

Regeneration Europe: Towards Another Europe

By Moritz Hartmann* & Floris de Witte**

This special issue of the *German Law Journal* is devoted to the ideas of *regeneration Europe*, an initiative that calls for a new normative paradigm for the European Union.¹ At its very core, *regeneration Europe* argues that the European Union should be more *European* and that it should more firmly reflect the European *modus operandi* of society. While it is unmistakable that the European Union is experiencing a crisis of identity—among the many other types of crisis that the contributions to this special issue highlight—it is hardly controversial to state that Europe is more than a market, more than an incipient political community or fiscal union. To its citizens, Europe is, first and foremost, a tangible reality. The difficulty in describing the Union’s normative texture, or the “nature of the beast,” as legal scholars particularly enjoy doing, does not reduce its tangible reality. Cultural diversity, political pluralism and individualism do not necessarily presume self-referential indecision. As Jonathan Franzen wrote on the indeterminacy of the US cultural framework:

[I]t is fashionable . . . to say that there is no America anymore, there are only Americas; that the only things a black lesbian New Yorker and a Southern Baptist Georgian have in common are the English language and federal income tax. The likelihood, however, is that both the New Yorker and the Georgian watch Letterman every night, both are struggling to find health insurance, both have jobs that are threatened by the migration of employment overseas, both go to discount superstores to purchase Pocahontas tie-in products for their children, both are being pummeled into cynicism by commercial advertising, both play Lotto, both dream of fifteen minutes of fame, both are

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¹ See also <http://www.regenerationeurope.eu>.

taking a serotonin reuptake inhibitor, and both have a guilty crush on Uma Thurman.²

Within the European context, the semantic differentiation in, and of, Europe is even greater. Within the Union's pluralistic normative order, it is even more difficult for collective symbols and cultural cues to have cross-territorial purchase. Europeans do not share a language, they do not share a taxation system, and they are intuitively attached to different ideological narratives, read different magazines, watch different TV-shows—albeit probably on the basis of the same format—and hail historic and cultural icons that are either adored on a strictly national or global level. This much we know: it is, to use Franzen's slight, "fashionable to say." Yet, the reality is also that many Europeans live in similar socio-economic and political realities, increasingly face similar challenges as a result of the crisis and the rollback of social services, and, although, explicitly, they might culturally associate Europe with the Eurovision song contest, the UEFA Champions League, or Easyjet, they also, without thinking about it, eat spaghetti in *Warszawa*, drink French wine in Dublin, support Real Madrid while living in Sofia, hum Adele songs in Bratislava, and meet fellow Europeans on the bus in Bavaria, in the supermarket in Malmö, or at work in Tallinn. This tangible aspect of Europe takes place in all four corners of the continent, and is not necessarily related to the European *Union*. We do not, simply put, need to know what Europe "is" to accept its presence and develop its structure. What is striking, however, is that this shared cultural and social space is not employed by the European Union either to inform its future trajectory or to guide its institutional configuration.

How, then, are we, as *regeneration Europe*, to argue that the European *Union* is not what Europe is and means to its citizens, that we need an alternative vision and paradigm? The idea for the essay *regeneration Europe: Constructing a Europe Beyond the Market*, with which this special issue starts, was born in Berlin in November 2011, where, at the Dahrendorf Symposium that had as its tagline "Changing the debate on Europe," politicians including the President of the European Commission José Manuel Barroso and Mario Monti, who was soon after sworn in as the 54th Prime Minister of Italy, and some of the most respected academics on EU matters, discussed the future of Europe.³ Sitting in the audience, it was difficult to square their understanding of the future of Europe—which turned out to be shorthand for austerity until the end of days—with our own understanding of what Europe is and means. Quickly, we realized that many of our contemporaries have similar reservations about Europe, that the tedious debates about Europe do not allow for a discussion on the *type* of Europe we want, but only offer the lazy binary choice: take it or leave it. And even though we are all staunch supporters and admirers of the *idea* of Europe, and are committed to the idea of an incredibly and

² Jonathan Franzen, *Why Bother?*, in *HOW TO BE ALONE* 55, 68-9 (2003).

³ See *Changing the European Debate*, DAHRENDORF SYMPOSIUM (Nov. 9–10, 2011), <http://www.dahrendorf-symposium.eu/>.

beautifully diverse continent in which societal differences are accepted and where freedom and equality are intrinsically respected, we no longer believe in the current institutional manifestation of Europe: in *this European Union*.

Regeneration Europe argues that we do not need to define Europe to shape it. Europe simply *is*. On a daily basis, all Europeans, mobile elites as well as immobile pensioners and workers, encounter it. What we lack is not a European space, but the conceptual and normative tools to connect this Europe to its institutional design. As such, *regeneration Europe* offers three new, intellectually untainted paradigms and conceptual instruments to tie the functioning of the European Union closer to the needs and desires of its citizens.

The first is the instrumental inclusion of *trust*. From the political perspective, trust needs to be developed in the EU, to legitimize majoritarian and redistributive politics and strengthen center-periphery relations. Trust both enhances societal compliance with transnational norms of cooperation and conformity, and at the same time provides the common framework in which transnational cooperation enables the construction of social institutions.⁴ As Habermas has recently emphasized, it is the mutual trust between the European peoples that will to a large extent be the source of the renewal or collapse of the project of integration.⁵ At the same time, it seems that differentiated mutual trust already exists within the European sphere, and just needs reciprocal capitalization by the Union. This is not the explicit trust that convinces Greek citizens that their German counterparts will take their concerns into account, but the implicit trust and understanding that comes from a continent full of citizens that interact, on a continuous and intuitive basis. And that sense of mutual trust that comes from communication, and communication alone, can further stabilize both the European space and legitimize the Union's position in it. The EU must, however, become more sensitive to its existence and internalize its potential.

The second paradigm relates to the political mainstreaming of—generational—*aspirations*. If Europe is to work, it needs to be sensitive about the aspirations of its citizens, and not least its younger generations. The process of integration was aspirational from the start, something both political elites and individual citizens bought into as an instrument towards a better future. That capacity, one that is absolutely indispensable in the future of the integration process, is dwindling. Exactly those groups of citizens with aspirational ideals, with great mobilizing force and hunger for a different, sustainable future, are sidelined by the Union directly and by its fiscal governance indirectly. Overpowered in the national political space by the baby-boomers, whose electoral significance locks the younger generations into the *status quo* and out of the job and housing market, the European Union should galvanize its role as a forum for more egalitarian political engagement and

⁴ See MICHAEL TOMASELLO, ET AL., *WHY WE COOPERATE* (2009).

⁵ See Jürgen Habermas, *The Crisis of the European Union in the Light of a Constitutionalization of International Law*, 23 *EUR. J. INT'L L.* 335, 342 (2012).

contestation. For our generation, Europe has always been a reality. The nation state, with its lethargy and grey elite, might still be our first point of reference, but less and less so. What we, the younger generations, want is functional possibilities of political inclusion. It is evident that the European Union cannot, and should not, guarantee the comprehensive provision of social services, but it must take its responsibility in articulating what its citizens crave, rather than simply regurgitate and provide a fig leaf for the political claims of its biggest Member States. Now, more than ever, the young is what the European Union needs to embrace if it wants a degree of contemporary relevance, if it wants to intellectually challenge and supplement the political monopoly of aspirations of the nation state, and if it wants to stabilize its future stake in the development of Europe. Granting itself a solid basis in the young electorate will do more for the Union's capacity to disentangle itself from the national specter than either the constant acquiescence of the wishes of its stronger members, or the rhetoric turf-wars with its Member States.

The third element in our new conceptual understanding of the EU is a renewed sensitivity of the European Union to its *public*. If the Union is to connect back to the citizens, be sensitive to its citizens' needs and desires, and be more than an instrument for executive federalism, whereby raw economic power governs us all, the Union needs to pay more attention to its public. If the Union is to be stable and sustainable in the long-term, citizens' voices need to be incorporated. The development of a transnational public sphere has long been discussed by jurists and political theorists, but seems more relevant than ever before: Redistributive decisions without a public sphere that mediates and placates social conflicts and legitimizes political choices risk undermining the Union more than anything ever before. But it might be up to us, its citizens, to force it to change. By articulating our claims on the European level directly, by making clear to our national politicians that our needs and desires can no longer be accommodated within the national political context, and by acting on the trust that we feel with all things European—not necessarily its institutions and claims, but the “Europe on the ground,” in the workplace, in the bus, in the supermarket. The reappropriation by the citizens of its political space must lie at the core of our future, whether through political engagement, cultural projects, or by taking to the street.

These may seem like idealistic claims of naïve optimists, or exuberant Europeans, but we strongly fear that neither the nation state, nor the EU as it exists now, can deliver the institutional configuration necessary for citizens to be at the core of the construction of society. Deleuze and Guattari were spot on when they argued that, “justice is desire and not law.”⁶ The role of law, and of the European Union, is not to prescribe the norms that inform our lifeworld, but to offer the mechanisms to facilitate the translation of our own

⁶ Sionaidh Douglas-Scott, *The Problem of Justice in the European Union: Values, Pluralism, and Critical Legal Justice*, in *PHILOSOPHICAL FOUNDATIONS OF EUROPEAN UNION LAW* 412, 429 (Julie Dickson & Pavlos Eleftheriadis eds., 2012) (citing GILLES DELEUZE & FELIX GUATTARI, *KAFKA: TOWARD A MINOR LITERATURE* 43, 49 (1986)).

individual and collective desires into reality. This is the time for the Union to become a union of citizens, rather than of Member States. It should do so not by transforming the continent into a federal superstate, but by offering its citizens what each social artifact, whether a nation state, transnational integration project, or local community is based on: the capacity to translate the needs, desires, and vision of the individual into reality.

We need ownership and authorship over the lives we lead and we need the political structures that allow us to do so. The European Union, currently, is at a crossroads, with one road leading to “executive federalism” and the other to “transnational democracy.”⁷ While the political elites in Europe have decisively chosen in favor of the former, it is our contention that that route will not only, in the short run, exclude large groups of citizens from the political process, but also, in the long run, destabilize and delegitimize the European integration project.⁸ Instead, we argue that the latter, a turn toward transnational democracy, is less intangible and illusive than often thought. It does not presuppose instilling some sense of *Europeanness* in all 500 million European citizens, but instead challenges us to rethink, individually and collectively, what Europe means to us, and what we want from it.

This special issue tries to help in this ever-ongoing process, and generate a debate about the relationship between Europe and the European Union, Europe and the nation state, and between Europe and its citizens. It begins with the essay that started this project, entitled *Ending the Honeymoon: Constructing a Europe Beyond the Market*, written by Moritz Hartmann and Floris de Witte. It sets out the context within which this call for a new Europe was born and discusses the three paradigms used. The contributions that follow focus on different elements of the current state of Europe and the potential for their regeneration. All contributions offer diagnosis of the crisis and malaise in the Union, as well as discuss the available treatment options, distinguishing between those that are unlikely to lead to a stable and legitimate Europe, and European *Union*, and those that are more attractive to rethink how the European Union should impact on our lifeworld.

Unsurprisingly, most contributions focus on the different dimensions of the crisis currently faced by the Union, centering their arguments on the unattractiveness of the road that leads towards executive federalism, and seek to advance projects that would allow, in different ways, a return to “a world in which economic forces would be guided and controlled by human beings rather than dominating them.”⁹ The contribution by Agustín

⁷ Habermas, *supra* note 5, at 345.

⁸ See Mark Dawson & Floris de Witte, *Constitutional Balance in the EU after the Euro-crisis*, 76 MODERN L. REV. ____ (forthcoming 2013).

⁹ Mark Mazower, *What Remains: On the European Union*, THE NATION, Sept. 24, 2012, available at <http://www.thenation.com/article/169756/what-remains-european-union#>.

José Menéndez, entitled *The Existential Crisis of the European Union*, traces the origins of the different, intertwined crises that the European Union is experiencing in depth. Menéndez is critical of both the institutional set-up and substantive policy choices made by the Union prior to, as well as in response to, the economic crisis. He argues that the Union has now entered a phase of constitutional mutation, whereby the Union structurally distorts the basic values of the social and democratic *Rechtsstaat*. Menéndez ends his contribution with a provocative discussion of the future of the Union. He suggests that neither the current reform agenda, nor a *Habermasian* constitutional rupture are capable of protecting the basic values of the *Rechtsstaat*, and that the best strategy might be to reopen the political space by forging a path of national constitutional resistance.

Michael Wilkinson is equally concerned about the direction of the integration project. His contribution, *The Specter of Authoritarian Liberalism: Reflections on the Constitutional Crisis of the European Union*, suggests that the structure of the European Union, in particular in the aftermath of the crisis, destabilizes the precarious balance between the capitalist and democratic concerns that have historically shaped European societies. The institutional and structural deficiencies of the Union, Wilkinson argues, have led to a “particularly egregious imbalance” in favor of capital and against democracy. Assessing the state of the Union from the angle of constitutional theory, Wilkinson warns of the looming specter of authoritarian liberalism, which is presented, or possibly disguised, as the only available alternative, and zealously promotes market liberalism, even, if necessary, *against* democracy. At the same time, he concludes, unveiling the preference for market liberalism as a political *choice* might go a long way towards re-politicizing the European space, and opening it up for alternative visions.

Alexander Somek takes this concern with the political direction of the future of Europe further and from a slightly different angle. His paper, *What is Political Union?*, takes issue with the understanding of what exactly is “political” about the Political Union that is presented as the inevitable next step in the integration process. Casting the neo-functional narrative of the integration process as promoting a distinct political and ideological agenda, merely disguised by the indeterminacy of the integration process, Somek argues that a political union must instead ultimately be about “shaping, developing, and preserving a form of life that some share in a certain place on earth.” Assessing the current state of the Union from this perspective, Somek describes the same schism as identified above between what the European Union is and what Europe is. Much like Wilkinson, Somek argues that we need to offer new political narratives for the future of the Union, so as to cast the current dogma of “ever further” integration, and the existence of the monetary union, as a political *choice* rather than an inevitability. Somek himself reconstructs a competing narrative, which puts the emphasis of societal construction not on the need to tame the nation state, but on the need to tame the market and allow for human emancipation.

For Floris de Witte, as for Somek, the need to re-politicize the process of integration is of utmost importance. After tracing the demise of the capacity of citizens to themselves decide on the social norms that dictate their lives, or lack of it, by virtue of the processes of globalization, European integration, and the political response to the euro-crisis, De Witte, in his contribution *EU Law, Politics, and the Social Question*, highlights the need to place politics at the center of the construction of the European Union. He stresses the need to develop a transnational public sphere that can accommodate and stabilize this process, and rejects the different proposals for further integration as curtailing, rather than increasing, the ability of European citizens to control the social norms that affect their lives. De Witte suggests, however, that a reinterpretation of central provisions of the EU Treaty, including the free movement provisions, may go a long way towards re-appropriating the capacity of citizens to decide for themselves on the “social question.”

In their co-authored paper, Gareth Dale & Nadine El-Enany argue that the neoliberal agenda of the European Union is more pervasive than suggested by De Witte. For them, it is implicit in the institutions, norms, and structures of the Union and Economic and Monetary Union (EMU), and is implicit in the use of law itself. Analyzing the structure of the Union, and the EMU specifically, both before and after the crisis, their article, *The Limits of Social Europe: EU law and the Neoliberal Agenda*, offers a detailed critique of the neoliberal core of the Union, and of the ideologically charged function of law in the context of the European Union. Dale and El-Enany argue that law both creates the neoliberal turn of the Union and attempts to mask it by referring to illusive social and egalitarian objectives. Rejecting law as a vehicle for the re-politicization of the European space, Dale and El-Enany instead suggest that the vast enfranchisement of European citizens might depend on their own willingness to secure such rights through mass mobilization.

Mark Dawson strikes an altogether more optimistic note about the role of law in the process of regenerating Europe. In his paper entitled *Re-generating Europe Through Human Rights? Proceduralism in European Human Rights Law*, Dawson casts human rights protection as a mechanism to forge the “political” Europe that Wilkinson, Somek and De Witte call for. He argues that human rights can serve as pathways to greater political engagement and contestation, which could ultimately lead to a “politically responsive and citizen-oriented EU project.” Dawson uses detailed examples to highlight the capacity of human rights to procedurally bolster the political nature of the integration project, to generate political contestation and active public discourse on the basic values of a pluralist Europe, and to bring together political actors and civil society beyond the nation state. Through human rights, then, Dawson argues, we can start creating the preconditions necessary for the creation of a Europe that is capable of constructing itself in the image that its citizens have for it.

Mayte Peters offers another route for the regeneration of Europe’s political space. In *Regenerating Europe Through Its Emerging Public Sphere*, she argues that the current economic crisis has also highlighted a deep political crisis, evidenced by the decrease of the

public's trust in politics and its actors. Peters traces this back to the incapacity of the latter to account for the transnationalization of the public space in which decisions are formed. She forcefully argues in favor of a European public sphere that would foster a transnational dialogue around European politics, and suggests that, even if that sphere is gradually emerging, its legitimizing potential is not properly addressed.

The final contribution to this special issue, by Moritz Hartmann, is entitled *Administrative Constitutionalism and the Political Union*, and analyses the normative evolution of the European Union through the lens of EU administrative law. Hartmann suggests that the transition of the European integration project from its original economic straightjacket into a political order that attempts to connect economic realities into societal imperatives was closely linked to the Europeanization of administrative law—as a functional method of European integration. This process has, Hartmann argues, not only contributed to the convergence of law and politics in the European Union, but has also, as a consequence, created increasing trust and cooperation between Member States and European institutions that transcends the prism of internal market regulation.

All contributions, in more implicit or explicit ways, attempt to redraw the boundaries of what is a hugely important and relevant academic and social discussion: where to go with this continent? We would like to thank all the contributors for their enthusiasm and commitment, Russell Miller and Peer Zumbansen for their enthusiastic support for this special issue, and Stiftung Mercator for their financial support for *regeneration Europe*. This is but the start.