts-swing-to-remain-in-second-brexit-vote/

457 See https://www.politico.eu/article/a-brief-history-of-having-cake-and-eating-it/ and also: https://www.politico.eu/article/the-uk-populations-have-cake-and-eat-it-stance-on-brexit-polls/ and finally https://www.politico.eu/article/european-union-eu-to-brexit-britain-eat-your-cake-and-go/

458 "*This scenario will in the first instance be painful for Britons. In fact, the words uttered by one of the leading campaigners for Brexit and proponents of the "cake philosophy" was pure illusion: that one can have the EU cake and eat it too. To all who believe*

Before the UK triggered Article 50, the EU Council strategically met to detail (and therefore condition) what would be the negotiation procedures[459] and to reiterate that "any agreement will have to be based on a balance of rights and obligations, and that access to the Single Market requires acceptance of all four freedoms.[460]"

On March 29, 2017 the UK formally triggered Article 50 and notified the European

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in it, I propose a simple experiment. Buy a cake, eat it, and see if it is still there on the plate. The brutal truth is that Brexit will be a loss for all of us. There will be no cakes on the table. For anyone. There will be only salt and vinegar. If you ask me if there is any alternative to this bad scenario, I would like to tell you that yes, there is. And I think it is useless to speculate about "soft Brexit" because of all the reasons I've mentioned. These would be purely theoretical speculations. In my opinion, the only real alternative to a "hard Brexit" is "no Brexit".

Source: https://www.consilium.europa.eu/en/press/press-releases/2016/10/13/tusk-speech-epc/

To note that the President later clarified that:

""The EU27 do not and will not pursue a punitive approach. Brexit in itself is already punitive enough. After more than forty years of being united, we owe it to each other to do everything we can to make this divorce as smooth as possible."

Source: https://www.consilium.europa.eu/en/press/press-releases/2017/03/31/tusk-remarks-meeting-muscat-malta/

459 It was agreed that the negotiation procedure would be as follows:

1. *UK triggers Article 50 by notifying the European Council of its intention to leave.*

2. *The EU 27 leaders adopt 'guidelines', including principles and general positions, for negotiations. They will update these guidelines in the course of the negotiations, as necessary.*

3. *Following a recommendation by the Commission, the General Affairs Council authorises the opening of negotiations.*

4. *The Council adopts negotiating directives on substance and on the detailed institutional arrangements. These may be amended and supplemented throughout the negotiations.*

5. *The Council will appoint the Commission as the Union negotiator who will negotiate on behalf of the 27. The Commission nominated Michel Barnier as chief negotiator. It will report back to leaders and to the Council throughout the negotiation and will also keep the European Parliament "closely and regularly informed".*

6. *The Council and its preparatory bodies will ensure that negotiations are conducted in line with guidelines provided by the EU 27. It will provide guidance to the Commission.*

Source: https://www.consilium.europa.eu/en/policies/eu-uk-after-referendum/

460 Statement after the informal meeting of the 27 heads of state or government, 15 December 2016, source: https://www.consilium.europa.eu/media/24173/15-euco-statement.pdf

Council of its intention to leave the EU[461] , and on April 29th a special European Council was convened to adopt the guidelines for the Brexit negotiations. Key in safeguarding the EU's position in these guidelines was the stipulation of two core principles, that negotiations would be conducted as a single package[462] - "nothing is agreed until everything is agreed" – and that the single market must be preserved, and its four freedoms are indivisible, allowing no room for the cherry-picking of rights and obligations[463].

The negotiation process started on June 19, 2017[464] under the principles of solidarity and transparency[465], allowing the EU to carry on its business as usual, but also allowing for public scrutiny over the negotiations. Several key intermediary meetings[466] took

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461 The Article 50 notification letter can be found here: http://data.consilium.europa.eu/doc/document/XT-20001-2017-INIT/en/pdf

462 Article 1.2 "Negotiations under Article 50 TEU will be conducted in transparency and as a single package. In accordance with the principle that nothing is agreed until everything is agreed, individual items cannot be settled separately." https://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brexit-guidelines/

463 "the integrity of the single market must be preserved, which means the four freedoms are indivisible and excludes any cherry-picking" https://www.consilium.europa.eu/en/meetings/european-council/2017/04/29/

"A non-member of the Union, that does not live up to the same obligations as a member, cannot have the same rights and enjoy the same benefits as a member." https://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brexit-guidelines/

464 Speech by Michel Barnier, the European Commission's Chief Negotiator, following the first round of Article 50 negotiations with the UK http://europa.eu/rapid/press-release_SPEECH-17-1704_en.htm

465 Guiding principles for transparency in negotiations under Article 50TEU http://data.consilium.europa.eu/doc/document/XT-21023-2017-INIT/en/pdf

466 June 20th, 2017 – regarding the "the relocation of the EU agencies currently situated in the UK: the European Medicines Agency (EMA) and the European Banking Authority (EBA)." https://www.consilium.europa.eu/en/meetings/gac-art50/2017/06/20/

July 20th, 2017 - Second round of negotiations between the EU and the UK;

https://ec.europa.eu/commission/publications/joint-technical-note-eu-uk-positions-citizens-rights-after-second-round-

place before the first draft withdrawal agreement was proposed on February 28th, 2018, which consisted of six parts and an additional protocol on Ireland and Northern Ireland. The draft agreement covered the following areas: citizens' rights, transitional arrangements, financial provisions, institutional provisions, and the future economic relationship with the UK. At this stage, the UK were signaling that they would leave the single market, the customs union, and the jurisdiction of the CJEU, and therefore the only remaining alternative would be for a free trade agreement between the EU and the UK, with the President of the EU Council proposing a comprehensive agreement covering all sectors and imposing zero tariffs on goods[467].

At this stage the question regarding the Irish backstop took centerstage, prompting EU leaders to reiterate that "there will be no Withdrawal Agreement without a solid, operational and legally binding Irish backstop.[468]" The final draft agreement on the

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negotiations-0_en

August 31st, 2017 – Third round of negotiations between the EU and the UK; https://ec.europa.eu/commission/publications/joint-technical-note-eu-uk-positions-citizens-rights-after-third-round-negotiations_en

September 28th, 2017 - Fourth round of negotiations between the EU and the UK:

https://ec.europa.eu/commission/publications/joint-technical-note-eu-uk-position-citizens-rights-after-fourth-round-negotiations_en

October 12th, 2017 - Fifth round of negotiations between the EU and the UK

November 10th - Sixth round of negotiations between the EU and the UK

February 9th, 2018 - Seventh round of negotiations between the EU and the UK

February 28th, 2018 - Draft Withdrawal Agreement https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement.pdf

March 23rd, 2018 - European Council adopts guidelines for post-Brexit relationship with the UK

467   https://www.consilium.europa.eu/en/press/press-releases/2018/03/07/statement-by-president-donald-tusk-on-the-draft-guidelines-on-the-framework-for-the-future-relationship-with-the-uk/

468 During the September 19-20, 2018 informal meeting of heads of state or government in Salzburg:

withdrawal of the UK from the EU was reached on 14 November 2018[469], and endorsed by the EU27 leaders on November 25th, 2018[470], after the UK and Spain reached an understanding regarding Gibraltar[471].

The normative and political framework of the Brexit deal is delineated in the withdrawal agreement itself; in the political declaration setting out the framework for the future relationship between the European Union and the United Kingdom[472], and in the declaration regarding the Withdrawal Agreement and the Political Declaration[473].

In terms of broader political commitments, the EU and the UK reiterated that they will continue to work in unison "to safeguard the rules-based international order, the rule of law and promotion of democracy, and high standards of free and fair trade and

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https://www.consilium.europa.eu/en/press/press-releases/2018/09/20/remarks-by-president-donald-tusk-after-the-salzburg-informal-summit/

469 Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as agreed at negotiators' level on 14 November 2018 https://ec.europa.eu/commission/files/draft-agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community-agreed-negotiators-level-14-november-2018_en

470 During the special meeting of the EU Council: https://www.consilium.europa.eu/en/meetings/european-council/2018/11/25/

Official declaration endorsing the agreement: http://data.consilium.europa.eu/doc/document/XT-20015-2018-INIT/en/pdf

The final draft can be found here: https://www.consilium.europa.eu/media/37099/draft_withdrawal_agreement_incl_art132.pdf

471 As highlighted in the November 25th, 2018 Declaration regarding the Withdrawal Agreement and the Political Declaration: "after the United Kingdom leaves the Union, Gibraltar will not be included in the territorial scope of the agreements to be concluded between the Union and the United Kingdom. However, this does not preclude the possibility to have separate agreements between the Union and the United Kingdom in respect of Gibraltar. Without prejudice to the competences of the Union and in full respect of the territorial integrity of its Member States as guaranteed by Article 4(2) of the Treaty on European Union, those separate agreements will require a prior agreement of the Kingdom of Spain". Source: https://www.consilium.europa.eu/media/37102/xt20017-en18.pdf

472 Available at: http://data.consilium.europa.eu/doc/document/XT-21095-2018-INIT/en/pdf

473 Available at: https://www.consilium.europa.eu/media/37102/xt20017-en18.pdf

workers' rights, consumer and environmental protection, and cooperation against internal and external threats to their values and interests.[474]" This included a political commitment by the UK regarding international climate change agreements, such as the Paris Agreement.

The relationship between the UK and the EU is envisioned[475] to be one based on balanced rights and obligations, however that such balance must ensure equally the integrity of the single market and its indivisible freedoms, as well as the UK's sovereignty and its ability to develop an independent trade policy.

The Withdrawal Agreement[476]

The almost 600-page agreement provides for an understanding in several key areas important to both citizens and business of the UK and the EU. The concern was to safeguard certainty and clarity throughout the implementation and transition period, and beyond.

- Part one: common provisions (articles 1-8)

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474 November 22, 2018 Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom; https://www.consilium.europa.eu/media/37059/20181121-cover-political-declaration.pdf

475 Para. 4 of the Political Declaration;

476 See: Explainer for the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union. Source:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759020/14_November_Explainer_for_the_agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union.pdf

- Part two: citizens' rights (articles 9-39)

- Part three: separation provisions (articles 40-125)

- Part four: transition period (articles 126-132)

- Part five: financial settlement (articles 133-157)

- Part six: institutional and final provisions (articles 158-185)

- Protocol: Northern Ireland / Ireland

- Protocol: Sovereign Base Areas

- Protocol: Gibraltar

With regards to the common provisions it should be note that, according to article 4.4, the withdrawal agreement with regards to Union law shall be interpreted and applied in conformity with the general principles of EU, and with the case law of the CJEU handed down before the end of the transition period. According to article 4.5, and with regards to the interpretation and application of the withdrawal agreement, the "UK's judicial and administrative authorities shall have due regard to relevant case law of the CJEU handed down after the end of the transition period".

With regards to citizens' rights, the concern was to provide certainty for UK nationals residing in other EU countries, and for EU citizens living in the UK. These rights related to residence (articles 13-22), to work (articles 24 to 26), to equal treatment and non-discrimination (article 23 and 12), to mutual recognition of professional qualifications (article 27 to 29), as well as a commitment to continue to abide by EU regulations on social security coordination (articles 30). Both EU and UK citizens falling within the scope of the agreement will continue to enjoy the rights to live, reside,

study and work as before[477].

The separation provisions are meant to stipulate how the "application of the EU legal order in the UK is brought to an orderly conclusion"[478], but also cover the future arrangements regarding: goods placed on the market; ongoing customs procedures; value added tax and excise duty matters; intellectually property; police and judicial cooperation in criminal matters; among others[479]. These provisions offer a vital safeguard for legal certainty, at least until the UK and EU more thoroughly decide the future of their economic relationship.

The provision regarding the transition period, also referred to as the implementation period, stipulate that this period will "start on the date of entry into force of (the) Agreement and end on 31 December 2020" (article 126). The general rule is that EU law shall continue to apply in the UK, subject to the exceptions provided in the agreement (article 127)[480]. However, during the transition period, the UK shall no longer

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477 With regards to residence: "UK nationals who have been living in a Member State of the EU continuously and lawfully for five years at the end of the implementation period will have the right to reside permanently in that Member State. Equally, EU citizens who have been living in the UK continuously and lawfully for five years at the end of the implementation period will have the right to reside permanently in the UK." Source: Explainer para. 29;

478 Explainer para. 48;

479 Title I: Goods placed on the market; Title II: Ongoing customs procedures; Title III: Ongoing value added tax and excise duty matters; Title IV: Intellectual Property; Title V: Ongoing police and judicial cooperation in criminal matters; Title VI: Ongoing judicial cooperation in civil and commercial matters; Title VII: Data and information processed or obtained before the end of the transition period or on the basis of this agreement; Title VIII: Ongoing public procurement and similar procedures; Title IX: Euratom related issues; Title X: Union judicial and administrative procedures; Title XI: Administrative cooperation procedures between Member States and the United Kingdom; Title XII: Privileges and immunities; and Title XIII: Other issues relating to the functioning of the institutions, bodies, offices and agencies of the Union.

480 "This will mean that businesses will be able to trade on the same terms as they do now. The agreement is of mutual benefit, building an important bridge to our future relationship, and giving citizens and businesses in both the UK and the EU the time and

be able to submit proposals, initiatives or requests to EU institutions (article 128.3), most notably those foreseen in Articles 7, 30, 42(4), 48(2) – (6) and 49 TEU and Articles 25, 76(b), 82(3), 83(3), 86(1), 87(3), 135, 218(8), 223(1), 262, 311 and 341 TFEU. During the transition period, the Bank of England shall no longer be considered a national central bank of a member state (article 128.4).

It shall remain bound by the obligations stemming from the international agreements concluded by the Union, even though representatives of the UK shall not participate in the work of any bodies set up by such agreements, unless it participates in its own right, or by exceptional invitation of the EU, as a part of the EU's delegation. The UK may however negotiate, sign and ratify its own international agreements in areas of traditional exclusive competence of the EU, as long as those agreements only enter into force after the transition period (article 129).

The provisions regarding the financial settlement pertain to the "fair settlement of the UK's rights and obligations as a departing Member State, in accordance with the law and in the spirit of the UK's continuing partnership with the EU"[481], and shall be discussed below when considering the criticism regarding the withdrawal agreement.

The final provisions are aimed at ensuring that the agreement brings legal certainty and clarity to all stakeholders, including citizens, organizations, and businesses. It sets the rules for a consistent interpretation and application of the withdrawal agreement, by allowing for example for courts or tribunals in the UK to make references to the CJEU

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confidence they need to plan for the UK's future relationship with the EU." Explainer para. 113;

481 Explainer, para. 126;

with regards to issues of citizens' rights (article 158)[482]. It also allows for the participation of the EC in cases pending the UK when questions arise regarding the interpretation of the agreement (article 162). More importantly, Part VI, Title II establishes the Joint Committee who shall be responsible for the interpretation and application of the Agreement. Comprised of representatives from both the EU and the UK, the Joint Committee's powers are detailed in article 164[483]. The withdrawal agreement also stipulates the creation of specialized committees on citizens' rights; on the other separation provisions; on issues related to the implementation of the Protocol on Ireland/Northern Ireland; on issues related to the implementation of the Protocol relating to the Sovereign Base Areas in Cyprus; on issues related to the implementation of the Protocol on Gibraltar; and on the financial provisions (article 165).

The withdrawal agreement also provides exclusivity for its own dispute settlement mechanism. All disputes arising under the agreement must be settled through the procedures provided for in articles 167 through 181. The UK and the EU, in the first instance, are required to attempt to resolve any dispute in good faith, and in consultation with the Joint Committee. A written notice to the Joint Committee is required for consultations to begin. If no mutual understanding is reached within 3 months of the

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482 In cases which commenced at first instance within 8 years from the end of the transition period;

483 "The Joint Committee shall:

(a) supervise and facilitate the implementation and application of this Agreement; (b) decide on the tasks of the specialized committees and supervise their work; (c) seek appropriate ways and methods of preventing problems that might arise in areas covered by this Agreement or of resolving disputes that may arise regarding the interpretation and application of this Agreement; (d) consider any matter of interest relating to an area covered by this Agreement; (e) adopt decisions and make recommendations as set out in Article 166; and (f) adopt amendments to this Agreement in the cases provided for in this Agreement." Art 164.4 of the W.A;

written notice, then either party may request the establishment of an arbitration panel (article 170). In disputes raising questions of EU Law, the arbitration panel must request that the CJEU give a ruling on the question, which shall be binding for the panel (article 174). The panel's decisions are binding to both parties, which must comply with the measures in good faith, and within a reasonable period of time (articles 175 and 176). With regards to remedies for non-compliance, the agreement foresees the possibility of the panel imposing, at the request of the complainant, a lump sum or penalty payment (article 178). Should respondent persist in not complying, within certain time-frames, the complainant shall be entitled to suspend most of her obligations under the agreement (except those referring to citizen's rights) until the respondent complies, or the dispute has been settled otherwise.

The Northern Ireland / Ireland Protocol.

The Northern Ireland protocol addresses one of the more serious concerns regarding the UK's withdrawal from the EU, which relates to the border between Northern Ireland and Ireland, and the peace process between these two countries[484]. The issue is both sensitive and complex, and is another source of opposition to the Brexit deal as shall be seen further below.

The protocol upholds the Good Friday Agreement[485], which in effect ended decades of violence between Northern Ireland and Ireland, by committing to not implementing

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484 Source: https://fullfact.org/europe/irish-backstop/

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a hard border between at any costs, and by virtue of a failsafe backstop safeguard, or insurance policy, the protocol hopes not to reignite old tensions.

Next steps for the UK.

The withdrawal agreement has met with internal criticism in the UK, and has now been thrice rejected by the House of Parliament. Hours after the November 14th proposal was announced, several resignations occurred within the Government's own cabinet, most notably the Brexit Secretary[486], with a powerful statement saying he could not support the proposed deal[487]. In the ensuing days talks of internal dissent grew stronger[488], with 24 letters being sent to the Conservative Private Members' Committee asking for a vote of no confidence[489]. While still short of the 48 minima to trigger such a vote, it is currently believed that 27 MPs had submitted such letters calling for the Prime Minister to step down[490]. A more immediate consequence of the resignations and of the UK's political turmoil was felt when the pound dropped significantly, registering

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486 Resignations: Brexit Secretary Dominic Raab; Work and Pensions Secretary Esther McVey; Junior Minister for the Department for Exiting the EU Suella Braverman; Minister of State at the Northern Office Shailesh Vara; MP Anne-Marie Trevelyan stepped down as PPS to the Education Ministers to the Prime Minister; Parliamentary Private Secretary to the Ministry of Justice Ranil Jawardena; Vice Chariman of the Conservative Party Rehman Chisti; Downing Street's director of legislative affairs Nikki Da Costa;   Source: https://www.msn.com/en-gb/news/uknews/brexit-deal-the-cabinet-ministers-who-have-resigned-so-far-with-esther-mcvey-and-dominic-raab-the-latest-to-walk/ar-BBPJC4X

487 https://dominicraab.com/2018/11/15/my-resignation-letter-of-today/

488 Source: https://www.euronews.com/2018/11/18/pressure-mounts-on-may-as-ministers-call-for-vote-of-no-confidence

489 Also referred to as the 1922 Committee, its main functions is to "keep the leadership informed of the mood of the party and wields considerable influence". https://www.ft.com/content/e04786f4-6fbd-11e2-8785-00144feab49a

490 Source: https://www.telegraph.co.uk/news/2018/11/26/tory-mp-becomes-27th-back-vote-no-confidence-theresa-may/

the largest one-day drop against the dollar and the Euro since October 2018 and June 2016 respectively[491].

The UK is scheduled to withdraw from the EU on March 29, 2019, at 11p.m. to be precise. After the successful endorsement by the EU, the deal had to be presented to the House of Commons for approval, according to the UK's European Union (Withdrawal) Act 2018 which requires Parliamentary approval of the outcome of negotiations with the EU[492]. This vote as commonly been referred to as the "Meaningful Vote".

Were the House of Commons to approve the deal, and introduce it as Bill, the agreement will then have to be approved by the European Parliament in a plenary vote. The vote was scheduled to take place on December 11th, 2018 but has was rescheduled on the day prior due to fears that the vote would fail, instead May's government faced a vote of no confidence on that same date.

The "Meaningful Vote" on the withdrawal agreement was rescheduled for January 15th, 2019 and suffered a significant defeat, with 432 votes against and 202 in favor, leading to a second vote of no confidence in the Government. For the second time the Government survives the no confidence vote, by a slim margin of 19 votes – 325 votes

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491 Source: https://www.theguardian.com/business/2018/nov/15/pound-falls-steeply-as-brexit-resignations-rock-the-government

492 European Union (Withdrawal) Act 2018 which states that:

"(1)The withdrawal agreement may be ratified only if— (a) a Minister of the Crown has laid before each House of Parliament (…);
(b) the negotiated withdrawal agreement and the framework for the future relationship have been approved by a resolution of the
House of Commons on a motion moved by a Minister of the Crown, (c) a motion for the House of Lords to take note of the
negotiated withdrawal agreement and the framework for the future relationship has been tabled in the House of Lords by a Minister
of the Crown and—(…) (d) an Act of Parliament has been passed which contains provision for the implementation of the withdrawal
agreement. "

Source: http://www.legislation.gov.uk/ukpga/2018/16/section/13/enacted

to 306 – and announces a "Plan B"[493], an attempt to secure certain concessions from the EU, particularly regarding the Irish backstop. May's "plan B" is criticized however because in all other regards it largely resembles "plan A"[494], and because the EU has been adamant against renegotiating the agreement[495].

A second "Meaningful Vote" is currently scheduled to take place on March 12th, 2019, and if it fails a "No-deal" vote will take place the following day, March 13th, 2019, following the UK's prime-minister's pledge that "The UK will only leave without a deal on 29 March if there is explicit consensus in the House for that outcome"[496]. Should the "No-deal" vote be rejected, then the more likely scenario is that the UK will seek the EU's agreement for a delay of its formal exit from the EU – an extension of Article 50 TEU.

A backstop might be intolerable.

One of the most vehement criticism of the Brexit deal relate to the backstop agreement[497], which may make it impossible for the UK to negotiate trade agreements

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493 Source: https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7960#fullreport

494 "Let us not forget that the fact that the Prime Minister is here at all before us today to explain her plan B, which looks suspiciously like plan A" Labour MP Dr Rupa Huq;

https://hansard.parliament.uk/commons/2019-01-21/debates/0FBF8F8F-E4B4-47A2-BD0A-958EFC89BD7E/LeavingTheEU

495 Sources: https://www.theguardian.com/politics/2019/jan/29/eu-rule-out-brexit-renegotiation-brady-amendment-pass

https://www.ft.com/content/4feb71d0-207c-11e9-b126-46fc3ad87c65

496 Source: https://www.ft.com/content/64e7f218-4ad4-11e7-919a-1e14ce4af89b

497 The strongest criticism coming from former Brexit Secretary Dominic Raab, who in fact named this has one of the two reasons why he resigned: "I cannot support an indefinite backstop arrangement, where the EU holds a veto over our ability to exit. The

with other countries besides the EU[498].

One day after the EU27 agreed to endorse the withdrawal agreement, the UK's Prime Minister addressed the House of Commons to gather support for the Brexit deal[499]. Defending the deal, and Britain's position, the Prime Minister offered two rebuttals to her critics, first regarding one of the more problematic concessions: "there is no deal that comes without a backstop, and without a backstop there is no deal". And secondly, often the ends justify the means, and sometimes the ends must come at all cost, this deal delivers the democratic outcome that the people of Britain chose[500]. That in fact is the first message reiterated in the official governmental website explaining the Brexit deal to its citizens, that this deal fulfills the "democratic decision taken by the British public"[501].

The strongest opposition to the Brexit deal came from the leader of the Labor Party and of the opposition, claiming that this deal leaves the UK worse off[502].

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terms of the backstop amount to a hybrid of the EU Customs Union and Single Market obligations. No democratic nation ever signed up to be bound by such an extensive regime, imposed externally without any democratic control over the laws to be applied, nor the ability to decide to exit the arrangement." https://dominicraab.com/2018/11/15/my-resignation-letter-of-today/

498 "Brexit backstop would be 'practical barrier' to trade deal, leaked paper says"

https://www.theguardian.com/politics/2018/dec/02/theresa-may-in-battle-over-brexit-legal-advice-as-charm-offensive-begins

499 November 26th, 2018 source: https://www.parliament.uk/business/news/2018/november/prime-minister-makes-statement-to-mps-following-brexit-agreement-with-eu/

500 To that effect, the Prime Minister stated that "this is the right deal for Britain because it delivers on the democratic decision of the British people" *idem*;

501 Source: https://brexitdealexplained.campaign.gov.uk/

502 https://hansard.parliament.uk/Commons/2018-11-26/debates/F334A05A-1975-4F80-95F4-3E07423AA960/LeavingTheEU

Concessions.

The UK tried to limit the rights of EU citizens to those who arrived before the withdrawal date (March 29th, 2019), but had to concede on extending those rights to all EU citizens that arrive into the UK until the end of the transition period;

The financial settlement of the UK's rights and obligations as a departing Member State[503] are expected to be between £35-39 billion[504]. While this figure is not as high as advanced, it is yet another concession that the UK had to agree to. The financial settlement is covered in articles 133 through 157 of the withdrawal agreement, and encompasses: the UK's contributions to the implementation of EU budgets for the years 2019 and 2020 (art. 135); the UK's participation in the implementation of EU programs and activities in 2019 and 2020 (art. 137); outstanding commitments (art. 140); the UK's share in EU liabilities until December 31st 2020 (art. 142); contingent financial liabilities arising from financial operates related to loans for financial assistance (art. 143); contingent liabilities related to legal cases (art. 147); financial operations approved by the EIB before the agreement's entry into force (art. 150); share of participation in the European Development Fund (art. 152); and to the financing of the European Defense Agency. The UK's liabilities after December 31st, 2020 extend to its share regarding the pension liabilities for: the personnel of the European Defense Agency, the European Union Institute for Security Studies, and the European Union Satellite Centre; any

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503 The popularly termed "divorce bill". Sources: https://www.instituteforgovernment.org.uk/explainers/eu-divorce-bill see also https://fullfact.org/europe/eu-divorce-bill/

504 As per para. 128 of the explainer for the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, dated 14 November 2018;

liabilities arising from the liquidation of the Western European Union.

Fishing opportunities

Even though the fisheries industry only accounts for 0.1% of the UK's economy, it has warranted special consideration within the WA (article 130) within the Political Declaration setting out the framework for the future relationship between the EU and the UK (para. 73-76), as well las in the declaration regarding the Withdrawal Agreement and the Political Declaration.

The UK's Chancellor of the Exchequer has stated that the country's economy will, in all scenarios regarding the UK's withdrawal from the EU, be smaller than it would have been if the UK had remained a part of the Union[505]. The Chancellor safeguarded however that the UK's economy will continue to grow, even if at a smaller rate, and that the legitimacy of the deal should be analyzed beyond its economic impact, and should consider also issues of concern for the British people, including the benefits of an independent trade policy and increased control over fishing waters.

Preliminary conclusions on Brexit.

> *"They were in with a load of opt-outs. Now they are out, and want*
>
> *a load of opt-ins."* Xavier Bettel[506]

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[505] In addition, the Chancellor of the Exchequer stated that: "if you look at this purely from an economic point of view, yes there will be a cost to leaving the European Union because there will be impediments to our trade"; Source: https://www.theguardian.com/politics/2018/nov/28/chancellor-uk-worse-off-brexit-scenarios-philip-hammond

[506] Luxembourg Prime Minister Xavier Bettel. Source: https://www.politico.eu/article/12-brexit-cherries-the-uk-wants-to-pick/

It has been suggested that the WA favors disproportionally the EU over the UK[507], particularly because of the possibility that the backstop protocol might apply indefinitely, *de facto* preventing the UK from celebrating trade agreements outside of the EU[508]. The UK's Prime Minister has been reluctant to share the full legal advice analysis she received from the Attorney General for England and Wales regarding the WA[509], as it was reported that this document would confirm the concerns regarding the backstop protocol. In the abridged legal opinion presented by the UK's Attorney General, it is confirmed that "the Protocol will continue to apply unless and until it is superseded, in whole in or part, by a subsequent agreement establishing alternative arrangements". Responding to Parliamentary questions regarding the UK's position, the Attorney General recognized that the UK would not be able to unilaterally withdraw from the backstop protocol, and therefore that the UK could remain committed to it indefinitely[510], preventing it from pursuing other trade agreements.

The backstop provision should not be understood as problematic in so much as it safeguards the overall objectives of the Good Friday agreement. When nonetheless it *de*

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507 The U.S. President for example has stated that that Brexit deal would be "a great deal for the EU" and would prevent the UK from being able to trade with non-EU countries.

https://www.theguardian.com/us-news/2018/nov/26/trump-brexit-deal-theresa-may-great-deal-for-eu

https://www.theguardian.com/us-news/2018/nov/27/why-does-donald-trump-oppose-theresa-may-brexit-deal

508 https://www.theguardian.com/politics/2018/dec/03/brexit-advice-summary-published-amid-warnings-of-backstop-row

https://www.theguardian.com/politics/2018/dec/02/theresa-may-in-battle-over-brexit-legal-advice-as-charm-offensive-begins

509 A summary of the legal advice was present instead. Available: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/761153/EU_Exit_-_Legal_position_on_the_Withdrawal_Agreement.pdf

510 Source: https://www.bloomberg.com/news/articles/2018-12-03/irish-backstop-is-uncomfortable-and-incomplete-brexit-update

facto imperils the UK's ability to pursue its own trade agenda, foster better trade agreements with new (U.S.) and old (Commonwealth) allies, then the WA does not enhance nor restore the UK's sovereignty.

Viewing Brexit in a larger historical context, it denotes the UK's complicated existence with and within the EU, a perspective which has been carefully explored by (Troitiño, Kerikmäe and Chochia 2018), and which denotes the UK's 'never truly in, never fully out' relationship with the EU, as reflected by Xavier Bettel's words. This problematic past starts with the UK's troubled accession to the European Communities, twice denied by Charles de Gaulle because he felt that, "the nature, the structure, the very situation (conjuncture) that are England's differ profoundly from those of the continentals"[511].

In a more contemporary context, Brexit should also be analyzed with regards to populism[512], how it furthers the political gap, and the cognitive dissonance between the EU and its peoples. We have seen how European integration is no longer governed by political elites but increasingly by mass politics, what we have not discussed is the influence of populism in the mass politicization of the EU, which are distinct concepts. Hutter and Grande define the politicization of Europe along the lines defined by Schattschneider, "as an expansion of the scope of conflict within the political

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511 General de Gaulle press conference, held on 14 January 1963, during which he declares his opposition to the United Kingdom's accession to the European Common Market. Source:

https://www.cvce.eu/en/obj/press_conference_held_by_general_de_gaulle_14_january_1963-en-5b5d0d35-4266-49bc-b770-b24826858e1f.html

512 A topic that has likewise been exhausted recently, for example by (Clarke and Newman 2017) and (Evans and Menon 2017). More broadly on populism and the EU, see (van Kessel 2015);

system"[513]. Recalling Hooghe and Marks, they note how politicization is "one of the causes of the current crisis in European integration because the political elite can no longer rely on the 'permissive consensus' of citizens"[514]. Populism speaks more to the forces not that expand the scope of political activism and voice, but that, in the words of Barroso, "tear apart the political support and the social fabric" of a society[515]. In other words, the risk of fragmentation does not come from increased public voice, from hearing citizens' concerns, but rather from a populist polarization of important political and social issues. Moreover, populism usually lacks structures of accountability that are essential to responsible governance, such as the Brexit leave campaign promises and politics demonstrate. The UK's leave campaign encompassed a series of promises that were at best uninformed, and at worst a gross misrepresentation of the several facts, promises such as: "let's give our NHS the £350m the EU takes every week"; "a vote for leave will be a vote to cut immigration" – a promise coupled with a threat that "five million more migrants could enter Britain by 2030 if Turkey and four other applicant countries join the EU"; and that "the free trade agreement that we will have to do with

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513 (Hutter, Grande and Kriesi 2016, 7);

514 (Hutter, Grande and Kriesi 2016, 5);

515 Speech by President Barroso at the Brussels Think Tank Dialogue: "The State of the EU in 2013: Heading towards Federalism or Fragmentation?" on 22 April 2013. Source: *http://europa.eu/rapid/press-release_SPEECH-13-346_en.htm*

> *"So there is a real risk of polarisation in Europe. I am deeply concerned about the divisions that we see emerging: political extremes and populism tearing apart the political support and the social fabric that we need to deal with the crisis; disunion emerging between the centre and the periphery of Europe; a renewed demarcation line being drawn between the North and the South of Europe; prejudices re-emerging and again dividing our citizens, sometimes national prejudices that are simply unacceptable also from an ethical point of view."*

the European Union should be one of the easiest in human history"[516]. An anecdotal evidence of how populism permeates social structures and cohesion is the reported fact that Brexit has increasing couples counselling in the UK[517]. Van Kessel cautions us on having such a limited understanding on populism however, denoting how populism "fulfils an important function in serving as an indicator for the health of democracy"[518].

4.2 The EU on EU

The question surrounding the future of Europe has been on the minds of all its stakeholders and scholars, but no more so than on the EU's institutions themselves. In recent years, both the European Commission and the European Parliament have devoted considerable time and resources to addressing the elephant in the room – what future for Europe, if any, after Brexit? Due to their unique insights, the overwhelming information at their disposal – specifically due to their capacity to procure tailored

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516 Sources:

https://www.theguardian.com/politics/ng-interactive/2018/mar/28/11-brexit-promises-leavers-quietly-dropped

https://www.independent.co.uk/news/uk/politics/final-say-brexit-referendum-lies-boris-johnson-leave-campaign-remain-a8466751.html

517 "A survey by the charity Relate found that one-fifth of their 300 relationship support counsellors have worked with clients arguing over Brexit" Source:

https://www.theguardian.com/commentisfree/2017/feb/07/eu-brexit-couples-turmoil-referendum-relationship

518 Van Kessel notes how "populism is often used pejoratively, and that concept is habitually related to political extremism and the ideology of the radical right. Several commentators and politicians have therefore treated populism as a phenomenon that needs to be opposed" at page 169. Populist parties "are typical 'agents of discontent' but their substantive message should not be ignored, as discontent is normally related to concerns about important political issues" at page 183. (van Kessel 2015);

indicators through Eurobarometer polls and public consultations - recent reports, addresses and initiatives by the EU institutions offer valuable contributions to the debate on what the next chapter in the integration process might look like. As just mentioned, these institutions have invested highly and are highly invested in this discussion. But it is not just that they have generated vast numbers of studies and public polls, or that they have gathered unparalleled information regarding a myriad of integration inputs, it is that they, unlike most academics, are to some extent in the know. They are privy, at least to some extent, to the potential political favor or disfavor that each proposal might engender. And while this latter information is not made available in official reports and addresses, it is reasonable to assume that in some ways it informs them.

The most notable publications addressing the future of the EU are the 2017 Whitepaper on the Future of Europe, and the 2018 SOTU address. These initiatives are attuned to the greatest challenges that the EU faces at the moment, particularly with regards to its legitimacy. One of the greatest challenges, at least as is perceived by certain Member States and their citizens, relates to immigration. Whether perceived or real, the EU has attempted to face these challenges head on through a serious of initiatives.

Whitepaper on the Future of Europe

On March 25th, 2017 the heads of state or government of all EU Members, with the exception of the UK, met along with the presidents of the European institutions to celebrate the 60th anniversary of the Treaties of Rome. The purpose of this meeting was

"to reflect on the state of the European Union, and look at the future of the integration process[519]". The meeting also provided an opportunity to reiterate the EU's unity, and the need for such unity, with the President of the EU Council delivering a passionate speech on the perils of abandoning the European project, and on the courage that is now asked of all EU citizens - "Europe as a political entity will either be united, or will not be at all. Only a united Europe can be a sovereign Europe in relation to the rest of the world"[520].

The outcome of this meeting was the adoption and the signing of the Rome Declaration, "setting out a joint vision for the years to come". The concerns of the EU citizens were once again at the forefront of the discussions, with the Commission recognizing that the "EU fell short of their expectations as it struggled with its worst financial, economic and social crisis in post-war history"[521]. Hoping to regain their trust,

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519 As stated in the event's webpage, source: https://www.consilium.europa.eu/en/meetings/european-council/2017/03/25/

520 A powerful message in a bottle:

"the European Union is not about slogans, it is not about procedures, it is not about regulations. Our Union is a guarantee that freedom, dignity, democracy and independence are no longer only our dreams, but our everyday reality. (…) Nothing in our life is granted forever - that to build a free world requires time, great effort and sacrifice. This is why it was achieved in so few places on Earth. And yet we made it. To destroy such a world is very easy. It only takes a short moment. (…) Today in Rome we are renewing the unique alliance of free nations that was initiated 60 years ago by our great predecessors. At that time they did not discuss multiple speeds, they did not devise exits, but despite all the tragic circumstances of the recent history, they placed all their faith in the unity of Europe. They had the courage of Columbus to enter unchartered waters, to discover the New World. (…) And only a sovereign Europe guarantees independence for its nations, guarantees freedom for its citizens. The unity of Europe is not a bureaucratic model. It is a set of common values and democratic standards. Today it is not enough to call for unity and to protest against multiple speeds. It is much more important that we all respect our common rules such as human rights and civil liberties, freedom of speech and freedom of assembly, checks and balances, and the rule of law. This is the true foundation of our unity". Speech by President Donald Tusk at the ceremony of the 60th anniversary of the Treaties of Rome;

521 Whitepaper page 6;

the EU leaders pledged to work towards: (a) a safe and secure Europe, both internally and externally, with responsible, sustainable and efficient migration policies, and unyielding action towards terrorism and organized crime; (b) a prosperous Europe and a strong internal market, focusing on sustainability; (c) a more social Europe: economic progress must be equally aimed at curtailing unemployment, fighting discrimination, combating social exclusion and ending poverty; and (d) solidifying and strengthening Europe's position on the global scene. These commitments speak to the core of the most pressing issues felt by EU citizens today, as has been discussed previously and will be reiterated further on.

The most important feature of the EU's Whitepaper was its "reflections and scenarios for the EU27 by 2025". Despite the EU being "home to the world's largest single market and second most used currency (... and) the largest trade power and development and humanitarian aid donor", the recent crises have threatened the Union's cohesion, and for the first time in its history, the EU has had to seriously and openly reflect on changing its existing framework and purpose. It has long been argued that the European project represents the most advance and successful experiment both in terms of supranational governance and intergovernmental cooperation. If we hold this statement to be true, then what we are witnessing is an unprecedented exercise in supranational polity building – an exercise in re-evaluation and if necessary of course correction of the European idea and the European integration project.

Aware of the uncertainty brought about by Brexit, the whitepaper presents five possible scenarios for moving forward. The common denominator and the "starting point for each scenario is that the 27 Member States move forward together as a Union".

Scenario 1 leaves open the possibility of carrying on. If the EU manages to weather the current crisis, it may choose to stay true to its course and pursue its agenda. This scenario recognizes however that although the unity of the EU27 is preserved for now, it may later be tested once again in the event of major disagreements. Scenario 2 explores the possibility of winding down the EU to "nothing but the single market". Should the current crisis prove that there is no longer the will nor desire for shared commitments in policy areas, then the EU should revert to being simply a single market. Should member states wish to cooperate on new issues, then they would do so through international bilateral agreements. Scenario 3, entitled "those who want more do more", is the 2017 reiteration of the multi-speech approach[522]. It would allow for differentiated levels of cooperation and integration for any coalition of the willing. Scenario 4 focuses on "doing less more efficiently". The Union remains more than just an internal market, but now chooses only to prioritize areas where there is consensus. And finally, scenario 5 falls short of an appeal for a federalist Europe but does suggest that member states do much more together.

Regardless of which scenario the EU chooses to adopt, the whitepaper reiterates the importance of the European project and its accomplishments. The EU is currently home to the most equal societies in the world, and to the most peaceful. These achievements were made possible through a certain idea of Europe. There are however challenges that lie ahead that call for a continued unity. Regarding its population, Europe is growing older, and it is estimated that it will be the oldest region in the world by 2030[523], with a

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522 See onion of the CPMR https://cpmrblog.wordpress.com/2017/04/13/142/ ;

523 Whitepaper

median age of 45. While the European economy is recovering, Europe's share of global GDP is shrinking. There is also concern that the Euro might lose its place as the second global currency.

State of the Union 2018 - The hour of European sovereignty

"To love Europe, is to love its nations. To love your nation is to love Europe. Patriotism is a virtue. Unchecked nationalism is riddled with both poison and deceit."

The 2018 State of the Union[524] (SOTU) address by the President of the European Commission was delivered under the heading "the hour of European sovereignty", and whatever its actual purpose or design, (1) its importance cannot be disentangled from the significance of two crucial events for the EU; and (2) for most, if not all Europeans and EU scholars, but also for international political and trading partners, it cannot be read without having those same two events in mind – the 2008 financial crisis, and the 2016 Brexit vote.

2018 marks the ten-year passage of the 2008 financial crisis, the great catalyzer of Europe's varied crises[525], plunging the EU in its worst-ever monetary, budgetary, and fiscal crises. These crises weakened the Union's capacity and, worse still, its resolve in

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524 "Every year in September, the President of the European Commission delivers his State of the Union Address before the European Parliament, taking stock of achievements of the past year and presenting priorities for the year ahead. The President also sets out how the European Commission will address the most pressing challenges the European Union is facing." available at http://ec.europa.eu/soteu2018.

525 "The global financial and economic crisis that started in 2008 in the United States shook Europe to its core" p 9 whitepaper

dealing with joint challenges with regards to labor, welfare and refugee migration, the generalized discontent with globalization, and the geopolitical tensions that have shaken essential alliances, resurfaced old threats, and required a stronger stance with new world powers. 2018 was and is an important year regarding Brexit, not only would the final negotiations for the EU's first withdrawal agreement be finalized, but the first such agreement reached. More important than the agreement itself, the positions and concessions of both parties would finally be ascertained, and the cohesion of the EU either weakened or strengthen. A successful Brexit deal, for the EU, would represent the greatest signifier that it has weathered the worst, and has come out stronger. The 2018 SOTU address should be understood, in a measure greater than all addresses before it, as a message to the peoples of Europe, as well as to all those outside the EU.

Announcing the end of the EU's financial crisis

Unsurprisingly the very first address of the SOTU refers to the 2008 financial crisis[526], and how a new leaf has turned in Europe's history. The EC proceeds to enumerate a series of economic[527] and trade[528] indicators meant to prove how the

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526 "Ten years after Lehman Brothers, Europe has largely turned the page on an economic and financial crisis which came from outside but which cut deep at home." EC 2018 SOTU address page 7;

527 "Europe's economy has now grown for 21 consecutive quarters. Jobs have returned, with almost 12 million new jobs created since 2014. 12 million – that is more jobs than there are people in Belgium. Never have so many men and women – 239 million people – been in work in Europe. Youth unemployment is at 14.8% (…) the lowest it has been since the year 2000. Investment is back, thanks notably to our European Fund for Strategic Investments, which (…) has triggered 335 billion euro worth of public and private investment. We are closing in on 400 billion." EC 2018 SOTU address page 7;

528 "Europe has also reaffirmed its position as a trade power. Our global trading position is the living proof of the need to share sovereignty. The European Union now has trade agreements with 70 countries around the world, covering 40% of the world's GDP."

European Economy is strong once more.

Weltpolitikfähigkeit[529] *- the EU as a new world player*

> *"United, as a Union, Europe is a force to be reckoned with."*

On the same day that the EC delivered the SOTU, it also presented a communication proposing such a change by asking "whether the European Union wants to be a pillar of the emerging multipolar global order or whether it will resign itself to being a pawn[530]".

The second recurring theme in the SOTU is the importance of the EU within the global community. The Europe of the old is back and more committed than ever before, as a beacon and guardian of peace, and as a source of stability. The EU acknowledges its "global responsibility": in responding to humanitarian crisis, such as the ones in Ibdil Syria; in safeguarding the values of the international order that arose out of WWII to address such crises, which are now in jeopardy; and in curtailing the type of nationalism and unilateralism that threatens those same values. The EU's message in this regard reads as follows, the international world order is more volatile than ever before, the interests of old allies might no longer be the same, and in fact "old alliances may not look the same tomorrow[531]"; and the world needs a strong and united EU that can

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2018 SOTU address page 7;

529 A term meant to convey the EU's capacity to be "able to credibly act on the global stage".

530 Brussels, 12.9.2018 COM(2018) 647 final COMMUNICATION FROM THE COMMISSION "A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy", Source: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0647

531 2018 SOTU address page 8;

continue to foster and promote multilateralism in an unfolding new international order.

The language and the message of the SOTU address goes beyond reasserting the importance of the Europe of the old, suggesting that the united Europe of the new has a larger role to play. The language seems tailored in response to America's criticism of the international order and the new form of nationalism that it is endorsing. In condemning the latter, the EU reiterates that "we should embrace the kind of patriotism that is used for good, and never against others. We should reject the kind of exaggerated nationalism that projects hate and destroys all in its path. The kind of nationalism that points the finger at others instead of searching for ways to better live together.[532]". This criticism is repeated in an appeal to "reject unhealthy nationalism and embrace enlightened patriotism[533]".

The reason why these comments should be understood as a criticism and as an alternative to the US new international position, are made clear when read together with the statement that the EU has always been a global payer and it is now time for it to become a global player as well. In recent years the President of the US has repeatedly asserted that, with regards to both trade and geopolitical safety and stability, the US has been doing much more than its fair share, paying a higher price[534]. With regards to NATO the President has often commented on how the US is paying for Europe's protection by financing up to 90% an institution that helps the EU more than it helps the

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[532] EC 2018 SOTU address page 6;

[533] 2018 SOTU page 16;

[534] "We're the schmucks that are paying for the whole thing," he said. "I'll see NATO and I'll tell NATO, 'You've got to start paying your bills." Source: https://www.nytimes.com/2018/07/05/us/politics/trump-montana-rally-warren-tester.html

US[535]. With regards to trade, the President has often characterized the US as the world's piggy bank that is constantly being robbed[536], even though, as Juncker noted, "Europe (absurdly) pays for 80% of its energy import bill – worth 300 billion euro a year – in US dollar when only roughly 2% of our energy imports come from the United States".

Europe has not only taken an opportunity to reject the US's criticism by claiming that the EU has always been a "global payer", it has also suggested that it should start becoming a "global player", one in which the united economic, political and military forces of its members could shape global affairs[537]. One way it would achieve this is by adopting qualified majority voting with regards to the EU's Common Foreign and Security Policy (CFSP). Qualified majority voting is increasingly a salient feature of the EU's decision-making process, in fact it is the most commonly used voting procedure in the Council[538], and it is estimated that about 80% of all EU legislation is adopted with this procedure – although as we have noted above, and as Maduro states, this also raises a concern regarding a possible intergovernmental majoritarianism.

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535 July 13, 2018 Remarks by President Trump and Prime Minister May of the United Kingdom in Joint Press Conference https://www.whitehouse.gov/briefings-statements/remarks-president-trump-prime-minister-may-united-kingdom-joint-press-conference/

536 Presidential Tweet: "Donald J. Trump @realDonaldTrump Jul 24, 2018 Tariffs are the greatest! Either a country which has treated the United States unfairly on Trade negotiates a fair deal, or it gets hit with Tariffs. It's as simple as that - and everybody's talking! Remember, we are the "piggy bank" that's being robbed. All will be Great!" https://twitter.com/realdonaldtrump/status/1021719098265362432?lang=en

537 "The geopolitical situation makes this Europe's hour: the time for European sovereignty has come. It is time Europe took its destiny into its own hands. It is time Europe developed what I coined "Weltpolitikfähigkeit" – the capacity to play a role, as a Union, in shaping global affairs. Europe has to become a more sovereign actor in international relations" 2018 SOTU page 9;

538 Source: https://www.consilium.europa.eu/en/council-eu/voting-system/qualified-majority/

The EU's global position is solidified by its currency, "the second most used currency in the world with 60 countries linking their currencies to the euro in one way or another". And the future looks brighter still, as the EU promotes a deeper alliance for "Sustainable Investment and Jobs between Europe and Africa". The EC highlighted the importance and the potential of further partnerships with its "twin continent, reiterating the importance that Africa plays in its strategic global development – "Africa is the future".

Finally, the SOTU promises a parade of new (and some old) initiatives that will further set it aside: "a Digital Single Market, a deeper Economic and Monetary Union, a Banking Union, a Capital Markets Union, a fairer Single Market, an Energy Union with a forward-looking climate policy, a comprehensive Migration Agenda, and a Security Union".

The 2018 SOTU address delivers more than a new political messianism, it rebrands the EU – an even more compelling tale of what Salgó refered to as the "seductive Europa"[539]. The use of imagery in its idyllic narrative is carefully thought-out[540], particulraly with regards to the EU's legitimacy issue: "and we – or at least most of us

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[539] (Salgo 2017, 51)

[540] More examples of this communication strategy:

"The geopolitical situation makes this Europe's hour: the time for European sovereignty has come" "So let us show the European Union a bit more respect. Let us stop dragging its name through the mud and start defending our communal way of life more.";

"We should embrace the kind of patriotism that is used for good, and never against others. We should reject the kind of exaggerated nationalism that projects hate and destroys all in its path. The kind of nationalism that points the finger at others instead of searching for ways to better live together."

"I would like us to reject unhealthy nationalism and embrace enlightened patriotism. We should never forget that the patriotism of the 21st Century is two-fold: both European and national, with one not excluding the other."

– agreed that Europe's social dimension should be given the Cinderella treatment no more, but should instead be geared towards the future". A legitimacy which, "is born of Member States' national sovereignty and does not replace it. Sharing sovereignty – when and where needed – makes each of our nation states stronger. This belief that "united we stand taller" is the very essence of what it means to be part of the European Union."

Lastly, the imagery then devolves into the parade of horribles should Europe not meet this call: "the world has not stopped turning. It is more volatile than ever. The external challenges facing our continent are multiplying by the day. There can therefore be not a moment's respite in our efforts to build a more united Europe."

Brexit[541] and a message to for all future exits

> *"If you leave the Union, you are of course no longer part of our single market, and certainly not only in the parts of it you choose"[542].*

While demonstrating regret over the UK's decision to withdraw from the Union, the 2018 SOTU address makes it clear that being a member of the EU is a privileged position[543] that cannot and will not be extended to anyone leaving the European project. Furthermore, the EU's reiterated unwillingness to renegotiate any aspect of the WA, seems to be mostly concerned with the foreclosure of future exists from the EU.

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541 Brexit is defined as "the most nefarious byproduct of that European crisis";

542 2018 SOTU page 13;

543 "we also ask the British government to understand that someone who leaves the Union cannot be in the same privileged position as a Member State." 2018 SOTU page 13;

Showing flexibility towards the UK could enact a dangerous precedent that the EU wishes to avoid.

Consultations on the future of Europe - *Vox Populi, Vox Dei*

The elections for the European Parliament (HP) saw a record low turnout in 2014

(42-54%) since the members of the Hp (MEPs) became directly elected in 1979

(61.99%) (EP data)." (Stefanova 2015, 269)

Questions over the EU's democratic deficit have plagued the legitimacy of the EU ever since its creation, despite evidence that when the EU has increased the voice of its citizens through the EP, that increase has been met with less interest in democratic participation, what Weiler has referred to as the EU's democratic deficit paradox[544]. The question then becomes, how do we account for the EU's democratic deficit paradox, and how do we overcome it.

The answer, as Schmidt notes, involves another systems theory concept, that of throughput legitimacy, a concept which the EU and particularly the EC has taken quite seriously. Throughput legitimacy "is judged in terms of the efficacy, accountability and transparency of the EU's governance processes along with their inclusiveness and openness to consultation with the people"[545]. Such public consultations and other initiatives received great attention in the 2018 SOTU, strengthening the EU's message that it aims to listen to its citizens. One of the more noticeable initiatives is the public

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544 See above FN 284;

545 (Schmidt 2013, 2);

consultation on the "Future of Europe" – with its own hashtag #FutureofEurope – where EU citizens "can contribute to the online consultation drafted by citizens themselves, read and react to the White Paper on the Future of Europe, attend Citizens' Dialogues organized by the European Commission or participate in other debates organized in (their) country.[546]"

The 2017 Whitepaper on the Future of Europe was designed to "'open an honest and wide-ranging debate with citizens on how Europe should evolve in the years to come. Every voice should be heard"[547]. According to the latest progress report of the Citizen's Dialogues and Citizen's Consultations initiatives (December 2018) over 1,200 such dialogues have taken place, involving around 160,000 participants[548].

The EU's concern to create a closer proximity to its citizens is also present in the increasing number of polling data that it conducts to assess the EU's democratic legitimacy, and trust and closeness that citizens feel towards the EU, among others. Below are some examples and some data regarding this topic:

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[546] https://ec.europa.eu/commission/future-europe/consultation-future-europe_en

[547] https://ec.europa.eu/commission/sites/beta-political/files/eu-progress-report-consultations-111218_en.pdf

[548] Idem;

Table 41 Opinion Poll on how EU citizens perceive themselves to be Europeans

Do you ever think of yourself as not only (nationality), but also European? Does this happen often, sometimes or never? (09/2006)

Table 42 Opinion Poll Perception regarding how democracy works in the EU

On the whole, are you very satisfied, fairly satisfied, not very satisfied or not at all satisfied with the way democracy works in (your country)? Would you say you are ...?
How about the way democracy works in the European Union?
European Union (from 03/1993 to 03/2018)

■ Very satisfied ■ Fairly satisfied ■ Not very satisfied ■ Not at all satisfied ■ DK - Don't know

Table 43 Direction of the EU March 2018

At the present time, would you say that, in general, things are going in the right direction or in the wrong direction, in the EU

Category	Percentage
Things are going in the right direction	31%
Things are going in the wrong direction	45%
Neither the one nor the other	12%
Don't Know	12%

Table 44 Level of Perceived Voice

Please tell me for each statement, whether you tend to agree or tend to disagree?
My voice counts in the European Union
European Union (from 10/2004 to 03/2018)

■ Total 'Agree' ■ Total 'Disagree' ■ DK
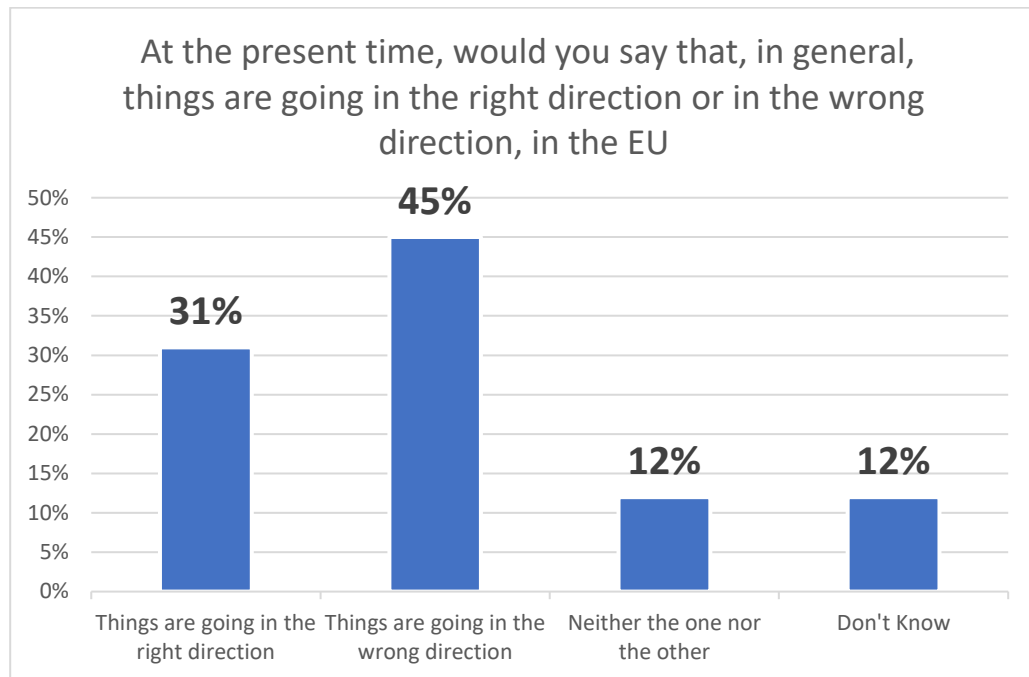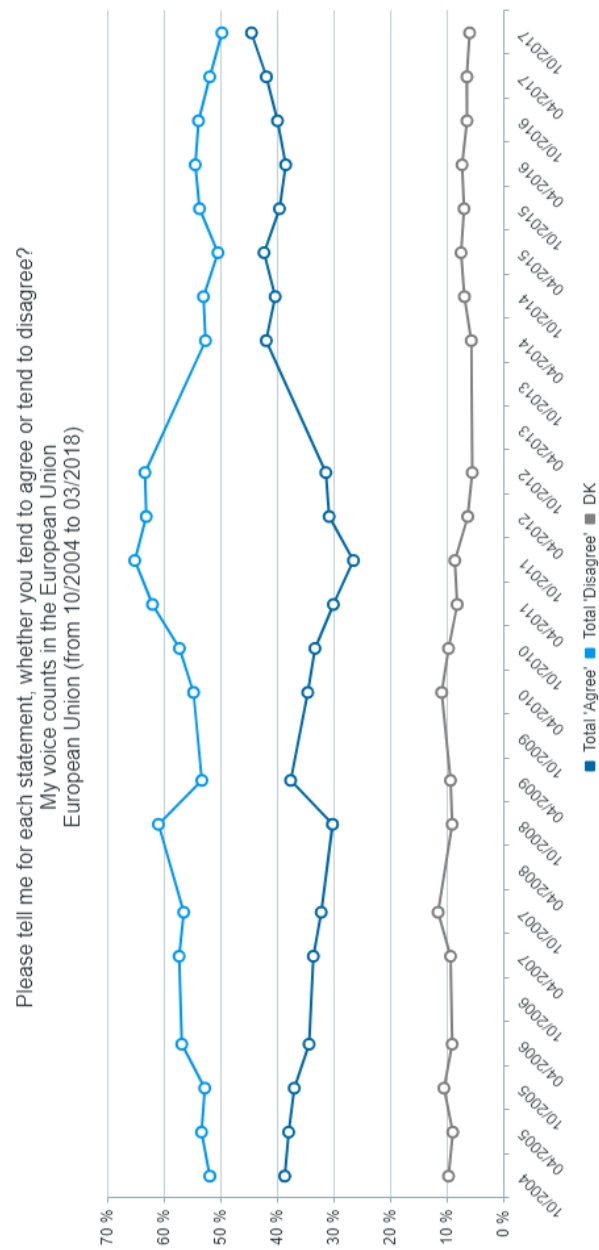
Table 45 Trust in the European Commission

And, for each of them, please tell me if you tend to trust it or tend not to trust it?
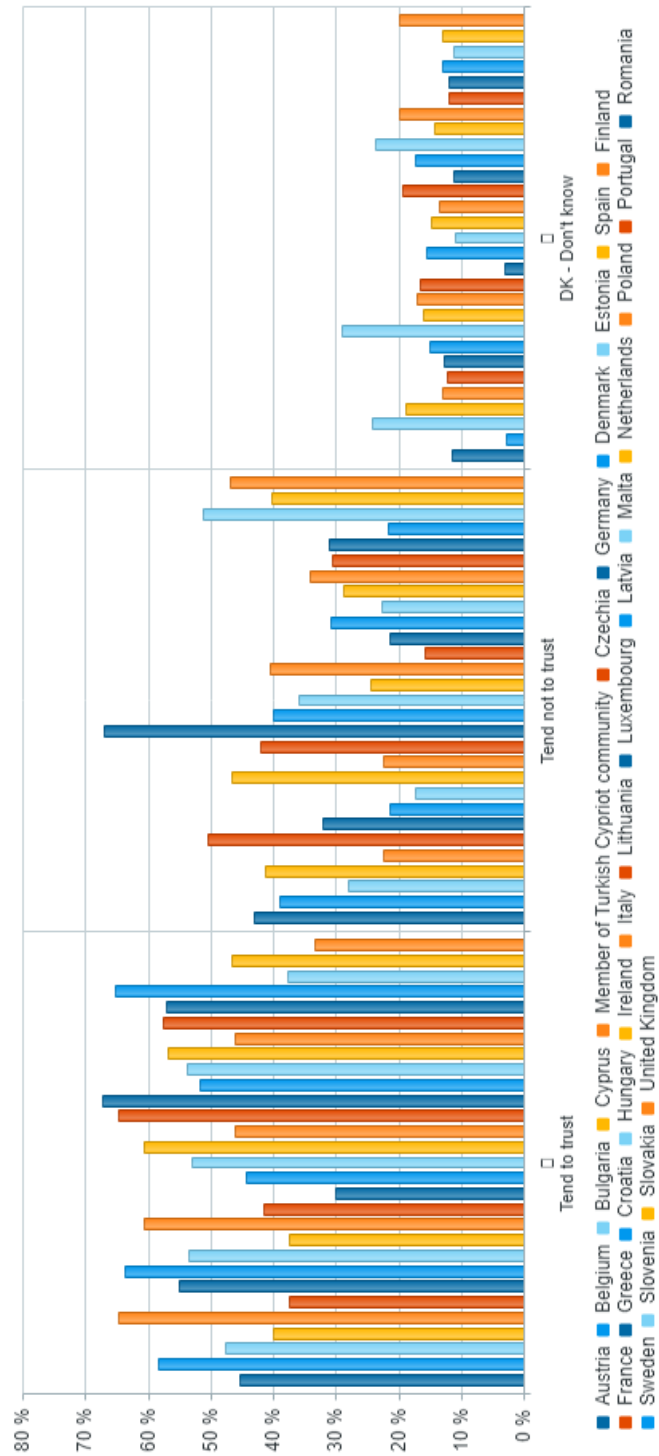The European Commission
(03/2018)

Table 46 Trust in the European Parliament

And, for each of them, please tell me if you tend to trust it or tend not to trust it?
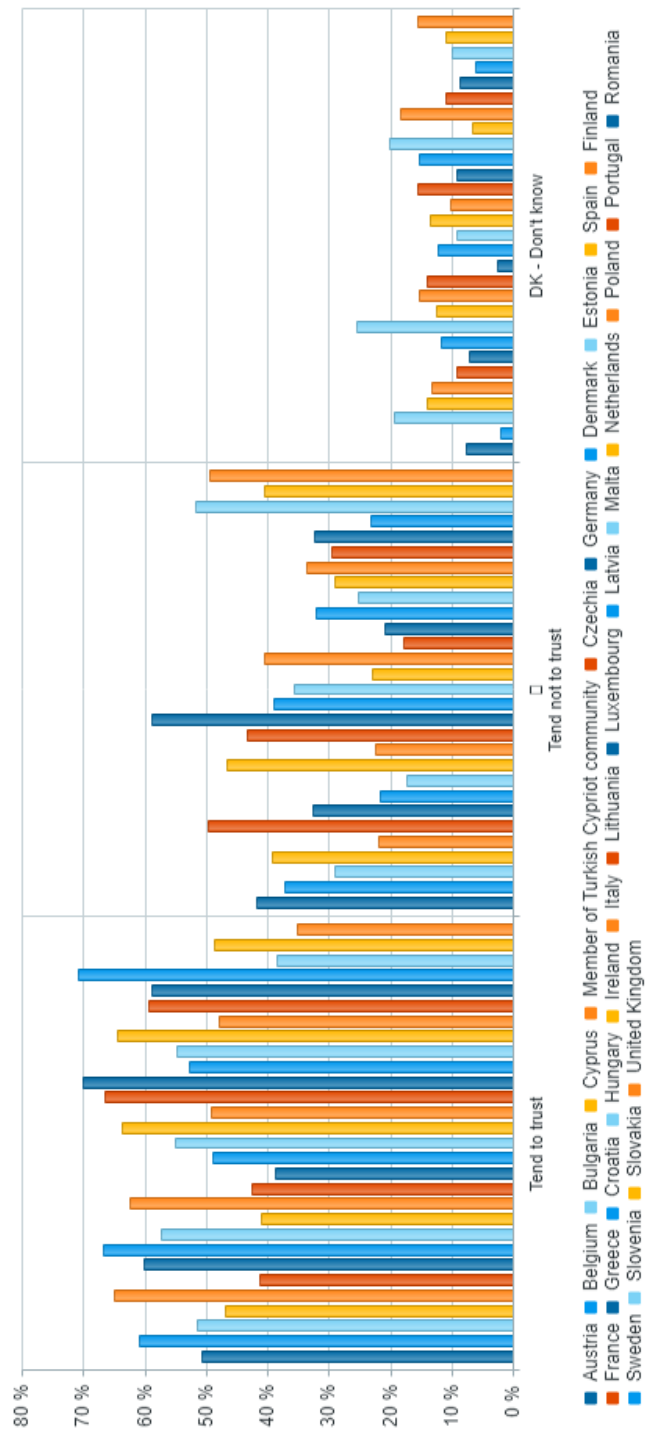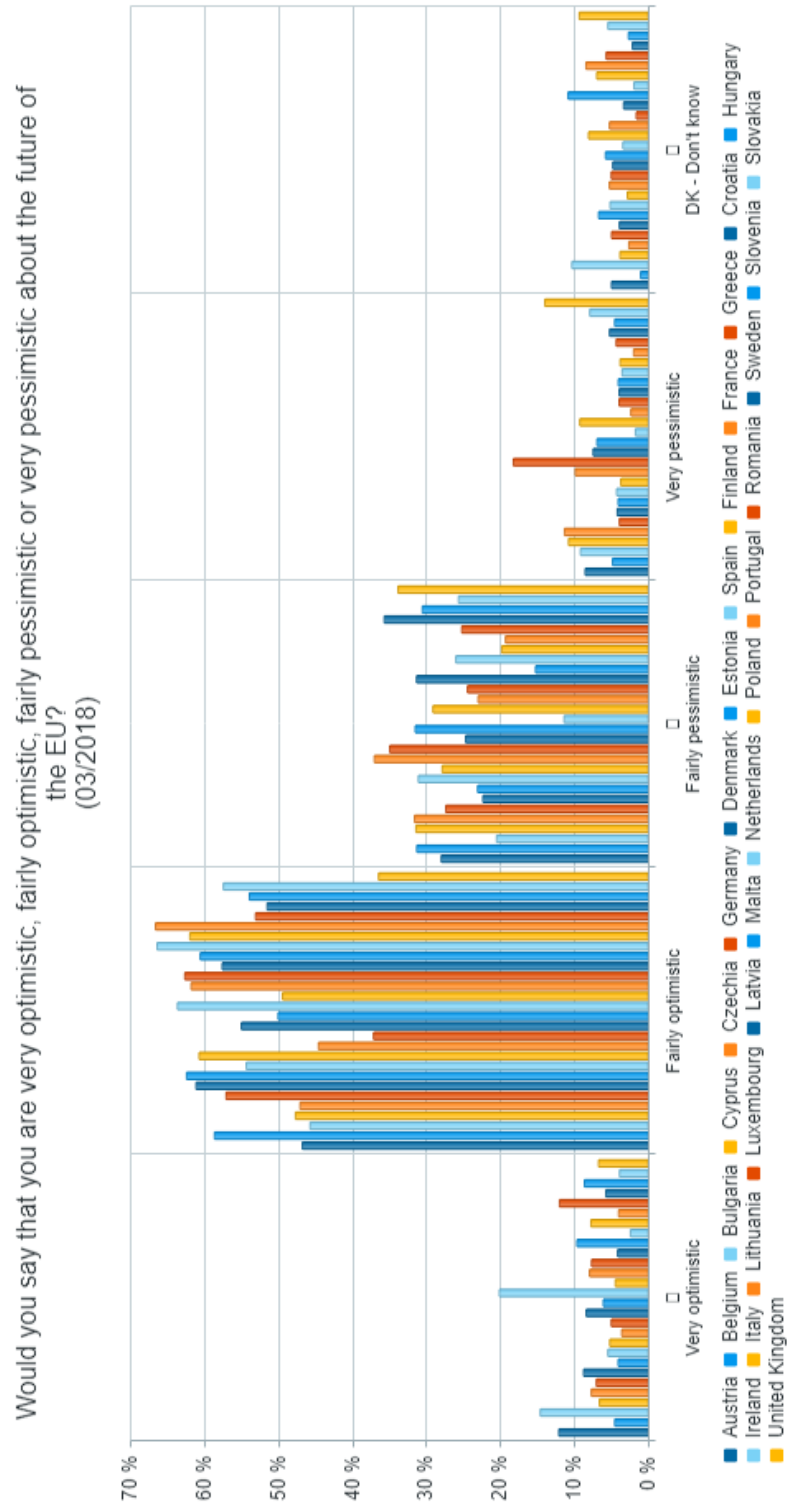The European Parliament
(03/2018)

Table 47 Optimism over the future of the EU

Would you say that you are very optimistic, fairly optimistic, fairly pessimistic or very pessimistic about the future of the EU? (03/2018)

The immigration challenge and the EU's Migration Plan as of 2018

> *"Paradoxically, the highest level of concern about the issue was registered in*
>
> *countries where immigration is minimal — Estonia, the Czech Republic and*
>
> *Hungary.[549]"*

Even though migration levels have dropped by more than 90% since 2015[550], and are back to pre-crisis levels, according to the latest Eurobarometer data (March 2018) EU citizens perceive immigration to be the most important issue facing the EU at the moment[551]. Immigration has therefore replaced concerns over the economic situation as the most pressing issue, followed by terrorism. It is interesting to note that this tendency seems to have a parallel in the U.S.

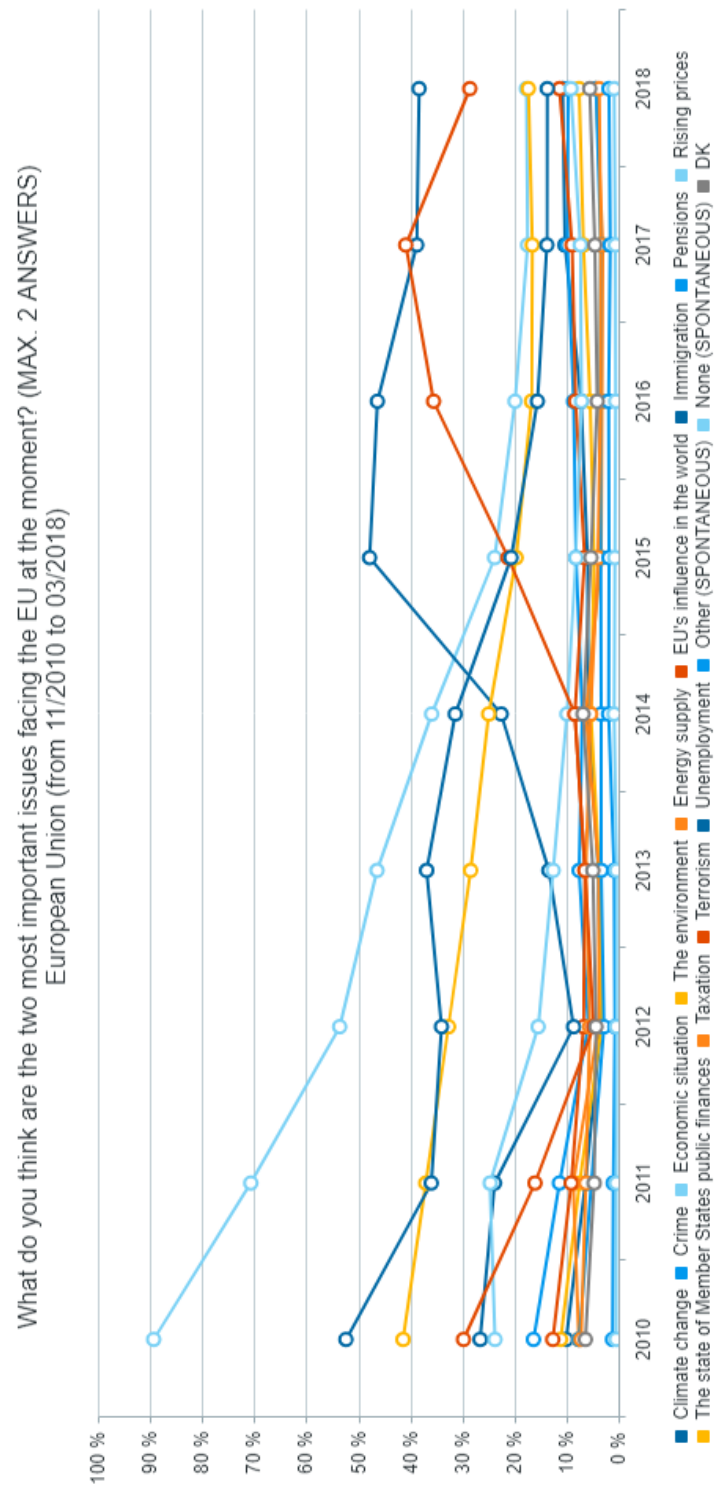549   https://www.reuters.com/article/us-eu-eurobarometer/immigration-terrorism-top-concern-list-of-europeans-poll-idUSKBN1JA2FX

550 See: https://www.consilium.europa.eu/media/35936/28-euco-final-conclusions-en.pdf

551 Source: http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Chart/getChart/themeKy/31/groupKy/188

Table 48 Opinion Poll on the two most important issues facing the EU today

The refugee crisis represented an "unprecedented migratory challenge" to the EU[552], but the action taken by the EU has, self-reportedly, been both effective and successful[553]. Considerable resources were directed towards the EU-Turkey joint action plan, seeing that the vast majority of irregular immigration was occurring through the crossing of the Aegan Sea. Out of approximately 980 thousand arrivals registered in 2015, 880 thousand represented sea crossings from Turkey to Greece. In fact, since the implementation of the EU-Turkey Statement in March 2016, the daily average of irregular arrivals dropped to 80[554].

The unprecedent refugee crisis caught the EU unprepared to deal with such vast numbers of migrants, which tested both the limits of the EU's infrastructure, as well as the very core and cohesion of the EU's legal framework. Many Member States introduced temporary internal border controls, which not only disrupted the regular functioning of the Schengen area, but weakened a fundamental and substantive right

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[552] A 2017 EC report on the one-year implementation of the EU-Turkey joint action plan, states that ""in 2015 alone, more than one million people arrived in the EU, around 885,000 of them through Greece."Source: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/eu_turkey_statement_17032017_en.pdf

[553] The 2017 report on the EU-Turkey Statement indicated a 97% drop in irregular immigration, and a decrease in the number of lives lost at sea: number of arrivals decreased from 988.703 to 27.711; and loss of lives decreased from 1145 to 80; source: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/eu_turkey_statement_17032017_en.pdf

The 2018 report indicated that "two years later, irregular arrivals remain 97% lower than the period before the Statement became operational, while the number of lives lost at sea has decreased substantially." Source: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180314_eu-turkey-two-years-on_en.pdf

[554] The daily average during October 2015 – the height of the refugee crisis – was 6,360 arrivals; *idem*

with the EU[555] [556]. Temporary restrictions with regards to secondary movement of migrants[557] are currently in effect in Austria, Norway, and Germany until May 11, 2019[558].

The levels of irregular migration have fallen drastically since the implementation of the EU-Turkey Statement and joint action plan. The number of illegal border crossings from January through September 2018 show strong indication of a return to pre-crisis levels[559], particularly as a result of the effective curtailment of irregular arrivals traveling from the eastern Mediterranean route[560]. EU external actions in Libya, through support and training programs to their coastguard since 2016, have ensured a 194% increase in their interception and rescue of migrants and refuges. Finally, the EU's work

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555 Recall that according to the Schengen Borders Code (S.B.C.), with regards to internal borders, "any person, irrespective of his/her nationality, may cross the internal borders at any point without checks being carried out". See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Al14514 It is only when, according to Article 23 of the S.B.C, "there is a serious threat to public policy or internal security, a Member State may exceptionally reintroduce border control at its internal borders for a limited period of no more than 30 days or for the foreseeable duration of the serious threat if its duration exceeds the period of 30 days". REGULATION (EC) No 562/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

556 For a full list of Member States' notifications of the temporary reintroduction of border control at internal borders pursuant to Article 25 et seq. of the Schengen Borders Code: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control/docs/ms_notifications_-_reintroduction_of_border_control_en.pdf

557 "The movement of migrants , including refugees and asylum seekers , who for different reasons move from the country in which they first arrived to seek protection or permanent resettlement elsewhere." https://ec.europa.eu/home-affairs/content/secondary-movement-migrants_en

558 Temporary internal border restrictions are also in effect in Sweden, Denmark and France for general concerns of serious threat to public policy and internal security;

559 Source: https://www.consilium.europa.eu/en/infographics/irregular-arrivals-since-2007/

560 Source: https://www.consilium.europa.eu/en/infographics/eastern-and-central-mediterranean-routes-09-2017/

with the International Organization for Migration, through EU-funded programs, has increased the number of voluntary returns from 2777 in 2016 to 28000 in the last two years[561].

Despite all these efforts, irregular migration remains a serious concern for EU citizens, even if this concern is born out of a mistaken perception regarding migration numbers, and not actual numbers. According to recent Eurobarometer numbers[562], on average EU citizens overestimate the share of immigrants in their country by a factor of 2. The average share totals 7.2%, whereas the perceived migration share is 16.7%[563]. The difference between the perceived share of non-EU migrants versus actual numbers is greatest in countries such as: Slovakia (8.3% vs. 0.6%); Poland (10% vs. 1.1%); Bulgaria (11.3% vs. 1.3%); and Romania (9.7% vs. 1.2%). Other countries such as Hungary (8.8% vs. 2%); Ireland (17.2% vs. 4.1%; Czech-Republic (10.5% vs. 2.7%); Italy (24.6% vs. 7%); Portugal (20.6% vs. 6.2); Cyprus (18.9% vs. 7%); Lithuania (10.2% vs. 3.8%); Spain (23.2% vs. 8.8%) and the UK (21% vs. 8.6%) also showed significant disparities. Only citizens from three EU countries had an accurate perception of the share of immigrations within their borders: Sweden (12.7% vs 12.4%); Croatia (11.4% vs. 11.3%), and Estonia (the only country where citizens estimated a lower share than the actual - 12% vs. 13.1%).

Besides believing that immigrations represent a larger share of their population than

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561 Source: https://www.consilium.europa.eu/en/infographics/eu-action-in-libya/

562 Special Eurobarometer survey 469 on "Integration of immigrants in the European Union", published on 13 April 2018 by the European Commission. Source: https://ec.europa.eu/home-affairs/news/results-special-eurobarometer-integration-immigrants-european-union_en

563 See also: https://www.consilium.europa.eu/en/infographics/migration-eurobarometer-2018/

official Eurostat data shows, on average, 38% believe that immigration from outside the EU constitutes more of a problem than an opportunity, whereas 31% believe that they pose equally a problem and an opportunity, and only 20% believe that they present an opportunity. In countries such as Hungary (63%); Malta (63%); Greece (63%); Slovakia (54%); Bulgaria (52%); and Italy (51%) more than half of their citizens believe that immigration from outside the EU constitutes a problem. On average, 56% agree that immigrants are a burden on the country's welfare system; 55% believe that immigrants worsen the crime problems in their country; and 39% believe that immigrants take away jobs from workers in their countries.

A special Eurobarometer report on migration issues found that ""only a minority of Europeans say they are well informed about immigration and integration", and it has been shown that "Europeans tend to largely overestimate the number of non-EU immigrants as a proportion of the population of their country"[564].

A recent paper by Alesina et al, focusing solely on six countries – the US and five EU countries (France, Germany, Italy, Sweden and the U.K.) – went further and found that citizens from these countries are strongly biased about immigrants as follows:

> *"they overestimate the share of immigrants from the Middle East, North*
>
> *Africa, and the share of Muslim immigrants, and they sharply underestimate the*
>
> *share of Christian immigrants. Natives also believe that immigrants are poorer,*

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564 Special Eurobarometer 469:

"In 19 of the 28 Member States the estimated proportion of the population who are immigrants is at least twice the size of the actual proportion of immigrants. In some countries, the ratio is much higher: in Romania, Bulgaria and Poland, the estimated proportion of immigrants is over eight times greater than the actual figure, and in Slovakia it is nearly 14 times the actual figure."

more reliant on the host country's welfare state, more unemployed, and less educated than they actually are. All these misperceptions contribute to making natives more averse to redistribution, as they perceive that immigrants are culturally and religiously more distinct from them and that they benefit disproportionately from the generosity of the welfare state.[565] "

The importance of the EU citizens perception on immigration lies with how it affects and conditions politics[566]. Migration concerns nearly prompted the breakup of Germany's government in June 2018, forcing a difficult compromise between the Christian Democrats party (CDU) and the Christian Social Union (CSU). The CDU's response to the 2015 refugee crisis was to open its borders to hundreds of thousands of migrants[567], a decision which drew international praise, but domestic contention. The CDU's welcoming culture - *willkommenskultur* – had to give way to several concessions[568] regarding Germany's policy on asylum-seekers, including expedited

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565 (Alesina, Miano and Stantcheva 2018);

566 See further studies regarding: immigration and public opinion https://www.europeansocialsurvey.org/docs/findings/IE_Handout_FINAL.pdf impact of immigration on electoral results https://www.ecfr.eu/article/commentary_migration_myths_dominate_italian_election_campaign aand https://www.ft.com/content/bfabfcc2-c882-11e7-aa33-c63fdc9b8c6c see also political reactions https://www.nytimes.com/2018/06/29/world/europe/migration-european-union-merkel.html, and https://www.washingtonpost.com/world/europe/germanys-angela-merkel-may-have-won-fight-over-migration-but-her-coalition-is-in-doubt/2018/07/02/d4e02b60-7da2-11e8-a63f-7b5d2aba7ac5_story.html?utm_term=.38bc4de1a33d

567 According to a press release by the Federal Ministry of the Interior, Germany welcomed 890 thousand migrants in 2015; https://www.bmi.bund.de/SharedDocs/pressemitteilungen/EN/2016/announcement-latest-refugee-figures.html

568"There needs to be more order in all types of migration," Merkel said. It cannot be allowed that the refugees determine where their request for asylum is processed. An immigration law for skilled workers will spell out clearly where our interests lie. Regarding

processing according to the Dublin agreement; enacting transit processes in police centers[569]; increasing cooperation with Austria to close immigration routes; enactment of bilateral deals with Greece[570], Spain[571] and Italy[572], to send asylum seekers back if it's determined that they have already applied for asylum in those countries, and to do so within 48 hours. Such bilateral agreements have since been signed or are in the process of being signed.

Hungary, Poland and the Czech Republic had long rejected key mechanisms of the EU's response to the refugee crisis, most notably regarding refugee quotas. These quotas were part of the EU's emergency relocation scheme enacted in 2015[573], and have been systematically ignored by these countries, prompting the Commission to refer the matter to the CJEU[574].

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integration, the Federal Government will continue to play its part - "This is reflected in the budget," declared the Chancellor. Source: https://www.bundesregierung.de/breg-en/search/germany-s-future-connected-with-europe-1511938 See also: https://www.reuters.com/article/us-europe-migrants-germany/german-coalition-reaches-deal-on-migration-no-transit-centers-idUSKBN1JV13I https://www.dw.com/en/german-government-agrees-on-migration-compromise/a-44546969

569 The CDU had actually gone as far to acquiesce to border camps for migrants, labelling them as transit centers, but ultimately , with the support of the SPD, the coalition agreement between the CDU, CSU and SPD did not go that far; https://www.reuters.com/article/us-europe-migrants-germany/german-coalition-reaches-deal-on-migration-no-transit-centers-idUSKBN1JV13I

570 Source: https://www.reuters.com/article/us-europe-migrants-germany-greece/germany-reaches-deal-on-sending-back-migrants-to-greece-idUSKBN1L21GV

571 Source: https://www.nytimes.com/2018/08/08/world/europe/germany-spain-refugees.html

572 Source: https://www.politico.eu/article/horst-seehofer-germany-migration-deal-with-italy/

573 established in two Council Decisions in September 2015 (Council Decision (EU) 2015/1523 and Council Decision (EU) 2015/1601);

574 http://europa.eu/rapid/press-release_IP-17-5002_en.htm

The EU's stance on immigration constituted its third and final rupture point threatening its internal cohesion, leading some leaders to reiterate that what was at stake in this summit was once more the fate of the EU.

Triggered by the potential political crisis in Germany, by several reports of Italy closing its ports to NGO rescue boats[575], and by growing anti-immigration support in Central European countries, the EU leaders met in Brussels on June 28th, 2018 to reach a compromise. The summit had to find a way to reconcile a) two widely different teleological views on immigration; b) growing anti-immigration support and rhetoric in some EU countries; and c) pressure from countries at the entry points of migration flows, such as Greece, Italy and Spain[576] - also referred to as countries of first arrivals, or frontline Member States - to get the EU and other Member States to share more equally in their burden.

While Italy's president threatened to block the summit until concessions were made[577], ultimately the summit was heralded a success, with the following outcome[578]:

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575   https://www.amnesty.org/en/latest/news/2018/09/italy-a-new-underhand-tactic-for-ending-work-of-ngo-rescue-ship-will-cost-lives/

See also: https://www.theguardian.com/world/2018/jun/16/italy-bars-two-more-refugee-ships-from-ports

576 According to latest indicators, Spain is now the leading entry point for Mediterranean migration, "a volume more than twice that of Greece and more than six times that of Italy." https://www.iom.int/news/mediterranean-migrant-arrivals-reach-68098-2018-deaths-reach-1549

577 Prompting a heated discussing about law professors, firemen and welders disagree on negotiation tactics. ""I am a law professor," Conte told his fellow leaders, protesting about the EU's working methods, promoting an unusual exchange, according to a source. The Bulgarian prime minister, Boyko Borissov, replied: "Well, I used to be a fireman and this is not how you negotiate." Sweden's prime minister, Stefan Löfven, added that he used to be a welder and he did not agree with the Italian's way of making his point either." https://www.theguardian.com/world/2018/jun/29/eu-leaders-summit-migration-doubts

578 https://www.bundesregierung.de/breg-en/search/unity-on-migration-1140302

Appeasing Hungary and Poland and other central European states, the EU leaders loosened the requirements for compulsory relocation quotas, instituting instead voluntary measures to expedite processing, relocation or resettlement, through European "control centers" that could weave out irregular migration and asylum seekers[579]. Appeasing political dissent within Germany, EU leaders reiterated the need for safeguards against secondary migration[580].

EU Leaders also agreed: to continue to fund and implement the EU-Turkey Statement; to continue to support Libyan Coastguard; and to pledge more support to the EU Trust Fund for Africa, realizing that "tackling the migration problem at its core requires a partnership with Africa aiming at a substantial socio-economic transformation of the African continent." [581] These last action points raised some concerns from the UNHCR and the IOM that the EU is outsourcing its migration problem, with dire consequences[582]. Doctors without Borders released a note stating

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579 "On EU territory, those who are saved, according to international law, should be taken charge of, on the basis of a shared effort, through the transfer in controlled centres set up in Member States, only on a voluntary basis, where rapid and secure processing would allow, with full EU support, to distinguish between irregular migrants, who will be returned, and those in need of international protection, for whom the principle of solidarity would apply. All the measures in the context of these controlled centres, including relocation and resettlement, will be on a voluntary basis, without prejudice to the Dublin reform." https://www.consilium.europa.eu/media/35936/28-euco-final-conclusions-en.pdf

580 "Concerning the situation internally in the EU, secondary movements of asylum seekers between Member States risk jeopardising the integrity of the Common European Asylum System and the Schengen acquis. Member States should take all necessary internal legislative and administrative measures to counter such movements and to closely cooperate amongst each other to that end." https://www.consilium.europa.eu/media/35936/28-euco-final-conclusions-en.pdf

581 https://www.consilium.europa.eu/media/35936/28-euco-final-conclusions-en.pdf

582 https://www.unhcr.org/en-us/news/press/2018/6/5b33d8bf4/iom-unhcr-appeal-region-wide-action-eu-countries-mediterranean-tragedies.html

that the "EU member states are abdicating their responsibilities to save lives and deliberately condemning vulnerable people to be trapped in Libya, or die at sea[583]". The ECFR criticizes the externalization of border control through the EU's Migration Partnership Framework (MPF), a policy that it deems "has little interest in acknowledging or addressing the real causes of migration[584]". The externalization of borders would create a de facto fortress surrounding the EU, through the creation of processing centers, which are being discussed as reception centers and disembarkation platforms.

During the recent immigrant summit, the European Council called on the Commission to "swiftly explore the concept of regional disembarkation platforms, in close cooperation with relevant third countries as well as UNHCR and IOM[585]". In a subsequent press release the European Commission reiterated that the purpose of these centers, and of regional disembarkation arrangements "is to provide quick and safe disembarkation on both sides of the Mediterranean of rescued people in line with international law, including the principle of non-refoulement, and a responsible post-disembarkation process[586]".

This proposal, which could see that enactment of funded processing centers in Algeria, Egypt, Libya, Morocco, Niger, or Tunisia, has gained criticism, and has drawn

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583 https://www.msf.org/european-government-policies-condemn-people-be-locked-libya-or-drown-sea

584 https://www.ecfr.eu/specials/mapping_migration#

585 https://www.consilium.europa.eu/media/35936/28-euco-final-conclusions-en.pdf See also: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724_factsheet-regional-disembarkation-arrangements_en.pdf

586 http://europa.eu/rapid/press-release_IP-18-4629_en.htm

comparisons to the Australian model and the controversial Pacific Islands detention centers[587].

At the core of these differences are two distinct views within the EU on how to handle the refugee crisis, with countries from central Europe refusing to welcoming them into their borders, and western European countries – values of the EU – solidarity.

Germany's welcoming culture as opposed to Hungary's Primer Ministr's calls for actions against a migrant "invasion"[588].

Easy way in which perception regarding immigration might affect politics, is its potential correlation to the rise of populist parties in Europe. A recent study by indicated that one in four Europeans vote populist[589], and that the overall populist vote share between 1998 and 2018 has risen from about 7% to over 25%, with 2008 showing an inflection point where the growth of populism accelerates at a much higher rate[590]. As

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587   See: https://www.aljazeera.com/news/2018/06/european-proposals-outsource-asylum-centres-condemned-180627165710147.html

https://www.ecfr.eu/specials/mapping_migration#

https://www.bbc.com/news/world-africa-44709974

https://www.politico.eu/article/regional-disembarkation-platforms-eu-leaders-consider-camps-outside-bloc-to-process-refugees/

https://www.theguardian.com/world/2018/jun/21/eu-admits-no-african-country-has-agreed-to-host-migration-centre

https://www.politico.eu/article/eu-cant-outsource-migration-crisis-disembarkation-platforms-centers/

588 https://www.theguardian.com/world/2018/mar/15/hungarian-leader-says-europe-is-now-under-invasion-by-migrants

589 November 20th, 2018 study conducted by The Guardian, with the assistance of more than 30 political scientists. The study defines populist parties as: "parties that endorse the set of ideas that society is ultimately separated into two homogeneous and antagonistic groups, "the pure people" versus "the corrupt elite", and which argue that politics should be an expression of the *volonté générale*, or general will, of the people. (Mudde, 2004)";

 Source https://www.theguardian.com/world/ng-interactive/2018/nov/20/revealed-one-in-four-europeans-vote-populist

590 The study indicates that "the number of Europeans living under governments with a populist in cabinet has increased 13-fold",

this study shoes:

> *anti-establishment populism has snowballed, particularly after the 2008 financial crash and the 2015 refugee crisis in Europe. The anti-austerity Syriza took 27% of the vote then 36% in successive Greek elections; Ukip propelled Britain to its Brexit vote and Marine Le Pen became the second member of her family to reach a presidential run-off in France, winning 33% of the vote. The anti-immigration Alternative für Deutschland has become the first far-right party since the second world war to enter every German state parliament and holds more than 90 seats in the Bundestag; in Italy, the far-right League and anti-establishment Five Star Movement won nearly 50% of the popular vote; Fidesz has been returned in Hungary with 49% of the vote; and the far-right Sweden Democrats have advanced to 17.5%.[591]*

The rise of populism in Europe is corroborated in other studies[592], but the link between immigration and the recent rise of populist parties in Europe should, in theory, be tenuous at best, given the actual numbers of immigration. Nonetheless studies show, and political commentators agree, that issues of immigration drive support for

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from 12.5 million to 170 million; *idem.* A detailed report on how populism has evolved in Europe over time can be found here: https://www.theguardian.com/world/ng-interactive/2018/nov/20/how-populism-emerged-as-electoral-force-in-europe

591 *Idem;*

592 "Since 2000, the number of populist parties in Europe has almost doubled, from 33 to 63" Source: https://institute.global/insight/renewing-centre/european-populism-trends-threats-and-future-prospects

populism [593] [594] [595] [596]. In fact a former Secretary of State of the United States commented that "Europe needs to get a handle on migration because that is what lit the flame" to populism and Brexit[597]. German Chancellor Angela Merkel, who has faced strong internal opposition to her welcoming stance on immigration, has recently stated that "Europe has many challenges, but migration could end up determining Europe's destiny"[598].

Who supports populism?

Studies seem to converge on the demographics that support populist parties:

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[593] According to the report by the Institute for Global Change: "the influence of populist parties in Scandinavia has probably been bigger than their share of the vote suggests. Especially on issues like immigration, they have also had a real impact on mainstream parties, leading both centre-right and, in some cases, centre-left parties that face new competition from the right to adopt more hardline positions on matters of immigration and social welfare spending." "more and more populist parties on both the left and the right have become willing to combine redistributive economic policies that emphasise opposition to austerity and support for a redistributive welfare state with restrictive immigration policies building on openly hostile rhetoric against immigrants." Source: https://institute.global/insight/renewing-centre/european-populism-trends-threats-and-future-prospects

[594] "Leaders of the European Union argued, cajoled and debated for nearly 10 hours until dawn on Friday to come up with a set of proposals on how to handle migration, including the idea of establishing secured centers both inside Europe and in North Africa to screen migrants, identify and distribute legitimate refugees, and keep migrants from moving from one country to another. The leaders were not driven so much by humanitarian concerns — the levels of migration have fallen considerably — as by political necessity. In an important gesture of solidarity, Ms. Merkel's colleagues gave her the "European answer" to her urgent domestic need — to face down a challenge to her leadership from her fellow conservatives in Bavaria and her own interior minister, Horst Seehofer." Source https://www.nytimes.com/2018/06/29/world/europe/migration-european-union-merkel.html

[595] "Hillary Clinton Says Europe Must 'Get a Handle' on Migration to Thwart Populism" source: https://www.nytimes.com/2018/11/22/world/europe/hillary-clinton-migration-populism-europe.html

[596] "the issue of migration has had great influence on elections held in Austria, France, Germany, Italy, and other European countries in the past year, boosting support for populist and eurosceptic parties." https://www.ecfr.eu/specials/mapping_migration

[597] https://www.theguardian.com/world/2018/nov/22/hillary-clinton-europe-must-curb-immigration-stop-populists-trump-brexit

[598] https://www.telegraph.co.uk/news/2018/06/28/angela-merkel-warns-migration-challenge-could-determine-europes/

typically, poorer, older, males, with lower levels of education, and who economically vulnerable[599]. Perhaps the more credible link between the rise of populism and the negative perception regarding immigration lies with the fact that both groups are the same in socio-demographic terms[600].

A starting point to explaining why populist parties have been so successful in accruing support is to consider two different theories: the economic inequality theory; and the cultural backlash theory. The arguments of the economic inequality theory have been widely discussed: as income, wealth, and welfare inequality increases in the West, economic uncertainty, a feeling of both social, and class exclusion prompt resentment and reprisals towards mainstream political parties (Inglehart and Norris, Trump, Brexit, and the Rise of Populism: Economic Have-Nots and Cultural Backlash 2016). The alternative cultural backlash theory shifts the focus from economics to progressive cultural change. The argument is that decades of exceptional economic security in the

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[599] "low-waged unskilled workers, the long-term unemployed, households dependent on shrinking social benefits, residents of public housing, single-parent families, and poorer white populations living in inner-city areas with concentrations of immigrants" (Inglehart and Norris, Trump, Brexit, and the Rise of Populism: Economic Have-Nots and Cultural Backlash 2016)

[600] According to the latest Eurobarometer on immigration:

Regarding age – "Around a third (36%) of those aged 55 or more have an overall positive perception compared to 45%-48% of those aged between 15 and 54 who hold the same view. Those in the oldest age cohort are particularly likely to agree that immigrants place a burden on the welfare system (61%, compared with 46% of younger respondents) or that they aggravate the problem of crime (60%, compared with 48%)."

Regarding education – "Nearly six in ten (57%) of those who completed their education at the age of 20 or older have an overall positive view of the contribution of immigrants to society, compared with just under three in ten (27%) respondents who left education at or before the age of 15."

Regarding economic vulnerability – "Economically vulnerable respondents are more likely to have negative views of immigrants on each of the statements: for example, only a third (33%) agree that immigrants have been good for the economy, compared with over half (55%) of those who do not have problems paying bills."

West have allowed for post-materialistic values to take center stage and start a "silent revolution" (Inglehart 1977) that generated support for multiculturalism (embracing others, expanding the group, by expanding its cultural identity), and progressive ideals (embracing liberal ideas, expanding cultural and social tolerance)[601]. Populism now arises as a subset of the original group senses a deterioration of their conditions, an erosion of their quality of life, of their privilege, and of their standing (Inglehart and Norris 2016, 3)[602]. Furthermore, there is a concern that traditional norms and values are being threatened and are at risk of being lost forever.

Populist parties not only lend voice to those who suddenly feel left-out, but also offer them a common enemy – the other (represented abstractly in globalization and social liberalism; and more concretely in immigrants, or non-citizens)[603]. Populist parties are the 21st century materialization of Schmittian politics, where the "specific political distinction to which political actions and motives can be reduced is that

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601 Inglehart argued in 1977 that "Western populations have been raised under conditions of exceptional economic security. Economical and physical security continue to be valued positively, but their relative priority is lower than in the past". Inglehart and Norris reiterate this point: "unprecedentedly high levels of existential security experienced by the people of developed Western societies during the postwar decades brought an intergenerational shift toward post-materialist values, such as cosmopolitanism and multiculturalism, generating rising support for left-libertarian parties such as the Greens and other progressive movements advocating environmental protection, human rights, and gender equality". (Inglehart and Norris 2016);

602 "Less educated and older citizens, especially white men, who were once the privileged majority culture in Western societies, resent being told that traditional values are 'politically incorrect' if they have come to feel that they are being marginalized within their own countries." (Inglehart and Norris 2016, 29)

603 As Inglehart and Norris note: "these parties can still exert tremendous 'blackmail' pressure on mainstream parties, public discourse, and the policy agenda, as is illustrated by the UKIP's role in catalyzing the British exit from the European Union, with massive consequences."

between friend and enemy"[604].

Is populism a threat to the EU[605]?

Both immigration statistics, and the EU's continuous, albeit slow-paced, economic recovery seem to support Inglehart and Norris's view that populism cannot be explained solely through recourse of economic theory (in fact, both economic trends and immigration statistics would seem to disprove them), but rather by psychological factors (Inglehart and Norris 2016, 30)[606]

4.3 The EU *de lege ferenda*

"A political society cannot endure without a supreme will somewhere. Sovereignty is

never held in suspense[607] "

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604 (Schmitt 1932, 26) Schmitt goes on to explain that the "political enemy need not be morally evil or aesthetically ugly; he need not appear as an economic competitor, and it may even be advantageous to engage with him in business transactions. But he is, nevertheless, the other, the stranger; and it is sufficient for his nature that he is, in a specially intense way, existentially something different and alien, that in the extreme case conflicts with him are possible." (Schmitt 1932, 27);

605 See also a report by Tony Blair's Institute for Global Change on "European Populism: Trends, Threats and Future Prospects": "Many populist parties advocate for the weakening or abolition of international institutions like the European Union; push for protectionist trade policies as a supposed panacea to economic anxieties over stagnating labor markets; or seek to impose stringent controls on immigration in response to cultural anxieties about the identity of European nations."

https://institute.global/insight/renewing-centre/european-populism-trends-threats-and-future-prospects

606 "Psychological factors seem to play a more important role. Older birth cohorts and less-educated groups support populist parties and leaders that defend traditional cultural values and emphasize nationalistic and xenophobia appeals, rejecting outsiders, and upholding old-fashioned gender roles. Populists support charismatic leaders, reflecting a deep mistrust of the 'establishment' and mainstream parties who are led nowadays by educated elites with progressive cultural views on moral issues."

607 Justice Sutherland in *United States v. Curtiss-Wright Export Corp.*;

Despite vehement and polarized disagreements on what the EU is, many scholars and political commentators argue in unison that the one thing the EU needs is more "loyalty", which would suggest that whatever the make of the European engine, it seems to run on loyalty. This is an oversimplification of those stated positions to an extent, but loyalty would allow the EU to become once again, or finally, the normative construct they envisioned it to be in the first place. Herein lies one of this project's criticism of European integration scholarship, how it has often operated through expectation-driven approaches (top-down), rather than data-driven (bottom-up). Frameworks, designs and measures of European integration have often been conceptualized by the reserve engineering of inferred structures.

Reverse engineering is a methodological approach common to many sciences (Milkowski), including cognitive sciences (Dennett) [608], and systems theory. Within cognitive sciences, and in its broadest meaning, reverse engineering is the process of "decomposing a system in order to gain understanding about its function" (Milkowski) [609] " and operates by "inferring adaptive function from structure" (Richardson)[610]. Dennett is critical of top-down approaches guiding reverse engineering efforts within cognitive science[611], seeing that their start pointing is an inference itself

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608 Reserve engineering has also been defined as "the interpretation of an already existing artifact by an analysis of the design considerations that must have governed its creation". (Dennett 1995, 683)

609 (Miłkowski and Talmont-Kamiński 2013, 25)

610 As cited by (Miłkowski and Talmont-Kamiński 2013, 12)

611 "Marr's top-down vision has its own blind spot: it over-idealizes the design problem, by presupposing first that one could specify the function of vision (or of some other capacity of the brain), and second, that this function was optimally executed by the

– it's the inference of function from an inference of structure. The same criticism should apply to grand-theories of European integration where constructs of intergovernmentalism, supranational constitutionalism, a federalist or quasi-federalist Europe, even functionalism, have been reverse-engineered from *a priori* inferences of structures, as argued in chapters one and two.

The role of legal doctrine in *de lege ferenda*

> *"[L]a réflexion constitutionnelle sur l'Europe est une utopie en action . . . . Ceux que l'on considère parfois comme des rêveurs ont été les artisans de l'Union européenne."*[612]

It has been the contention of this project that frameworks matter, as they allow us to correctly grasp *de lege lata* – a norm within its legal, social, political and moral construct or, more broadly, the law as it exists. Knowing the *de lege lata* should be the starting point of every legal discourse yet knowing it does not *per se* serve Law's purpose within society. Since Plato's Crito, legal philosophers, and more recently, legal positivists, have given thought to law's purpose, and the concept of *de lege ferenda* – the law as it ought to be. The dichotomous nature of law – of stability and of flux, as intended and as necessary to serve and to fit society (Llewellyn) - rests in the tension and the output

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machinery. That is not the way Mother Nature designs systems. In the evolutionary processes of natural selection, goal-specifications are not set in advance problems are not formulated and then proposed, and no selective forces guarantee optimal "solutions" in any case. If in retrospect we can identify a goal that has been optimally or suboptimally achieved by the evolutionary design process, this is something of a misrepresentation of history". (Dennett 1995, 684-685);

612 Jean-Paul Jacqué, quoted in (Maganza 2014);

between *de lege lata* and *de lege ferenda*. The place for legal doctrine is know the former and to propose the latter.

It is challenging to reflect on the standing of legal doctrine within the social sciences without at least tangentially engaging in the debate between analytical jurisprudence and normative jurisprudence, and critical theories of law[613]. Suffice to say that the purpose of this paper is not to consider the nature of law, nor explore the conditions of legal validity, and not even to weigh in on the debate between the overlap, separation and social theses. The distinction I am making between *de lege lata* and *de lege ferenda* is certainly not the same made by the separation thesis between law and morality, even if that distinction also considers *what law is* versus *what it should be*. In any case, as Marmor argues, those discussions are often riddled with confusion, and fraught with misunderstandings[614], as the relationship between law and morality is much more complex than that - it's a nuanced mixture of source and merit (Marmor)[615].

Leaving aside the discussions surrounding normativity and the conditions of legal validity, Law permeates all areas of social life, and, as Archibald MacLeish once said,

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613 The divide between natural law and Austin's legal positivism raised many important questions regarding the provenance of law, and the merits of law, prompting Austin and then Hart to endorse the separation thesis, with Dworkin trying to find a third way - "if we treat principles as law we must reject the positivists' first tenet, that the law of a community is distinguished from other social standards by some test in the form of a master rule" (Dworkin 1967, 45). Analytical jurisprudence both common to natural was then challenged by legal realism and a prediction-based jurisprudence, but recall Dorf: "advocates of the prediction model 'begin with the legal realists' correct observation that the formal rules of legal doctrine do not provide a complete account of how judges actually decide hard cases. They then assume that since the rules do not bind the judge, the law is whatever the judge says or will say" (Dorf 1995);

614 (Marmor 2017)

615 "Whether a norm is law or not may well depend, partly, on what values we find in law and what makes law, or laws of that kind, worthy of appreciation." (Marmor 2017, 9)

"the business of the law is to make sense of the confusion of what we call human life—to reduce it to order but at the same time to give it possibility, scope, even dignity". The place of Law as a social science is to carry out that missive, to make sense of the normative constructs that bind us, and to explore how they can meet the needs of a society that is always changing[616]. But somehow Law and legal doctrine seem to have lost their way, and their standing within the social sciences, due to: (a) the cognitive dissonance and distance between legal theorizing and legal practice like two branches that divert at a common root[617]; and (b) the unfinished work of critical theories of law such as legal realism.

Both these factors have contributed to the devaluing of law itself as a social science, and to the shifting of the primacy in solving society's problems to the second half of all the "law and…" movements, such as law and economics, and law and psychology. The science of law should not be diminished by the concerns raised by legal realism, either by the indeterminacy thesis, or the discretion thesis, nor even by Holmes' highly misunderstood characterization of judicial prophecies [618] which have devolved to breakfast jurisprudence. It will be my contention elsewhere that legal realism and critical legal studies are important steps towards a systems theory approach to the science of law, which relies heavily on interdisciplinarity, but one in which law and legal constructs are at the center. The mistake, in many ways similar to Marmor's

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616 society's future normative needs;

617 This results in my view from a poor understanding and explanation of the normative frameworks that continuously model law and society – that is why frameworks matter.

618 "The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law". (Holmes 1897)

criticism of the separation thesis was, *mutatis mutandis*, to suggest that law in books and law in action are different things, and not to appreciate the importance of normative structures in our cognitive reasoning. The erudition of law should have never forgotten law's greatest tenet, that law serves society and law must be applied. Purely theoretical concepts of law may serve a purpose similar to concepts of metaethics such as moral relativism for example - as highly gratifying intellectual and existential exercises – but law, like morality, is meant to be applied.

The erudition of law – the law developed in books – should pursue and serve that function, as should the application of law – the law applied in action – recall those lessons. Legal realism and critical legal studies were right that: (a) there is much more to law than formalism; (b) that law cannot exist or ever be applied in a contextual vacuum; (c) that law could remain impervious to moral, social, or economic cost benefit analyses; (d) that it could remain impervious to the inner self of she who applies law; and (e) that it should not continue to harbor illegitimate hierarchies and privilege.

The corollary to these arguments is not however that law is useless as a social science, and that it should give way to economic analysis, or psychological research, or critical race theory, but that it should be informed by these other sciences and theories in its normative constructs. For example, the concept of truth is a highly debated philosophical topic, but the concept of truth with regards to law and civil procedure, or the concept of truth in criminal procedure, is materially different (Landowski)[619].

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619 "Les procédures et les enjeux de la preuve s'en trouvent du même coup envisagés dans une tout autre optique: il ne s'agit plus de révéler la vérité des états de choses réels - vérité en soi -, mais de construire une réalité- une réalité qui fasse sens pour le droit. (Landowski 1988, 49)

Philosophy, psychology, even physics can contribute greatly to an understanding of what truth is, and their insights are invaluable, but law has taught us the intricacies of the concept with regards to proof, the powers of the State, and the rights of each individual. There is value in law, in its normative constructs, regardless of what one might have had for breakfast, and the disservice to law has been to suggest that normative constructs do not matter. Returning to my example, any philosophical or psychological breakthrough in our understanding of truth is paramount to better norms with regards to civil and criminal procedure, as they inform the construct of material truth (*la vérité judiciaire*).

Chapter FOUR conclusions.

"The UK is fast realizing high (if not unbearable) costs of exiting the EU. It will discover that can exit EU governance but not European interdependence. (...) The extent of interdependence both between States and between EU policies is such that it renders increasingly difficult any effective form of exit for States. (...) The paradox is that the more may want to exit, the more difficult the decision to exit become". Maduro[620]

In chapters ONE and TWO we explored how the different narratives of EU integration theory explore the framework that govern the integration project, and the challenges that it faces. Divergent theories claim that "it's the politics"; "it's the

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620 (Maduro and Wind 2017, 331)

economy"; or that "it's both the politics and the economy, stupid…" In chapter THREE we noted how many of the premises born out of these theories lacked a systemic understanding of the EU, and chapter FOUR shows that such an understanding is the right one. Analyzing the EU's response to the crisis can uncover two distinct periods: the first period was comprised of a reactive econocentric approach which tested the EU's legitimacy beyond measure; the second, a citizencentric period with equally concrete measures to regain a sense of trust, solidarity and legitimacy in the EU. The first can be characterized as a response to Europe's economic dimension; the second to its social dimension, particularly with Brexit and populism as its main antagonists[621].

Reading chapter FOUR, it becomes apparent how complex the EU truly is, with, for example, issues of perceived numbers of immigration – from countries with little or no actual migration concerns – playing such a disproportional part in the disintegration of Europe. In its citizencentric response the EC has also engaged a powerful communication strategy to give birth to a new idea of Europe, a more powerful version of political messianism, one that is also tethered to a utilitarian promise[622]. But the fate

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[621] French President Macron address these antagonists in what he calls "the European trap":

"Brexit stands as the symbol of that. It symbolises the crisis of Europe, which has failed to respond to its peoples' needs for protection from the major shocks of the modern world. It also symbolises the European trap. The trap is not being part of the European Union. The trap is in the lie and the irresponsibility that can destroy it. Who told the British people the truth about their post-Brexit future? Who spoke to them about losing access to the European market? Who mentioned the risks to peace in Ireland of restoring the former border? Nationalist retrenchment offers nothing; it is rejection without an alternative. And this trap threatens the whole of Europe: the anger mongers, backed by fake news, promise anything and everything." Source https://www.elysee.fr/emmanuel-macron/2019/03/04/for-european-renewal.en

[622] . In a recent speech, French President Emmanuel Macron gave his version of this new messianism a name – "une Renaissance européenne". Source: original in French: https://www.elysee.fr/emmanuel-macron/2019/03/04/pour-une-renaissance-europeenne
In English: https://www.elysee.fr/emmanuel-macron/2019/03/04/for-european-renewal.en

of the EU still hangs in the balance, precisely because it lacks a serious normative framework.

Maduro, then advocate-general to the CJEU, once said that the: "Member States' obligations in respect of potential action by the Community have a very particular character. To paraphrase Saint- Exupéry, their duty is not to foresee the future, but to allow it."[623]. Through this project I hope to have conveyed that a systems theory approach to European integration does precisely that.

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[623] AG Poiares Maduro Case C-205/06 Commission v Austria and Case C-249/06 Commission v Sweden

CONCLUSION.

Weiler has recently called for a new transformation to take place within European governance, due to the untenable relationship between law and politics that preempts a European "constitutional architecture" (Maduro and Wind 2017, 99) but the greatest transformation the EU requires is epistemological, not ontological. It is our failure to understand the EU that is limiting its unique systemic architecture.

Guided by the principle that frameworks matter, I started my dissertation project by revisiting the main narratives of European integration, the paradigms under which they operated, and the normative claims that they espoused. I then contrasted these claims against the actual developments and the many paradoxes in European integration, and I concluded that the current European crisis has a dual nature: it is both epistemological and ontological. It results from the lack of adequate governing principles and mechanisms of European integration, as most scholars have recognized, but it also results from our failure to fully understand and study the integration process as a complex adaptive system.

My research process therefore led me to conclude that behind the European crisis lies a scholarly crisis in European integration theory — as was apparent by the fact that most scholars, while not being able to agree on what the European polity now is, vehemently argue that what it needs is more "loyalty" so that it can become, once again, the normative construct they had initially uncovered. I chose instead to adopt a new methodological approach to study the European Union, one that borrows from systems theory and that takes into account all inputs of European integration, so that we can develop adequate governing principles to manage all areas of political, social, economic

and legal integration.

The salient feature of this process is that it does not operate in reverse, it does not aim to frame a given issue in the backdrop of a pre-existing construct. It presents the legal construct as is, and only then comments on what it should be. Its purpose is to solve the tension between *de lege lata* and *de lege feranda*, through intellectually honest discourse, by realizing that the corollary to Llewellyn's claim that law must fit society is not that society must fit law, but the nuanced understanding that society must be informed by law.

EPILOGUE.

Research limitations and shortcomings (the proof is in the pudding)

This project hoped to make a case for the importance of a systems theory approach to European integration, and to law in general. In order to do so I had to venture into areas and subject matters of which I am not an expert, nor do I purport to be. This project would have gained immensely from contributions by other scholars in different fields. In this regard, this project's shortcomings prove one of its main premises, that the issues of European Integration – and of law in general – are complex, they require inputs and expertise from a myriad of areas, they require collaborative, discursive and contextual dialogue. A systems theory approach to law might signify that, with regards to complex systems, legal research can no longer be undertaken alone.

Opportunities and next steps

With regards to substantive integration theory.

This project's shortcomings, with regards to inputs and expertise from other areas, present an incredible opportunity for collaborative works. My aim is to pursue such collaborations, and to create a computational model of the integration process.

With regards to legal theory.

I plan to continue to develop a unique systems theory approach to international law. This approach stems in part from the critical legal studies movement, and from the law-

in-context approach (Shaw), as well as from more recent approaches regarding legal polycentricity (Petersen), but it relies on systems theory concepts and modelling tools to understand how law operates in a complex system (such as the EU) and in complicated systems (such as the WTO).

My objective is then - laterally - to develop this systems theory approach to the concept of law in general and pick up where both the Hart-Fuller debate (substance of law), and the critical legal studies approach (context of law) left off.

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