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**THE IDENTITARIAN CHALLENGE IN THE  
EUROPEAN UNION  
THE DIALOGUE BETWEEN DEMOCRACY AND IDENTITY**

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## **ABSTRACT**

This thesis is primarily a critique of some key political concepts in the European Union.

The starting point is the concept of identity, which in the European Union takes shape not only in the economic sphere but also in the political one. What characterizes European Identity today? This question is the first objective of this research, the answer to which is largely identifiable in the democratic aspect. It also represents an irremissible challenge to combat Euroscepticism and the democratic deficit. A sort of invisible thread connects the word "identity" with citizenship, hence of Constitution and Nation-State. All these concepts influence the modern interpretation of democracy and they lay the foundations for the understanding of the future developments of the European Union. Understanding the intrinsic relationships between concepts is the second objective of this thesis. The internal inconsistencies of democracy, the system of representation, and the fragilities of the constitutional system acquire particular relevance and end up being the stumbling blocks that the Union must overcome to find a solution to the problem of sovereignty. The last part is devoted to the possible evolutions for European democracy. The final result is a critical lens that allows us to evaluate different dynamics with which the European Union places itself on the international stage and acts internally.



## INTRODUCTION

Throughout this research, I want to investigate the concept of European identity nowadays.

Younger generations are used to comforts such as free circulation, euro, and in the last years European roaming, which are the result of previous generations of politicians' work. Many young people take for granted such accomplishments: it is hard for them to imagine a European Union with border control, no roaming, no Erasmus, etc. This might explain why young people are more pro-European than their forerunners. However, the overall picture does not show a particularly Euro-enthusiastic population. According to the 52nd Censis Report, in Italy, in 2018 «only 43% of Italians think that membership of the EU has benefited Italy in some way»<sup>1</sup>.

Since its birth, several issues are questioning the stability of the European Union: the enlargement process, the integration issue, and the identitarian challenge require the institutions to put great effort to survive<sup>2</sup>. Last but not least, the recent events linked to Brexit are the symptom of a deep malaise made of Euroscepticism, of democratic deficit and, overall, made of non-satisfying responses to problems like immigration, economic crises, inequalities. Such malaise continues to emerge, but the bureaucracy cannot respond properly.

Far from being a disaster, we know that the European Union counts several achievements, too. In the face of this fragmented opinion, there is a need to understand how the feeling of identity operates: its origin, what the Union does to nurture it, and why it seems to succeed only in a specific segment of the population (even in the face of concessions from which everyone benefits). However, a correct reading of the Eurobarometer data is not the main objective of this paper which, however, will provide a key to its interpretation. The ultimate goal is to understand if the identity challenge of Europe is fundamental for the future of the Union even if it might have multiple solutions. The absence of a unanimous answer, however,

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<sup>1</sup> Censis, (2018), "Sintesi del 52° rapporto Censis", visited in 17/12/2021, Available at the link: <https://www.censis.it/rapporto-annuale/sintesi-del-52%C2%B0-rapporto-censis>

<sup>2</sup> Nevola G., (2007), *Democrazia, costituzione, identità. Prospettive e limiti dell'integrazione europea*, Torino, ed. Liviana

does not preclude a future for the Union provided that answers, albeit alternative ones, are given.

In doing so, I relied mainly on the voices of Gaspare Nevola, professor of political science and author of several articles on European identity and democracy, and Giovanni Duso, philosopher, former professor, and director of the Interuniversity Center on the European Political and Legal Lexicon. Both of them impressed me with the lucidity of their thinking and - Duso's case - for its originality too. Alongside them, there are other recurring voices: some major scholars of political science and - at the beginning of each chapter - Pirandello's voice. Even if he is not an academic, I find it impressive how this poet can express, in a few lines, what other scholars have taken entire books to explain. Also, the attempt to theorize a matter that is connected to the perception of individuals (and identity matter is just that) is complex but suits literature well. Despite the poet's political point of view, I share his critical approach that I have tried to make my own throughout this research.

#### *Methodological Remarks*

The core of this research is the concept of European identity. Since European Union was born (not in 1992 with the Treaty of Maastricht nor in 1951 with the foundation of the Steel and Coal European Community but since she appeared as an idea in the heart/head of some far-sighted politicians), she has continuously changed shape and content, nor it could have been different. As sociologist Stuart Hall deeply investigated<sup>3</sup>, identity is a never-ending process characterized by the lack of any final resolution that leads to the necessity of a continuous reaffirmation and «identity negotiation», and the European Identity does not escape this strict rule. Despite not being easy at all, identifying the proper method to deal with this malleable matter must be the first step of this research.

The inner risks in this field are mainly two:

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<sup>3</sup> Hall S., (2006), *Il soggetto e la differenza. Per un'archeologia degli studi culturali e postcoloniali*, Roma, ed. Meltemi.



- First, the risk of a *colonized thinking*<sup>4</sup> that could lead to an analysis tainted by two biases: the distance between the student and the matter studied and the cultural framework of which the student is part, which inevitably falls on the research.
- Second, the risk of reducing the analysis to a mere reconstruction of the history of the concept, thus re-proposing work already carried out by others.

For the first point, complete independence will be impossible since I - and all the works on which I based this study - am affected by the dominant occidental cultural framework in which I'm rooted. The fascinating challenge of «decolonizing the thought» - opened by W. Mignolo and A. Escobar in 2010 - is far too ambitious for this research which will be limited to exploring the complexity that the concept "European identity" covers nowadays.

Since my intent is not the reconstruction of the history of the concept, I chose a philosophical approach rather than a historical one. I will limit the historical approach only to those paragraphs where I find it helpful to explain the meaning and the role a specific concept covers nowadays. Historical reconstruction does not suit all the topics in the same way because few words are linked closely to specific historical events.

As explained by Duso, following the path of a word is not aimed at reconstructing the progressive loss of its meaning, attributing to this process a moral judgment the loss of fundamental values or the emptying of meanings, but rather it is aimed at understanding that the origin of words that today are not adequate to describe our reality lies in a pre-modern reality and therefore in another context than ours, that is why they are unsatisfactory.<sup>5</sup>

### *In the net of concepts*

By studying the existing literature about this field, I realized that this concept contains in its roots many others. A sort of invisible thread connects this word with citizenship, hence of Constitution and Nation-State. All these concepts influence

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<sup>4</sup> Mignolo W. D., Escobar A., (2010), *Globalization and decolonial option*, Abingdon, edit. Routledge.

<sup>5</sup> Duso G., (2005), "Il potere e la nascita dei concetti politici moderni" in *Sui concetti giuridici e politici della costituzione dell'Europa*, Milano, edit. Franco Angeli.

the modern interpretation of democracy and they lay the foundations for the understanding of the future developments of the European Union.

Understanding the intrinsic relationships between concepts is one of the two objectives of this thesis. Mapping the nodes of this articulated network is the only way to have a deep understanding of it, even if it is not a process that guarantees answers. For sure, it does not produce easy solutions. However, the game is worth the candle even if it does not lead to an answer. There is, in fact, the second objective in this work that I care about most. It is to restore complexity to a subject that the daily dialogue too often trivializes. This research covers words that find everyday use in political and non-political discourse, which almost always sees them as unambiguous, universal, universally shared. But to the careful eye, they are not at all. They are divisive words, full of historical and conceptual contradictions, containing meanings as different as the historical and political contexts that generated and then re-generated them at different epochs. So, this thesis is first and foremost a critique of concepts: not a criticism in its disparaging sense, but a critique in its evaluative sense. Far from devaluing these concepts, I would like to bring out all their nuances. This critique would like to be the first step towards an alternative scenario that could be painted one day. I will do it by accepting the risk inherent in this process: to open up more questions than the ones I can answer.

### *Through the research*

The first chapter of this research focuses on the concept of identity. After defining and analyzing it in its various forms, I will focus on the relationship - not always immediate and easy - between the different identities of an individual. I then transpose this concept and this relationship between multiple identities into the European context, where identity takes shape not only in the economic sphere but also in the political one.

The second chapter opens with the concept of citizenship, seen as the institutionalization of a specific identity. This concept is accompanied by the constitution, without which citizenship - understood as a legal institution - would not exist. The argument then shifts to the European level. Here, a Constitution does not yet exist even though a form of citizenship already exists. This contradiction,

which generates several problems, is analyzed with a critical eye. The aim of the critique is to try to understand how multiple identities appearing on the European scene are combined with a political plurality.

From political plurality, we then move on to an analysis of democracy. After a comparison between the Greek example and today's reality, the need to find a new definition is concluded. The literature offers several, all valid but all with certain limitations, ending up with the concept of polyarchy. The analysis then continues through all the weaknesses of modern democracy: degenerations (dictatorship of the majority and tyranny of the minority), the legitimacy deficit, and, finally, the representative issue.

Representation is a particularly relevant issue as it constitutes the starting point from which Duso moves away to build his federal Europe. The last chapter is devoted to the possibilities for European democracy. The most interesting and innovative is undoubtedly that of Duso for a Federal Union. Other minor alternatives are a path of inertia, a new Hanseatic league, and an imperial Europe. Finally, from the last paragraph to the conclusions, I develop some assessments of the possible European scenarios just analyzed. The second set of evaluations concerns how the critique of the concepts of this thesis has allowed me to interpret - with an alternative point of view - recent news events.



## 1. IDENTITY, IDENTITIES, AND EUROPE

*«A reality was not given to us and does not exist, but we must make it ourselves, if we want to be: and it will never be one for everyone, one forever, but continuously and infinitely mutable» Luigi Pirandello - One, no one and One hundred Thousand<sup>6</sup>*

### 1.1 What is identity?

Far from being unanimous among scholars, we must define first the word identity. James Fearon in 1999 stated the inadequacy of the dictionary definitions and tried to delineate how scholars use this word:

«in ordinary speech and most academic writing, “identity” means either (a) a social category, defined by membership rules and allegedly characteristic attributes or expected behaviors, or (b) a socially distinguishing feature that a person takes a special pride in or views as unchangeable but socially consequential (or, of course, both (a) and (b) at once).»<sup>7</sup>

This statement highlights that a unique and universal meaning of identity cannot exist. It keeps together the dimension of the social category with that of the distinguishing features of an individual. Examples of social category can be university students, working mothers, or older brothers. In the everyday life, each individual likely belongs to more than one category at the same time and in every situation, a category prevails over the others that still co-exist. On the other side, the individual characteristics are cross-cutting features that each person brings with himself regardless of the role (social category) prevailing at that moment. These features go beyond what the individual belongs to or what the individual does. Nevola provides another helpful definition «a feeling and an awareness of self, the formation of which is due to a process of self-recognition and hetero-

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<sup>6</sup> Pirandello L., (1926), *Uno nessuno e centomila*, Milano, edit. Rizzoli, Original Version: “Una realtà non ci fu data e non c’è, ma dobbiamo farcela noi, se vogliamo essere: e non sarà mai una per tutti, una per sempre, ma di continuo e infinitamente mutabile.”

<sup>7</sup> Fearon James D., (1999), “What is identity (as we now use the word)?” available at <https://web.stanford.edu/group/fearon-research/cgi-bin/wordpress/wp-content/uploads/2013/10/What-is-Identity-as-we-now-use-the-word-.pdf>

recognition»<sup>8</sup>. The two descriptions are both valuable but of different utility. Fearon's definition helps us to understand the social role of identity and thus lays the groundwork for understanding the relationship between different identities. Nevola's definition, on the other hand, helps us to frame the objective of this work. The real challenge is to identify those identity traits of the European Union that are both internally and externally recognized. To do this, however, in addition to the suggestions provided so far that define the general concept, we need a definition of identity that also fits the collective political dimension. Here, too, Nevola comes to our aid, making a list of eight elements that belong to a collective identity but are difficult to trace back to Europe.<sup>9</sup> The first point is similar to an individual identity: self- and hetero-recognition, in and out of the group. The other points refer instead to the purely political and collective dimension and are, as we shall see, the most problematic:

- a commonality of aspects of public life and of resources;
- a feeling of mutual solidarity;
- legitimization of the chain of command;
- boundaries and criteria of citizenship;
- a common territory, defined physically, politically, legally, and symbolically;
- the possibility of self-reproduction and durability of the group in the face of changes that may affect it.

In the course of this research, I will try to apply these characteristics to Europe to see if we can really talk about European identity.

## **1.2 Overlapping of identities**

It is more appropriate to speak of multiple identities rather than a single identity. The overlappings of these identitarian levels are often problematic because of the social obligations and limitations each identity entails. The coexistence of

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<sup>8</sup> Nevola G., (2007), *Democrazia, costituzione, identità. Prospettive e limiti dell'integrazione europea*, Torino, ed. Liviana, Original version: "un sentimento ed una consapevolezza di sé, la cui formazione è dovuta ad un processo di autoriconoscimento e di eteroriconoscimento."

<sup>9</sup> Nevola G., (2007), "Il modello identitario dello Stato-Nazione. Genesi, natura e persistenza" in *Quaderni di sociologia*, n. 44

contradictory identities is not that easy to understand: here, the complexity of the topic emerges. V. Damiani explains the possible relations among identities theorized by Hermann and Beyer (2004), so identities can be: nested (or concentric circles model - here she places the example of communitarian, national, and European identity), cross-cutting (this is the case of the simultaneous belonging to different groups), or completely separated. The limit of this theory is the little attention given to the influence each identity exerts on the others. The various identities are too static, too crystallized: the model does not allow for hybrid forms. To overcome this limit, Risse (2004) proposed the marble-cake category:

*«According to this model, the various identities of an individual cannot be clearly separated on different levels [...], because they actually influence each other and mix with each other.»<sup>10</sup>*

One year later in 2005, Delanty and Rumford theorized the overlapping identities. In this model, however, the prevalence of one identity over the other is not defined, nor it is in reality. For this reason, the latter model describes better the relation between national and European identity than the nested model. The concentric circles did not seem to admit the existence of contradictions and grey areas that are a daily issue. The case of the identification of migrants is a striking example. A. Esu and S. Maddanu provide this contribution:

*«In a certain sense, these new subjects free themselves from the identity definition attributed to them. They express multiple affirmations, in a game of coherence and adaptation, which the recurring question of integration is not able to solve. »<sup>11</sup>*

In this context, trying to define the precise boundaries of an individual's identity - with the claim to find a definitive answer - is like looking for the shape of water. We are destined not to understand, simply because we use the wrong perspective. Anna Rita Calabrò, in her paper, provides a fascinating lens for this concept:

*«To use a simple metaphor, identity is like a kaleidoscope in which mirrored pieces of colored glass combine into a symmetrical structure depending on how you turn the instrument. Similarly, our different affiliations, the multitude of our characters, the imprint of our experiences make up, yes, a unitary representation of ourselves,*

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<sup>10</sup> Damiani V., (2016), *Cittadinanza e identità – Educazione alla cittadinanza globale e identità multiple in studenti di terza media*, Roma, Editoriale Anicia

<sup>11</sup> Esu A., Maddanu S., (2012), "Il soggetto nella differenza", in *Sociologia in movimento: il percorso sociologico di Alain Touraine*, edit. Angelo Guerini e Associati, (pp. 129-140), available at [https://www.researchgate.net/publication/320764902\\_Il\\_soggetto\\_nella\\_differenza](https://www.researchgate.net/publication/320764902_Il_soggetto_nella_differenza)

but this representation changes concerning the perspective assumed by the beholder.»<sup>12</sup>

As Hall reminds us, identity is a never-ending process characterized by the lack of any final resolution that leads to the necessity of a continuous reaffirmation and identity negotiation.<sup>13</sup> Nevola also helps us to understand this need, in his book he writes that:

«A collective identity is such if it is able to solve the problems related to its maintenance when it encounters profound changes affecting its structure and context. In short, a successful collective identity is one that allows a society to remain itself while changing.»<sup>14</sup>

Change, therefore, far from being a risk, is a fundamental and desirable test case. When reaffirming his own identity, no one will ever look the same. It does not imply loss of self but an evolution of that self that otherwise would die. But this evolution goes on independently. The challenge is to identify fundamental traits of that identity which, while constantly changing, retains some key features that make it recognizable over time. For the European Union, this reflection is fundamental to solving the political problem of Euroscepticism. According to Dahrendorf (1997), «The European Union is a matter of the head, not of the heart.» Nevola (2007) identifies in this coldness (we could say utilitarianism) the inability of the Union to foster a sense of European belonging that would guarantee its future political development.<sup>15</sup> So, a reflection based on the identification of the colorful little

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<sup>12</sup> Calabrò A. R., (2013) “Di che parliamo quando parliamo di identità?” in *Quaderni di sociologia* n. 63, available at <https://journals.openedition.org/qds/422#tocto1n2>, Original text: “Per usare una semplice metafora, l'identità è come un caleidoscopio in cui i pezzetti di vetro colorato rispecchiandosi si combinano in una struttura simmetrica a seconda di come si ruota lo strumento. Analogamente le nostre diverse appartenenze, la molteplicità dei nostri caratteri, l'impronta delle nostre esperienze compongono, sì, una rappresentazione unitaria di noi stessi, ma tale rappresentazione cambia in relazione alla prospettiva assunta da chi guarda.”

<sup>13</sup> Hall S., (2006), *Il soggetto e la differenza. Per un'archeologia degli studi culturali e postcoloniali*, Roma, ed. Meltemi.

Nevola G., (2007), *Democrazia, costituzione, identità. Prospettive e limiti dell'integrazione europea*, Torino, ed. Liviana, Original version: “Un'identità collettiva è tale se essa è in grado di risolvere i problemi relativi al suo mantenimento nel momento in cui si imbatte in mutamenti profondi che interessano la sua struttura e il suo contesto. Insomma, un'identità collettiva riuscita è quella che consente ad una società di restare se stessa pur cambiando.”

<sup>15</sup> Nevola G., (2007), *Democrazia, costituzione, identità. Prospettive e limiti dell'integrazione europea*, Torino, ed. Liviana



pieces of glass that build the face of the Union seems to be the only way out of the Eurosceptic drift.

In this overlapping of identities, there are those, like Smith<sup>16</sup>, who argue that national identity prevails over the others. It is an easily verifiable thesis emerging in local conversations, especially away from the political rooms. According to the sociologist, this prevalence is dictated by the *mythomoteur* role played by culture. In other words, culture transfigures collective experiences by giving them symbolic value and thus forming the collective identity of a people. The challenge for the Union would therefore be to create the 'myth of Europe'. We must be careful not to think of a European culture as the mere sum of national cultural heritages. Mario Fiorillo warns us about this.<sup>17</sup> Cultural traditions are a cohesive factor in citizenship because they signify identity. This richness of identity lies in the multiplicity of its cultural manifestations. As in a paradox, it is this plurality that makes us unique. Some fruitful steps in the direction of a European cultural heritage have been taken. First of all, it is worth mentioning the 2005 Faro Convention, which started the definition of common heritage.<sup>18</sup> But there is still a long way to go: in Fiorillo's colourful words, «having done Europe, it is now a matter of doing Europeans».

### **1.3 Which Europe for the European Union?**

On the part of the Union, the most relevant statement regarding the construction of the European identity is the Copenhagen Declaration on European Identity of 1973. Although dating back 50 years, it remains to this day one of the strongest statements on the subject, so I intend to analyze the concluding article:

«European identity will evolve in line with the dynamics of European integration. In the field of external relations, the Nine will seek in particular to gradually define their identity in relation to other political entities. In so doing, they are aware that they are strengthening their internal cohesion and contributing to the development of a truly European policy. They are convinced that the progressive implementation of this policy will be one of the essential elements to enable their countries to face with realism and

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<sup>16</sup> Smith A. D., 1986, *Le origini etniche delle nazioni*, Bologna, edit. Livini.

<sup>17</sup> Fiorillo M., (2018), “Patrimonio culturale, nation building e cittadinanza: alla ricerca di un’anima per l’Europa” in *Diventare cittadini europei*, Torino, edit. Loescher.

<sup>18</sup> Council of Europe, 2005, “Convenzione di Faro”, visited in 06/02/2022, available at the link: <https://www.coe.int/it/web/venice/faro-convention>

confidence the next stages of European construction, facilitating the envisaged transformation of their overall relations into a European Union.»<sup>19</sup>

An important aspect is the relations between the European identity and the other political ones. This relation, in 1973, was still to be defined, and the focus was only on the external relations. Instead, the problem facing us today is the relationship between *internal* identities. While it is true that it is also through external recognition that the identity takes place, internal affirmation is imperative. The thought-provoking aspect is that what was left «to be defined gradually» in 1973 is still incomplete today. In recent years, some movements from below are proposing solutions that seem to put peace to the difficult issue of overlapping European and national identities. However, this solution requires overcoming several political concepts and structures that we must first analyze as they are today.

To find the inner features of European identity, we should look at the "Europe" we refer to and to brief moments of her history.

First thing first, Europe is a continent. However, her boundaries are far from intuitive. Borders to the east, in particular, are more of a faint pencil mark on the map than a clear distinction between two distinct entities. Ural mountains are as close as a natural barrier. Still, the Europe - Asia separation remains evanescent for those living there. It is not by chance that we hear about the Eurasian Continent. If we still deal with Europe and Asia as two, it is because of historical, cultural, linguistic, and ethnic reasons. Even to the west, the Canary Islands would geographically belong more rightfully to Africa, were it not for historical reasons considered European territory. F. Celata and R. Coletti made a literature-based analysis of the social role of borders that can help understand why we rely so much on them:

«The border is not simply a line drawn in space, but the outcome of a process of social construction conditioned by a continuous re-imagining and of re-imagination and re-interpretation (Van Houtum and Van Naerssen, 2002). It is the process of

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<sup>19</sup> Osservatorio Europeo del plurilinguismo, "Documento d'archivio: La Dichiarazione sull'identità europea (Copenaghen 14 dicembre 1973)", Official website, Original Version: "L'identità europea è destinata ad evolvere in linea con le dinamiche della costruzione europea.

Nel campo delle relazioni esterne, i Nove cercheranno in particolare di definire gradualmente la loro identità nei confronti delle altre entità politiche. Così facendo, sono consapevoli di rafforzare la loro coesione interna e di contribuire allo sviluppo di una politica veramente europea. Sono convinti che la progressiva attuazione di questa politica sarà uno degli elementi essenziali per consentire ai loro paesi di affrontare con realismo e fiducia le fasi successive della costruzione europea, facilitando la prevista trasformazione delle loro relazioni globali in un'Unione europea."

construction (or deconstruction) of boundaries, rather than boundaries per se, that has an impact on socio-spatial dynamics (Newman, 2006). The inscription of borders is, in turn, a "strong act of imagining the world" (Van Houtum, Kramsch, and Zierhofer, 2005, p. 3). The symbolic dimension of borders is not simply added to their material function, but is intimately linked to it and influences their scope and effectiveness.»<sup>20</sup>

According to the Department of Contemporary Languages and Cultures of the Faculty of Political Science, University of Milan, boundaries have a strong reassuring effect on the uncertainties and fears of the individual. Fear induces one to see the Other as an enemy opposed to the Ego. The new strong community identifications are based exactly on this dialectic. (Chapter 1, p.31)<sup>21</sup>

For Nation-states too, borders are an indispensable foundation of their existence. The definition of borders - which is hardly ever a peaceful process - is what has led to the affirmation (and in some cases reaffirmation) of their national identity.

A similar logic fits well for the issue of the borders in the European Union. In the light of Europe described above, we should ask ourselves whether the word "European" can represent the European Union. Some countries geographically European, like Switzerland, are not part of the Union. Other countries, like Turkey, are in the long process of joining the Union despite not being fully European geographically. So, why European? The name speaks of the ambition of those states that together, with the Maastricht Treaty in 1992, chose it. More than a name, they assigned an identity (still a work in progress in many ways) and, at the same time, a perspective and a direction for the future of what was at the time little more than an economic aggregation. To put it more precisely, it was the ambition of a group of enlightened politicians rather than that of European citizens as a whole. They could hardly claim to be involved in these decisions. Yet another proof of the fact

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<sup>20</sup> Celata F., Coletti R., (2011), "Le funzioni narrative dei confini nelle politiche di cooperazione transfrontaliera in Europa", in *Riv. Geogr. Ital.* Original Version: Il confine non è semplicemente una linea tracciata nello spazio, ma è l'esito di un processo di costruzione sociale condizionato da un continuo lavoro di re-immaginazione e reinterpretazione (Van Houtum e Van Naerssen, 2002). È il processo di costruzione (o decostruzione) dei confini, più che i confini di per sé, che ha un impatto sulle dinamiche socio-spaziali (Newman, 2006). L'iscrizione dei confini rappresenta, a sua volta, un "forte atto di immaginazione del mondo" (Van Houtum, Kramsch e Zierhofer, 2005, p. 3). La dimensione simbolica dei confini non si aggiunge semplicemente alla loro funzione materiale, ma è ad essa intimamente connessa e ne influenza la portata e l'efficacia.

<sup>21</sup> Colombo E., (2008), "Decostruire l'identità" in *Dossier Studi culturali e identità*, Bologna, edit. Il Mulino

that the history of nation-states is, at times, nothing more than the history of a few men.

#### **1.4 Not only an economic identity**

In the same period of the Maastricht Treaty, with the 1993 Copenhagen criteria, those politicians drew up some conditions for the states to ask for entrance into the Union.<sup>22</sup> The three main criteria, in a nutshell, are:

- Political: the State must respect democracy, human rights, rule of law, and respect for and protection of minorities;
- Economic: to have a functioning economy that must be able to stand in competition with other members' market economies;
- Legislative: acceptance of the *acquis communautaire*.

While the second and the third requests are intuitive dealing with an economic union, the first point goes further. While setting this condition, the EU is putting itself in the international scenario as a moral actor. The desire to defend institutions and values that have strong ethical repercussions has contributed to the identity's construction. It is, in fact, an almost unique feature compared to other actors on the international scene.

Far from being sterile rhetoric, this principle has economic and political repercussions. Since the 1990s, the practice has been the introduction of a human rights clause in all economic agreements with extra-UE partners. This positive conditionality is frowned upon by several countries, primarily China. The issue is extremely topical. A little over a year ago in the middle of the Comprehensive Agreement on Investment negotiations, Beijing even refused to include a clause banning forced labor.<sup>23</sup> The same clause becomes conditional on aid to developing countries. M. Raiteri well analyzed the Human rights and democracy clauses in the European Union's international agreements:

«It has been widely argued that Cotonou was the most advanced mechanism of development and human rights. The new Partnership Agreement introduces a form

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<sup>22</sup> EurLex, Copenhagen criteria, available at: [https://eur-lex.europa.eu/summary/glossary/accession\\_criteria\\_copenhagen.html?locale=it](https://eur-lex.europa.eu/summary/glossary/accession_criteria_copenhagen.html?locale=it)

<sup>23</sup> De Luca A., (2020), "UE-Cina il super accordo sugli investimenti", in *ISPI Online publications*, available at the website: <https://www.ispionline.it/it/pubblicazione/ue-cina-il-super-accordo-sugli-investimenti-28820>

of conditionality that can be described as "positive": it aims to improve the effectiveness of aid flows and at the same time to encourage ACP governments to take positive steps to promote the essential elements of the Agreement.»<sup>24</sup>

In other words, the EU makes as a condition of its (seemingly unconditional) aid the sharing of some universal values that are universal only from a Western point of view. In the case of developing countries, this practice does not emerge in all its complexity because these countries often have no choice. On the contrary, with countries like China, which is much more powerful economically, the issue becomes thorny and gives rise to international friction. However, this issue remains close to the heart of the Union, which seems to be willing to pay the price of losing possible trade partners. This attitude seems so much like blackmail as soon as you step outside the Western logic that sees human rights as the first foundation of civilization.

In recent years, therefore, the EU has behaved towards other states like a teacher faced with unmotivated pupils without ever questioning whether this was right. Even with the best of intentions, the EU has not questioned whether its instruments and concepts are adequate for the noble purpose of securing peace. The problem is that alternatives exist, and the EU does not see them. It's not that she doesn't share them: she doesn't see them at all. The very choice of using the law, i.e. the instrument of regulation between two subjects with different power, to ensure equality between men is not so logical. If one then chooses democracy - which is grounded on the conviction that the whole *démos* is on an equal footing and has equal power - as the ideal instrument for promoting human rights, then logic flies away just like the feather described by Pirandello. The conviction that law (and human rights) must be defended and promoted at all costs and that democracy is the best instrument for doing so are, in my view, the first and most important of those pieces of glass that go to characterize the kaleidoscope of European identity.

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<sup>24</sup> Raiteri M., (2014), "Le clausole sui diritti umani e la democrazia negli accordi internazionali dell'Unione Europea", in *L'Unione Europea nelle relazioni internazionali del XXI Secolo*, Roma, edit. Carocci, Original Version: È stato ampiamente sostenuto che a Cotonou sia stato creato il meccanismo più avanzato di sviluppo e diritti umani. Con il nuovo Accordo di partenariato viene introdotta una forma di condizionalità che può essere definita "positiva": si punta a migliorare l'efficacia del flusso degli aiuti e al tempo stesso a spronare i governi dei Paesi ACP ad adottare misure positive per la promozione degli elementi essenziali dell'accordo

In this evolution, the economic aspect seems to be, if not irrelevant, at least secondary in the identity definition of the Union. Furthermore, we should not forget that political concepts can also be manifested in the economic sphere (see, for example, the reference to fiscal sovereignty in section 4.2). Moreover, the possibility of political action in the economic sphere is one of the greatest achievements of modern democracy compared to ancient democracy (the differences between which will be explored in section 3.1). Sartori, in his book, points out well how the distance of the economy from politics was a limitation to participation:

«Ancient democracy was fatally doomed to founder in the class struggle between rich and poor, precisely because it bred only a political animal, not also a *homo oeconomicus*. Thus considered, the Greek experience helps us understand, by contrast, that 'indirect' systems of government offer advantages that we are too prone to underestimate. [...] Participation - if it is to be effective and not dust in the eyes - requires that hypertrophic development of political tasks at the expense of all others that made Aristotle say that the man who has to work for a living cannot be a citizen.»<sup>25</sup>

It is, therefore, a matter of perspective. The effort to make European politics a non-economic affair, which may seem - and probably is - a limitation, is at the same time the result of a democratization process that has led to extending - albeit with infinite contradictions - the arena of citizens.

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<sup>25</sup> Sartori G., (1957), *Democrazia e definizioni*, Bologna edit. Il mulino, Original Version: “La democrazia antica era fatalmente destinata a naufragare nella lotta di classe tra ricchi e poveri, proprio perché allevava solo un animale politico e non anche un *homo oeconomicus*. Così considerata, l’esperienza greca ci aiuta a capire, per contrasto, che i sistemi “indiretti” di governo offrono vantaggi che siamo troppo inclini a sottovalutare. [...] la partecipazione – se vuole essere efficace e non polvere negli occhi – richiede quello sviluppo ipertrofico delle mansioni politiche a scapito di tutte le altre che faceva dire a Aristotele che l’uomo che deve lavorare per vivere non può essere cittadino.”

## 2. CITIZENSHIP, CONSTITUTION AND POLITICAL PLURALITY

*«To find yourself before a madman, do you know what that means? To find yourself in front of one who shakes off the foundations of everything you have built in you, around you, the logic, the logic of all your constructions. - Eh! What do you want? They build without logic, blessed are they, the fools! Or with a logic of their own that flies like a feather!» Luigi Pirandello - Henry IV<sup>26</sup>*

### 2.1 Citizenship and Constitution

At the legal level, it is the possession of citizenship that establishes membership of the nation-state; consequently, citizenship is the legal and social construct that determines one aspect of a citizen's identity. At a closer look, citizenship determines one of the multiple overlapping identities that everyone possesses. It is undoubtedly a fundamental identity because, from the possession of citizenship are derived infinite rights and powers; without such, it would be difficult to imagine ourselves. In the Italian example, citizenship is a right enshrined in the Constitution, in article 22: «No one may be deprived, for political reasons, of legal capacity, citizenship, or name.»<sup>27</sup> It is a concept that is so embedded in the daily lives that we end up perceiving anyone who goes outside this framework as 'problematic'. Hence the thorny issue of integration of migrants that Claudia Mantovan addresses in her book "Immigration and citizenship. Self-organisation and participation of migrants in Italy". Before going into the merits of migration, she reflects on the political origin - not natural, let alone universal - of the link between citizen and state.

«Bourdieu argued that our adherence to the state, which seems natural and obvious to us, actually has its political roots, which we struggle to perceive because of what the sociologist called l'effet d'universel, and which he traced to the genesis of the state and in the interests of [...] the legal profession.»<sup>28</sup>

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<sup>26</sup> Pirandello L., (1922), *Enrico IV*, Milano, edit. Rizzoli, Original Version: “Trovarsi davanti a un pazzo sapete che significa? Trovarsi davanti a uno che vi scrolla dalle fondamenta tutto quanto avete costruito in voi, attorno a voi, la logica, la logica di tutte le vostre costruzioni. - Eh! Che volete? Costruiscono senza logica, beati loro, i pazzi! O con una loro logica che vola come una piuma!”

<sup>27</sup> Senate of the Italian Republic, “The Italian Constitution”, Official website: <https://www.senato.it/istituzione/la-costituzione>

<sup>28</sup> Mantovan C., (2007), *Immigrazione e cittadinanza. Auto-organizzazione e partecipazione dei migranti in Italia*, Milano, edit. Franco Angeli. Original Version: Bourdieu sosteneva che la nostra

This link is enshrined in the obtaining of citizenship, which has become fundamental. It does not mean that it is indispensable, though. Looking at the concept of citizenship, we can understand why alternatives to citizenship do exist. Here is a definition provided by an article published in ISPI magazine:

«Citizenship is a relationship based on the ownership of particular rights, and it is generally defined as the relationship of an individual toward a nation-state.»<sup>29</sup>

The deep link between citizenship and rights is clear. If we were able to get out of the theoretical framework of the nation-state and the rule of law, the possession of citizenship would be an empty title.

This link allows us to understand one of the fundamental challenges in the European integration path: adopting a European Constitution. In the organization of the nation-state, the Constitution is the most important source of law, born from the ashes of the monarchy. Moreover, its birth coincides with the transition from one government's form to another. Far from being a mere coincidence, the new form of government has chosen this document as the cornerstone of its identity.

## **2.2 The European Citizenship development**

Now the EU seems to be on the same track. Formally, the Maastricht Treaty in 1992 introduced the concept of citizenship in its European form.<sup>30</sup> As with any legal acquisition, however, we must remember that it is the result of an informal path, more difficult to trace, that began much earlier in the common feeling or at least in the heads of the politicians who wanted it. The creation of European Citizenship constitutes a premise to the whole Treaty. Right from the introduction of this text, we can read: «RESOLVED to establish a citizenship common to nationals of their countries.»<sup>31</sup> At the same time, the Treaty sees the Citizenship as both an end to

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adesione allo Stato, che ci appare naturale e scontata, ha in realtà delle radici propriamente politiche, che facciamo fatica a percepire a causa di quello che il sociologo chiamava l'effet d'universel, e che rintracciava nella genesi dello Stato e negli interessi [...] dei giuristi.

<sup>29</sup> Delanty G., (2003), "Immigrazione e cittadinanza europea" in *ISPI Policy Brief* n. 47

<sup>30</sup> Council of the European Communities, Commission of the European Communities, "Treaty on European Union; available at the website: "https://europa.eu/european-union/sites/default/files/docs/body/treaty\_on\_european\_union\_en.pdf

<sup>31</sup> *Ibidem* footnote 16.



be achieved with the Treaty and a means to answer other needs. Among the «common provisions», it is the means «to strengthen the protection of the rights and interests of the nationals of its Member States»<sup>32</sup>. Then, in Part Two of the Treaty titled «Citizenship of the Union», citizenship is the final achievement.

«Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby».<sup>33</sup> The link with rights is explicit in this section as well. These words imply a citizen's adherence to the European institutions similar to the one argued by Bourdieu.<sup>34</sup> The question here is more complex and in several respects different from the one posed at the national level, though. The first difference is that there is no European Constitution to shine a light on this link (yet). The second big difference is that there are now two levels of action, that follow a hierarchical order: theoretically, European Law prevails over national one. In the Italian case, Article 10 of the Constitution establishes it: «the Italian legal system complies with the generally recognized rules of international law»<sup>35</sup>, but it must be clarified that a relationship of compliance is not equivalent to a relationship of subordination. This promiscuous relationship creates confusion, partly because national laws are not uniform. The Garcia Avello 2003 case offers us the perfect example of the difficulty of managing a multilevel system.<sup>36</sup>

These emerging difficulties are the reasons that led to some modifications of the Maastricht Treaty.

«Currently, Articles 9 of the EU Treaty and 20 of the Treaty on the Functioning of the EU (TFEU) with the modifications made by the Lisbon Treaty of 13 December 2007 regulate this matter. The main change from the previous text was the change of an expression in the following sentence: "EU citizenship is additional to national citizenship and does not replace it." Thus, EU citizenship ends being

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<sup>32</sup> *Ibidem* footnote 16.

<sup>33</sup> *Ibidem*, footnote 16.

<sup>34</sup> Mantovan C., (2007), *Immigrazione e cittadinanza. Auto-organizzazione e partecipazione dei migranti in Italia*, Milano, edit. Franco Angeli.

<sup>35</sup> Senate of the Italian Republic, "The Italian Constitution", Official website: <https://www.senato.it/istituzione/la-costituzione>

<sup>36</sup> GARCIA AVELLO JUDGMENT OF THE COURT 2 October 2003; available at the website: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62002CJ0148&from=IT>

"complementary" to national citizenship and becomes "additional," facilitating the possibility of its autonomous development, as will be noted.»<sup>37</sup>

In this sense, in contrast to the traditional hierarchy of sources of law, the national constitutions that gave rise to national citizenship seem to be much stronger than European citizenship. European citizenship is a right only for those who hold the nationality of a member state. National citizenship is the premise for European citizenship, which becomes a political consequence. This relationship is not merely a matter of formal law but a power relationship that constitutes an obstacle to the process of political integration of the European Union. This is one of the motivations behind the desire to adopt a European constitution.

### **2.3 Towards a Constitution for European citizens**

Before moving towards the European Constitution, it is good to clarify some aspects of the national one. Among Italian constitutional theorists, Giovanni Sartori is undoubtedly one of the most influential. Sartori calls for a re-conceptualization of the word 'constitution', which has two meanings: the guarantee meaning, i.e. protection of freedoms, and the formal meaning, which refers to whatever form the state chooses to give itself.

The former is - in fact - not a real constitution, but rather a collection of rules that 'appropriates' the term 'constitution' but does not place limits on the exercise of power. a good constitution should contain both, but reality sometimes differs: therefore, he identifies three types of constitutions: nominal-constitution, facade-constitution, and guaranteed-constitution.

Nominal constitutions are, in fact, the collection of rules that organize but do not limit the exercise of political power in a given state. They describe a system of power that is unbounded and unchecked.

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<sup>37</sup> Beltrame De Moura A., Doctoral Thesis, Università degli studi di Milano, (Academic Year 2013), *Caratteri ed effetti della cittadinanza tra diritto internazionale e fenomeni di integrazione regionale: Unione europea e Mercosul*; Original Version: Attualmente, la materia viene disciplinata dagli artt. 9 del Trattato sull'UE e 20 del Trattato sul Funzionamento dell'UE (TFUE) con le modificazioni effettuate dal Trattato di Lisbona del 13 dicembre 2007/316. La principale modifica con riguardo al precedente testo è stato il cambiamento di una espressione nella seguente frase: "La cittadinanza dell'UE si aggiunge alla cittadinanza nazionale e non la sostituisce." Così, la cittadinanza europea finisce di essere "complementare" a quella nazionale e diviene "aggiuntiva", agevolando la possibilità di un suo svolgimento autonomo, come sarà rilevato.

Facade-constitutions resemble the real constitutions: they perform the guarantee function of limiting powers and protecting freedoms but are not applied. For this reason, they are also called "pseudo-constitutions".

Finally, guaranteed constitutions are the real ones. These determine the form of the state, setting limits to powers and protecting freedoms, and are enforced too.

For Sartori, constitutionalism seeks a balance between the exercise of power (*gubernaculum*) and control over power (*jurisdictio*). A Constitution where controls prevent action is just poorly designed (it would be *jurisdictio only*). At the same time, an all-*gubernaculum* constitution must not be accepted by constitutionalism: a power without control does not bring into being the constitutional state, it is its negation and destruction. At the European level, the aspect of control over power is the most problematic, due to states' reticence to renounce sovereignty. At the same time, the exercise of power, not being centralized, but left largely to member states, is also not easy to implement. So let's look at how the European constitutional journey has unfolded.

«Towards a Constitution for European citizens - [...] The question ultimately arises as to whether this simplification and reorganization might not lead in the long run to the adoption of a constitutional text in the Union. What might the basic features of such a constitution be? The values which the Union cherishes, the fundamental rights and obligations of its citizens, the relationship between Member States in the Union?»<sup>38</sup>

These words come from the declaration adopted by the European Council in Laeken in December 2001. On this occasion, the European Council poses many questions with the hope to answer them.

These answers, which in reality were not forthcoming, were planned for the Nice summit. The final outcome, the Treaty of Nice, formally subscribed in February 2001, is in many ways a failure. Nowhere in the treaty the constitutional issue is addressed.<sup>39</sup> A special Convention was charged to take up the project, which

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<sup>38</sup> European Commission, 20021, "Presidency Conclusions European Council meeting in Laeken 14 and 15 december 2001", Official website, visited in 10/01/2022, available at the link: [https://ec.europa.eu/commission/presscorner/detail/en/DOC\\_01\\_18](https://ec.europa.eu/commission/presscorner/detail/en/DOC_01_18)

<sup>39</sup> European Parliament, 2001, "Treaty of nice", Official website, visited in 10/01/2022, available at the link: <https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/treaty-of-nice>.

materialized in 2003 with the presentation of a 'Treaty establishing a Constitution for Europe' that the Council signed in Rome the following year.<sup>40</sup> However, the treaty never entered into force as France and the Netherlands (two of the founding countries of the EU, by the way) rejected its ratification.<sup>41</sup> The constituent process ended in 2007 with the adoption of the Treaty of Lisbon<sup>42</sup>, which definitively abandoned the project of a European Constitution but, at the same time, incorporated many of its provisions; essentially, the Charter of Fundamental Rights of the European Union was the only subject that was really sacrificed. This is no coincidence: citizens' rights are the main content of the modern constitutions that emerged in the 1940s in response to the Second World War.<sup>43</sup> This Treaty - while sharing and incorporating the Charter of Rights in an Annex Protocol - is not intended to be a Constitution. Also, the word 'Constitution' doesn't appear very often in these documents. To understand the real political reasons of this constituent process, it is useful to look at some of the secondary documents that the European Parliament adopted during those years. A Report about the Constitutionalisation of the Treaties of November 2000 states:

«[The European Parliament] stresses that the future Constitution must clearly and vigorously enshrine:

- the common values of the EU
- the fundamental rights of European citizens
- the principle of the separation of powers and the rule of law,
- the composition, role, and functioning of the Union's institutions,
- the division of competences,
- the principle of subsidiarity,
- the role of European political parties,
- the aims of European integration.»<sup>44</sup>

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<sup>40</sup> European Parliament, 2004, "Draft Treaty establishing a constitution for Europe (not ratified), Official website, visited in 10/01/2022, available at the link: <https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/draft-treaty-establishing-a-constitution-for-europe>

<sup>41</sup> Bin R., Caretti P., Pitruzzella G, (2015), *Profili costituzionali dell'unione Europea*, Bologna, edit. Il mulino.

<sup>42</sup> European Parliament, 2007, "Treaty of Lisbon", Official website, visited in 10/01/2022, available at the link: <https://www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon>.

<sup>43</sup> Di Giammarco G., (2018), "Diritti umani e diritti del cittadino: tra ontologia, rilevanza ed effettività", in *Altalex Magazine*.

<sup>44</sup> European Parliament, 2000, "Relazione sulla costituzionalizzazione dei trattati", available at the link: [https://www.europarl.europa.eu/ige2000/offdoc/pdf/repa50289\\_it.pdf](https://www.europarl.europa.eu/ige2000/offdoc/pdf/repa50289_it.pdf)

As we can read, the true objectives of adopting a European Constitution touch on several thorny issues. Taking the constitutional route forces us to think deeply about the concepts that constitute the basis of today's European political order. It's like waking up the sleeping dog and raising unresolved issues. Addressing the matter of the division of powers would be extremely complicated from a bureaucratic point of view, even in the (unrealistic) event that all states and institutions agreed on their respective roles. Such a deal could not be further away. From a conceptual point of view, it would involve identifying the constituent concepts of the nation-state and those of the European Union first and then bringing them into dialogue. At first glance, this seems to be possible: if we adopt the thesis that the democratic principle and the protection of human rights form the basis of the European identity, it is quite easy to trace these cornerstones in the identity of the nation-states as well. However, at least one of the central notions of the nation-state dovetails poorly with this new order. An in-depth analysis of the first two articles of the Italian constitution is particularly helpful in understanding this difficulty. (Knowing that the Italian case is not very different from that of other European countries.)

Article 1 and 2 states:

- «1. Italy is a democratic Republic, founded on work. Sovereignty belongs to the people, which exercises it in the forms and within the limits of the Constitution.»
- «2. The Republic recognizes and guarantees the inviolable rights of man, both as an individual and in the social groups in which his personality takes place, and requires the fulfillment of the binding duties of political, economic and social solidarity.»<sup>45</sup>

As expected, there is a clear reference to the democratic formula in the first article. The link between democracy and the constitution expressed here is the same as the one explained by politician Ciampi<sup>46</sup>. According to the politician, while the constitution is not sufficient to guarantee the establishment of a democratic system, it is indispensable. This privileged position on the issue of democracy is partly the result of a constituent process that took place in a historical context marked by totalitarianism and models that were anything but democratic. The disastrous aftermath of the Second World War led the entire political class to move as far away

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<sup>45</sup> Senate of the Italian Republic, "The Italian Constitution", Official website, visited in 22/01/2022, available at the link: Senate of the Italian Republic

<sup>46</sup> Nevola G., (2007), *Democrazia, costituzione, identità. Prospettive e limiti dell'integrazione europea*, Torino, ed. Liviana

as possible from the political model it had brought there; democracy was the obvious answer. The protection of human rights also becomes, in this framework, the result of a historical context. In the same years, the General Assembly of the United Nations also approved the Universal Declaration of Human Rights<sup>47</sup>, in the wake of the same political movement. It can be assumed that this similarity between the Constitution of the Nation-States and the fundamental principles of the EU is due precisely to the historical events that led to the birth of the latter and a transformation of the former.

In the articles of the constitution there is a reference that is very problematic for Europe, though: sovereignty. Sovereignty which people exercises in the forms and within the limits of the Constitution. The constitution is therefore the most powerful weapon of the states. It prevails over democracy, it establishes it, protects it but at the same time defines its limits. It is understandable, therefore, why the EU is scrambling to have its constitution. However, EU members have always been reticent to surrender their sovereignty to Europe. This reluctance is the real reason for the French and Dutch veto to the 2004 proposal. The issue of sovereignty is still an open question whose solution seems far away.

An interesting observation can be made on the method by which this solution was found. States and the EU have indirectly competed for sovereignty in an (often vain) European attempt to tip the scales to its advantage. Beyond the results, neither of them has ever admitted the possibility that there might be an 'other' order not based on sovereignty. Sovereignty is the trophy to be won. But what if there was an alternative? Or if an alternative was necessary? We cannot create a new political order funding it on old concepts. An alternative, therefore, seems indispensable for a European future. Today's EU, as stated, is antithetical to the concept of sovereignty. But even if the weight on the scales were reversed, it is not so obvious that the EU would be able to exercise it. Without claiming to find a definitive answer, Duso's reflection helps us to give the subject back the complexity it deserves and to try to map out paths towards an alternative.

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<sup>47</sup> United Nation, 1948, "Universal declaration of human rights", visited in 22/01/2022, available at the link: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

In the two articles under analysis, there is also another difficulty: the definition of "people". It is not possible to speak of the existence of a European people as a subject not only of an ethical nature but also of cultural, social, and linguistic tradition. In short, we are not dealing with a subject that can be assimilated to the notion of people we are accustomed to in a national horizon.

The fact that the absence of a real European people is an obstacle to the drafting of a Constitution is not an argument shared by all. Habermas sees in the abstraction that led to the construction of national identities the prerequisites for the creation of a European people (and therefore a constitution):

«The genesis of the European nation-states shows us how the new forms of national identity have an inherent character of artificiality, which was formed within very specific historical assumptions and during a long process that lasted throughout the nineteenth century. This identity formation is due to a painful process of abstraction, which ended up transferring the old local and dynastic loyalties into the new awareness, on the part of democratic citizens, of being part of the same nation. If this reconstruction is correct, then there is no reason to believe that the generative process of such civic solidarity should stop once the boundaries of the nation-state are reached.»<sup>48</sup>

A term, *solidarity*, proper to Habermas's theory is used here, which cannot be elaborated on here, nor can it be totally assimilated to that of identity.

According to Nevola, the problem of the existence of the «subject of constituent power» (the people) is one of the two main obstacles to a European constitution according to the dictates of modern liberal democratic constitutionalism. The second obstacle is the question of the source of legitimacy of a Constitution.

«Ciampi strongly emphasized that a European constitution was necessary to demonstrate that the ultimate source of legitimacy of the institutions in the European Union lies with the citizens and to anchor the Union in the fundamental values of democracy, freedom. [...] Can the European Union really give itself a constitution capable of producing democracy if it does not have its own source of democratic

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<sup>48</sup> Bozzon M., Tesi di Dottorato, Università degli studi di Padova, (Ciclo XXVIII), *Quali concetti politici e giuridici per una "costituzione" dell'Europa?* Original Version: "La genesi degli stati nazionali europei ci mostra come alle nuove forme dell'identità nazionale inerisca quel carattere di artificialità che si è costituito nell'ambito di presupposti storici assai particolari e durante un lungo processo durato per tutto l'Ottocento. Tale formazione identitaria è dovuta a un doloroso processo di astrazione, il quale ha finito per trasferire le vecchie lealtà locali e dinastiche nella nuova consapevolezza, da parte dei cittadini democratici, di far parte di una stessa nazione. Se questa ricostruzione è corretta, allora non esiste motivo per ritenere che il processo generativo di una solidarietà civica di questo tipo debba arrestarsi una volta che siano raggiunti i confini dello stato nazionale."

legitimacy? And, in turn, what is the condition for a source of democratic legitimacy?  
The answer to this question is now known to us: political unification.»<sup>49</sup>

Bertolissi helps us to understand this transition: in the transition between the eighteenth and nineteenth centuries, a deep dividing line was established between civil society and the state.

Plurality has been confined to the social sphere while the political sphere is governed by the dimension of unity. Politics has favored order, governability, and a 'mechanical' process of legitimizing power, to the detriment of a progressive loss of the ability to think in terms of a plurality of subjects. The last bulwark in defense of plurality is the instrument of representation which, however, as we shall see, is not sufficient on its own to provide legitimacy. It is a rather complex situation: in fact, the problems in adopting a constitution are partly the same as those intended to be solved by this document. The solution to Europe's democratic deficit, together with its deficit in political unification, were precisely the aims that had generated the constitutional perspective, particularly at the outset.<sup>50</sup> This problem risks not be solved if we continue to think in terms of the concept of sovereignty. According to Bertolissi and Duso<sup>51</sup>, this conceptual framework can provide only are two alternatives, but neither is satisfactory. The first is to think of the EU as a new unit, «with the decision-making capacity and strength that characterize sovereignty», but this would «lose the political consistency of the members who constituted it». The second option safeguards the autonomy and independence of nation-states. The result in this case, however, would make Europe «the terrain only of a momentary agreement, which fails to translate into a real new political reality.»

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<sup>49</sup> Nevola G., (2007), *Democrazia, costituzione, identità. Prospettive e limiti dell'integrazione europea*, Torino, ed. Liviana, Original version: "Ciampi ha marcato con forza come una costituzione europea fosse necessaria per dimostrare che la fonte ultima della legittimità delle istituzioni nell'Unione Europea isiede nei cittadini. [...] L'Unione Europea può davvero darsi una costituzione capace di produrre democrazia, se essa non dispone di una sua fonte di legittimità democratica? E, a sua volta, qual è la condizione affinché sia data una fonte di legittimità democratica? La risposta a questa domanda ormai ci è nota: l'unificazione politica."

<sup>50</sup> Nevola G., (2007), *Democrazia, costituzione, identità. Prospettive e limiti dell'integrazione europea*, Torino, ed. Liviana.

<sup>51</sup> Bertolissi M., Duso G., (2008), *Ripensare la costituzione, la questione della pluralità*, Milano, edit. Polimetrica.



Before going into the merits of the system of representation and its link with sovereignty to move towards overcoming them, there is another element to be analyzed concerning the limits of the Constitution: the issue of political plurality.

## 2.4 Political plurality and multiple identities

The Constitution considers all citizens equal before the law but, at the same time, must deal with a fragmented reality characterized by plural interests. In addition, the issue of plurality also has to do with the kind of relationship between different citizens and groups that the Constitution aims to regulate.

«The pluralist ideal, at least in many of its reconstructions, would be said to be that of defusing and normalizing the permanent social conflict typical not only of the nineteenth-century society divided into classes but also of contemporary society crossed by heterogeneous and articulated social instances that are difficult to reconcile: such as, for example, the conflicting and unresolved issues questions posed by the multi-ethnic, multi-religious, multi-cultural society in which the conflicting interests in the field do not always receive adequate responses from the contemporary democratic systems.»<sup>52</sup>

It is an ideal that the Constitution fails to protect completely. Precisely in order to regulate conflict, it ends up binding the plurality, "crystallizing" it in political forms (which coincide with parties) that can no longer represent it.

H. Hoffman<sup>53</sup> identifies the question of political plurality as one of the elements giving rise to the crisis in the concept of the Constitution. The second cause, as expected, is precisely the impetus resulting from the process of European integration. This crisis is so serious that it has triggered a process of "constitutionalization": a progressive emptying out of the constitutional structure. This process takes shape first and foremost in the functions of parliaments. This process is yet another alarm signal inviting us to think of Europe in new terms,

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<sup>52</sup> De Marino F., (2019) "L'ATTUALITÀ DEL PRINCIPIO PLURALISTA COME PROBLEMA" in *Rivista Associazione Italiana dei Costituzionalisti* 2:2019, Original Version: "l'ideale pluralista, almeno in molte sue ricostruzioni, si direbbe quello di disinnescare e di normalizzare il conflitto sociale permanente tipico, non solo della società ottocentesca divisa in classi, ma anche di quella contemporanea attraversata da eterogenee ed articolate istanze sociali difficilmente componibili: come ad esempio, le contrastanti e irrisolte questioni poste dalla società multi etnica, multi religiosa, multi culturale in cui gli interessi conflittuali in campo non sempre ricevono adeguate risposte da parte dei sistemi democratici contemporanei."

<sup>53</sup> Hoffman, H., (2005), "Riflessioni sull'origine, lo sviluppo e la crisi del concetto di Costituzione", in *Sui concetti giuridici e politici della costituzione dell'Europa*, Milano, edit. Franco Angeli.

basing it on other concepts. Abandoning the sovereignty-state nexus that underpins our logic and reconstructing the concepts of constitution, citizenship, and identity accordingly. And be prepared for the fact that this will shake off the foundations of everything we have built-in us, around us, the logic, the logic of all our constructions.<sup>54</sup>

I will leave aside the parliamentary aspect and concentrate on the European one. Plurality at the European level points to the different national identities of the states, each of which carries its baggage of multiple identities. At the same time, it also recalls a specific task of politics: to provide a space for action for this plurality. It is a fundamental role of politics, if only because of the risks and consequences of its absence. H. Arendt highlights this well, here are some words taken from the analysis of Arendt's thought conducted by Maria Laura Giacobello:

«By erasing the space for action, which is the extreme manifestation of man's spontaneity, in fact, mass society transforms the plurality of equal but distinct individuals into a uniform multitude, within which the conditions for the affirmation of an ethically connoted subjectivity and for the emergence of specific identities are lacking. The uniformity of behavior extinguishes man's ontological vocation to freedom as a capacity to begin, and the individual-mass reveals a singular incapacity for active citizenship, testifying to the dangerousness of the renunciation of thinking action typical of a man in the age of social conformism.»<sup>55</sup>

The philosopher-politician develops this thought in her book "The Origins of Totalitarianism", written in 1951. Arendt's thinking is conditioned by having experienced the consequences of totalitarianism at first hand. Precisely because the EU also finds part of its roots in this historical era, her thinking is very valuable. It allows us to understand the seriousness of the problem posed by Bertolissi and Duso<sup>56</sup>. At the same time, it makes us realize its urgency. Thirty years after

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<sup>54</sup> Pirandello L., (1922), *Enrico IV*, Milano, edit. Rizzoli

<sup>55</sup> Giacobello M. L., (2021), "L'identità plurale dell'uomo nell'antropologia Filosofica di Hannah Arendt. Possibili declinazioni", in *HUMANITIES Magazine*, Anno X n° 20, Original version: "Cancellando lo spazio per l'azione, che è l'estrema manifestazione di spontaneità dell'uomo, infatti, la società di massa trasforma la pluralità di uguali ma distinti in una moltitudine uniforme, nell'ambito della quale mancano le condizioni per l'affermazione di una soggettività eticamente connotata e per l'emergere di specifiche identità. L'uniformità del comportamento spegne la vocazione ontologica dell'uomo alla libertà come capacità di inizio, e l'individuo-massa rivela una singolare incapacità di cittadinanza attiva, testimoniando la pericolosità della rinuncia a pensare l'azione tipica dell'uomo nell'epoca del conformismo sociale."

<sup>56</sup> Bertolissi M., Duso G., (2008), *Ripensare la costituzione, la questione della pluralità*, Milano, edit. Polimetrica.

Maastricht, this is perhaps a problem that should have been solved before the Union was even dreamt of. The failure of the constitutional attempt is therefore no longer surprising. Now more than ever, in the light of the new crisis we are experiencing (which is not only pandemic), we can no longer postpone this reflection. Not to criticize Europe once again, but to at least give it a chance of survival.



### 3. DEMOCRACY IN THE EUROPEAN UNION

*«The real cause of all our ills, of this sadness of ours, do you know what it is? Democracy, my dear, democracy, that is, the rule of the majority. Because when power is in the hands of one, this one knows that he is one and that he must please many; but when the many rule, they only think of pleasing themselves, and then we have the most idiotic and hateful tyranny: tyranny disguised as freedom»<sup>57</sup> Luigi Pirandello – *The late Mattia Pascal**

#### 3.1 Past and present of democracy, the need for a re-definition

The choice of democracy, understood as a method rather than as a political order, is one of the characteristics of the identity of the European Union (and this research work, for the reasons explained in the first part, has adopted this approach); a reflection on its meaning today is indispensable.

The first important point to remember is that Democracy has changed face many times, wearing a different mask in each era. It may seem obvious, but the reality shows that the political class asked for answers and solutions this particular method of government, which is not capable of doing: it would look elsewhere if it was aware of what this political order is nowadays. Not only that: the politicians aspire to an ideal status but above all an idealized one, which, if achieved, would be far from governable. If sovereignty belonged to the people, to the whole *démos*, regions as large as a nation-state would be governed by chaos to the point that even territories of the entity of Malta would have serious difficulties. On a practical level, a "government by the People" requires active participation, expression of ideas, preferences, and opinions by each individual. So many actions would not be manageable, and the only possible outcome would be decision paralysis, if not outright conflict. The small number of the Athenian population made it possible in

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<sup>57</sup> Pirandello L., (1904), *Il fu Mattia Pascal*, Milano, edit. Rizzoli, Original Version: “La causa vera di tutti i nostri mali, di questa tristezza nostra, sai qual è? La democrazia, mio caro, la democrazia, cioè il governo della maggioranza. Perché quando il potere è in mano d’uno solo, quest’uno sa d’esser uno e di dover contentare molti; ma quando i molti governano, pensano soltanto a contentar se stessi, e si ha allora la tirannia più balorda e più odiosa: la tirannia mascherata da libertà”

part because it didn't count women and slaves that were a substantial percentage of the entire population.

Leaving aside the influence of today's population size and composition, there are some incompatibilities on the theoretical level. Democracy in ancient times chose *dèmos* and *cràtos* as its prevailing masks, but it always implied a third one: *eleutheria*, freedom, which democracy claims to promote and defend. This freedom has changed form and interpretation over the ages, leading democracy to change with it as well. In political rhetoric, democracy, together with the law that follows it, is the instrument used to defend the freedom of the individuals it comprises. For instance, the 13<sup>th</sup> article of the Italian Constitution states «Personal freedom is inviolable.»<sup>58</sup> Personal above all.

Democracy does not always manage to protect this freedom, though. One example is the various opinions that some extremists frequently suggest and whose legitimacy is debated by virtue of the popular principle that «my freedom ends where the freedom of others begins»<sup>59</sup>. To what extent is an opinion legitimate (and does it meet the principle of freedom of expression of thought and opinion)? What is the boundary point beyond which this freedom crosses the barrier of legitimacy and becomes the freedom to offend? Law has the role of establishing this breaking point. And it is perhaps for this reason that we often get confused between "freedom to" and "right to" although they are two concepts close only in language. While the first concept opens the horizon, the other delimits it. This ambivalence helps us understanding the subject matter of this thesis. It contains, at the same time, an ideal dimension, a kind of aspiration that guides the heart (the feeling), and a practical dimension, concrete and limiting (the boundaries)<sup>60</sup>.

Both are necessary to be able to talk about identity and both are present in today's democracy. We must be aware, however, that this extremely topical reflection is far removed from the ancients' concept of freedom, which, besides having a different link with law, was not at all personal. Benjamin Constant, in one of his famous speeches, said that the freedom of the ancients:

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<sup>58</sup> Senate of the Italian Republic, "The Italian Constitution", Official website, visited in 22/01/2022, available at the link: <https://www.senato.it/istituzione/la-costituzione>

<sup>59</sup> Famous phrase attributed to Martin Luther King

<sup>60</sup> Feeling and boundaries refer to what is described in Chapter 1.

«consisted in exercising collectively but directly many functions of the whole sovereignty, in deliberating in the public square on war and peace, [...] But if this was what the ancients called freedom, they considered compatible with this collective freedom the complete subjection of the individual to the authority of the whole. You do not find with them any of the enjoyments [...] part of the freedom of the moderns. All private actions are subjected to strict supervision. Nothing is accorded to individual independence either in respect of opinions, nor under that of industry, nor especially under that of religion.»<sup>61</sup>

Collectivity is the core of Constant's argument. The *démos* that forms the bedrock of democracy is conceived as One, not as a multitude of ones. It is worth remembering that this is an extremely exclusive, elitist collectivity, which does not coincide with the modern concept of the people (anything but elitist, from which the term 'popular' derives). The individual, who is characterized by his uniqueness, has no place in this community that flattens differences. When democracy was born, it focused on this specific collectivity: male, adult, rich, and educated. Today we are dealing with a political class (which in some ways recalls that ancient *démos*) that appeals to democracy to put the people, as a collection of unique individuals, at the center and to defend the freedoms of individuals while maintaining the level of control that only the collectivity allows. The inconsistency is obvious: we use the same term referring to both meanings, while in reality it represents only the first one. Remembering this is essential because thinking about a possible combination of the collective and individual dimensions is a difficult task that requires great lucidity. Constant does not really help us in this as his reflection is limited to choosing the modern alternative. His mindset is designed to adjust an ancient method to the new requirements.

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<sup>61</sup> Constant B., Paoletti G., (2005) *La libertà degli antichi paragonata a quella dei moderni*, Torino, Edit. Einaudi Original Version: (la libertà degli antichi) “consisteva nell'esercitare collettivamente ma direttamente molte funzioni dell'intera sovranità, nel deliberare sulla piazza pubblica sulla guerra e sulla pace, [...] Ma se questo era ciò che gli antichi chiamavano libertà, essi ritenevano compatibile con questa libertà collettiva l'assoggettamento completo dell'individuo all'autorità dell'insieme. Non trovate presso di loro alcuno dei godimenti che abbiamo visto far parte della libertà dei moderni. Tutte le azioni private sono sottoposte a una sorveglianza severa. Nulla è accordato all'indipendenza individuale né sotto il profilo delle opinioni, né sotto quello dell'industria, né soprattutto sotto il profilo della religione.”

«But since the freedom we need is different from that of the ancients an organization different from that of the ancients is necessary to it»<sup>62</sup>.

His conclusion is simple, but not by any means easy. The solution he proposes is the representative system, described as follows:

«The representative system is nothing more than an organization by which a nation unloads on certain individuals what it cannot or does not want to do itself. [...] The representative system is a power of attorney given to a certain number of men by the mass of the people, who want their interests to be defended but who do not have the time to always defend them themselves.»<sup>63</sup>

Later in the speech, he explicitly says that the great risk of modern freedom is that citizens may give up their right to participate in political power. The community sacrificed in the name of individual private interests. The level of civic engagement found in the OECD<sup>64</sup> surveys shows that this is a real risk given that, on average, the percentage of citizens giving up their rights is over 30%. Constant talks about the 'right' to participate, not just freedom. In a way, this freedom is bound by its implementation, without which it risks being lost. The famous definition of Giorgio Gaber, a famous Italian singer and thinker, fits this concept: «freedom is participation»<sup>65</sup>, which is different from «freedom to participate». The 48<sup>th</sup> article of the Italian Constitution<sup>66</sup> talks about voting, the most exemplary form of participation in political life, conceived as a right but also as a duty: we don't talk about absolute freedom to vote. In the ancient world, this risk did not exist but, on the contrary, there was the risk of sacrificing individual freedoms. These two opposing forces shift the fulcrum of power from the individual and to the collective,

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<sup>62</sup> Constant B., Paoletti G., (2005) *La libertà degli antichi paragonata a quella dei moderni*, Torino, Edit. Einaudi Original Version: “Ma poiché la libertà che ci occorre è diversa da quella degli antichi occorre ad essa un'organizzazione diversa da quella degli antichi.”

<sup>63</sup> Constant B., Paoletti G., (2005) *La libertà degli antichi paragonata a quella dei moderni*, Torino, Edit. Einaudi Original version: “Il sistema rappresentativo non è altro che una organizzazione mediante la quale una nazione scarica su alcuni individui ciò che non può o non vuol fare da sé. I poveri fanno da sé i loro affari: i ricchi assumono degli intendenti. È la storia delle nazioni antiche e delle nazioni moderne. Il sistema rappresentativo è una procura data a un certo numero di uomini dalla massa del popolo che vuole che i suoi interessi siano difesi e che però non ha il tempo di difenderli sempre da sé”.

<sup>64</sup> *OECD Better Life Index*, (2018), “Impegno Civile”, visited in 15/02/2022, Available at the link: <https://www.oecdbetterlifeindex.org/it/topics/civic-engagement-it/>

<sup>65</sup> Verse from the song "La Libertà" by G. Gaber, 1973.

<sup>66</sup> Senate of the Italian Republic, “The Italian Constitution”, Official website, visited in 22/01/2022, available at the link: <https://www.senato.it/istituzione/la-costituzione>



but always referring to the idea, or rather the ideal, of democracy, bound to defending freedom in one sense or the other, depending on the historical era. In his book "Democracy and its Critics"<sup>67</sup>, Dahl helps us to identify other differences between modern democracy and as it was in the Greek polis. The most evident differences are the increasing number of people, and the resulting participation model, which has changed from direct to indirect through a representation system. Other differences that are less addressed concern interests, participation, and autonomy. In ancient Greece, the culture was permeated by a strong sense of common good. As a result, there was harmony in the interests of politicians who rejected individual interests to ensure the public good. In part, this harmony is linked to the elitist nature of the political class: by excluding not individuals but entire social classes (women, foreigners, slaves), those who remained were a very homogeneous group of citizens with similar social, cultural, and economic characteristics. It is intuitive to understand why in a similar group interests were homogeneous. In this context, giving up individual interests in favor of common ones was an easy decision. On the contrary, in today's democracies, citizens are very uneven and, consequently, so are their opinions, preferences, and interests. Participation has also changed: the public offices that in the polis rotated between all citizens, in the nation-state are entrusted only to professionals through an elective system. Finally, the last difference that deserves to be highlighted, is the complete autonomy that characterized the city-state. Today there's no such thing: smaller political units cannot be autonomous but always subordinate to a larger system. The central power sees the centrifugal thrusts of the movements for the autonomy of small regions as a danger. This push gradually erodes a central authority that is already in difficulty because of the large numbers it must manage and the great inconsistencies that characterize the democratic system. All these characteristics, largely problematic, are present in the European scenario too that, due to its size and to the overlapping with the national authorities and institutions, amplifies these issues.

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<sup>67</sup> Dahl R.A., (2008), *La democrazia e i suoi critici*, Bari, edit. Laterza

The primary objective of highlighting the differences between ancient and modern democracy is to understand what form of government we are dealing with, where it comes from, and where it is taking us - otherwise, it would not be possible for the European Union to draw future lines escape the democratic limits in which it finds itself today. We have now seen that although democracy has a common name, it is different from the past both in form (numbers, representation, etc.) and in its theoretical base (the people, individual freedom and collective freedom, etc.). To avoid misunderstandings, therefore, it is helpful to find terminology that allows us to unambiguously identify the object of the research: in this case, modern democracy.

In the quest for clarity, the majority of scholars have succumbed to the temptation of adding attributes to the word *democracy*, disregarding the fact that the very root of the term nowadays constitutes a problem from a conceptual point of view. The definitions offered to us by scholars can be of various kinds. The minimal definition is the one that draws up a list of the indispensable requirements that democracy must have to be called that. There are in total four elements:

- universal male and female suffrage,
- the presence of free, competitive, recurring, and fair elections,
- party pluralism,
- the presence of diverse and alternative sources of information.

These are the elements that Nevola<sup>68</sup> attributes to what he calls "mass representative liberal democracies". It is an ambitious definition that aims to be in the middle between 'ideal' and 'procedural' definitions. An "Ideal" one, is, for example, Dahl's, which is quite far from reality:

«a political regime characterized by the government's continuous responsiveness to the preferences of its citizens, who are considered to be politically equal.»<sup>69</sup>

With these parameters, no government could boast of being democratic. "Procedural" definitions, on the other hand, are those that focus on democracy as a method focused on the system of representation. Scholars who choose this

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<sup>68</sup> Nevola G., (2007), *Democrazia, costituzione, identità. Prospettive e limiti dell'integrazione europea*, Torino, ed. Liviana

<sup>69</sup> Dahl R.A., (2008), *La democrazia e i suoi critici*, Bari, edit. Laterza

perspective tend to speak of democratic method rather than democracy. The method is at the center and *democratic* remains as an attribute. It is interesting to point this out because Schumpeter<sup>70</sup>, in doing so, takes the first step towards a re-signification of democracy that is not limited to adding adjectives and drawing up a checklist of essential attributes. For Schumpeter, the democratic method is the institutional means of arriving at political decisions whereby individuals obtain the power to make decisions in the name of a competition that has the popular vote as its object. He introduced, therefore, a radical change, the *dèmos* and the *kratos* now follow the method, the real protagonist of modern democracies. It is a particularly coherent approach with the political reality we live in today - very focused on the functioning of things, on technicalities (how many technical governments!), and little on concepts. The machinery of government is prevalent over ideals, and the political debate itself is often limited on how to do things rather than what things make sense to do. The economy is the perfect example of this deviant mechanism: we talk about how to make the country grow, never about why we want to grow it or whether it will really benefit us. The second important aspect of Schumpeter's definition is the central role of the elite. There is a reversal of perspective: "the People chooses who decides, not decides through its representatives".<sup>71</sup> "The people do not have direct access to power but can only decide who should legitimately hold it".<sup>72</sup> This aspect is important because of the dynamics it triggers. The politician, by virtue of this mechanism, is driven to achieve the common good in order to obtain votes in return. The politician, by virtue of this mechanism, is driven to achieve the common good in order to obtain votes in return. In this competition, however, it is the logic of exchange that takes center stage, not the aspiration for the common good. If we take this dynamic back to the European level, the risk is that by increasing the number of steps, the distance between the common good, understood as the good of the people, and the interest (votes) of the politician will also increase.

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<sup>70</sup> Schumpeter J.A., (1955), *Capitalismo, socialismo e democrazia*, Milano, Edit. di Comunità.

<sup>71</sup> Schumpeter J.A., (1955), *Capitalismo, socialismo e democrazia*, Milano, Edit. di Comunità., Original version: "il popolo sceglie chi decide, non decide tramite i suoi rappresentanti".

<sup>72</sup> Bernabale A., "Schumpeter: la teoria elitaria della democrazia", in *SPI Storia, Politica, Informazione*, Original Version: "il popolo non ha diretto accesso al potere ma può solamente decidere chi debba legittimamente detenerlo."

Among the procedural definitions, we find also the one of Kelsen that considers democracy mainly as a set of rules:

«Fundamental rights -writes Kelsen- become an essential requirement of every democratic constitution. They serve above all as a bulwark against abuses of power, abuses that are by no means more fearsome on the part of an absolute monarch than of the majority, of this queen of democracy.»<sup>73</sup>

Here, too, we can move some criticisms. The centrality of law understood as a tool that regulates differences in power underscores that at the center of democracy, in the end, power always remains - not the common good, not the People. It's a dynamic that seems to agree with Macchiavelli<sup>74</sup>: the rules change but the problem is always the same - conquering power.

There is then a criticism that applies to all procedural definitions. Limiting ourselves to talk about a method is reductive if one considers democracy as an aim to achieve. Both individual states and the EU have not simply chosen democracy as the most effective means of government, they have made it their own. They want to be democratic, they want to distinguish themselves because of this: it is evident in the foreign relations of the EU. The Union asks as a requirement for admission to have a stable democracy, not to have any form of government as long as it is stable.<sup>75</sup> Without this requirement, there would be such an incompatibility that it would not allow not only a deep integration but also an equal dialogue.

Among the consequences of the path that democracy has taken -from Greece to us – there are a specific set of political institutions that, taken as a whole, distinguishes modern democracies from all political systems<sup>76</sup>; here is where the term polyarchy, particularly beloved by Dahl, comes into play. Government of many, not government of all nor government of the people. The many definitions of democracy help us understand the path and inner workings of today's form of government. None of those definitions, however, can re-define the political order

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<sup>73</sup> Lagi S. (2017) “La teoria democratica di Hans Kelsen: un tentativo di storicizzazione (1920-1932)” in *Annali VII*, 7:2017 Original version: «I diritti fondamentali —scrive Kelsen— diventano un requisito essenziale di ogni costituzione democratica. Essi servono soprattutto come baluardo contro gli abusi del potere, abusi che non sono affatto più temibili da parte di un monarca assoluto che non della maggioranza, di questa regina della democrazia»

<sup>74</sup> Macchiavelli N., (2014) *Il principe*, Torino, Edit. Einaudi

<sup>75</sup> Look at EurLex, Copenhagen criteria, available at: [https://eur-lex.europa.eu/summary/glossary/accession\\_criteria\\_copenhagen.html?locale=it](https://eur-lex.europa.eu/summary/glossary/accession_criteria_copenhagen.html?locale=it)

<sup>76</sup> Dahl R.A., (2008), *La democrazia e i suoi critici*, Bari, edit. Laterza

for what it is, thus ending up creating analytical paraphrases on an ancient word. This limitation, peculiar to all the definitions we have analyzed, implies the lack of a term with an evocative appeal that is capable not only of describing the political order but also of conveying the political ambitions of states and unions. No analytical paraphrase will ever be able to convey the appeal to pivotal concepts of politics, freeing itself from the not-contemporaneous one of unitary *dèmos*, as much as a single new word can do. Dahl's work then, whether or not one agrees with the appropriateness of the term polyarchy, is an important step forward on the methodological level. Beyond a simple redefinition, he operates a real reformulation of the concept. In this reformulation process, he works on the basic concepts of political order.

### **3. 2 An idealised democracy: dictatorship of the majority and tyranny of the minority**

One of the risks of idealization is to be disappointed when discovering that the much-desired political order is nothing more than a mask of chaos. With democracy, it has been more or less like this: politics idealized and criticized it several times over the centuries but repurposed it nonetheless. What is surprising is that the criticisms are almost always the same, and nothing seems to have been done to change the status quo. Being aware of what cracks democracy has is the only way to be able to choose what path to take. The two possible alternatives are to move towards other forms of government or to fill these cracks with gold, recalling an ancient Japanese tradition capable of enhancing even the hardships and fractures caused by a complex and ambitious path.<sup>77</sup> Attempting to correct the errors of democracy by pretending they never existed is the only wrong way. Repeatedly sweeping the dust under the carpet will only result in swamping the unfortunate person who tries to lift it, and that is the situation we find ourselves in now. The nowadays challenge is to resist the temptation to close our eyes to problems and try to analyze critical issues to solve them. The most widespread criticism is

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<sup>77</sup> The reference is to the practice of kintsugi, the repair of ceramic with gold. It has a strong metaphorical meaning: difficulties, wounds and scars are things that make us unique and precious, they are not weaknesses to hide and deny.

undoubtedly that which moves Schumpeter, which before him even Plato himself pointed out, namely that:

«Politicians are like bad knights who are so committed to the task of keeping themselves in the saddle that they no longer care what direction they are riding in.»<sup>78</sup>

Pirandello<sup>79</sup> made the same criticism in his works, and it describes the feeling of all the minorities who fail to find representation in the political scenario. Hence derives the expression "dictatorship of the majority": although modern democracy is more inclusive than ancient democracy, that does not mean it is universal. It maintains boundaries, the customs of which are the possession of citizenship, which play a central role in the creation of an identitarian feeling. The direct consequence is minority groups (e.g., second-generation immigrants) who cannot have any voice in the process. This expression can be declined within the electorate too. An example is the groups that lose the elections and so cover the role of "opposition". Another example can be those even more minority groups that do not find representation even in the role of opposition. Critics of the "dictatorship of the majority" point out two key issues. The first consideration is that what is decided by the majority is not necessarily the best thing. This assessment can refer not only to the outcome of the decision-making process but also to the decision-actors. «The *maior pars* is not necessarily the *melior pars*.»<sup>80</sup> A second interesting consideration concerns the link between democracy and the constitution.

«Therefore, in order not to degenerate, democracy must become "constitutional". [...] Constitutional values are capable of constituting a true "limit" to popular sovereignty, and therefore to democratic power, only on condition that they too are not simply procedural, but substantive, and not only democratically derived. To avoid running into an insuperable logical aporia, [...] it seems unthinkable that a procedure (democracy) is limited simply and exclusively by another procedure (the Constitution, at least understood according to the pure or formalistic approach). The rules of the democratic

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<sup>78</sup> Bernabale A., "Schumpeter: la teoria elitaria della democrazia", in *SPI Storia, Politica, Informazione*, Original version: «I politici sono come cattivi cavalieri che si impegnano così tanto nell'impresa di mantenersi in sella da non curarsi più di quale sia la direzione verso cui stanno cavalcando»

<sup>79</sup> Pirandello L., (1904), *Il fu Mattia Pascal*, Milano, edit. Rizzoli

<sup>80</sup> Spadaro A., (2017), "Su alcuni rischi, forse mortali, della democrazia costituzionale contemporanea. Prime considerazioni" in *Rivista AIC – Associazione Italiana dei Costituzionalisti*, n. 1:2017

game must be inspired and limited, therefore, by substantive and meta-democratic values.»<sup>81</sup>

These words were written by Spadaro, a member of the Italian Association of Constitutionalists. Therefore, it is not surprising to hear the reference to the Constitution as a solution to democratic problems. The magnet of these words lies in the appeal to meta-democratic values. It is possible to save democracy, even founding it on the same current instruments (e.g. the Constitution), provided that it is rooted in other concepts, external to it. In other words, an external legitimation of democracy is needed: "such a regime cannot be self-referential".

The second most common democratic criticism, opposite to the previous one, is related to the risk of the "tyranny of the minority". This risk is a direct consequence of a decision-making system geared toward limiting the dictatorship of the majority. Apparently, policy decisions are coherent with the opinion of the majority of citizens. However, political decisions are often coherent only with the prevailing opinion in the political scenario (from which we must exclude the share of those who do not participate, do not vote, and do not express their opinion). The share that prevails does not necessarily coincide with the majority of citizens. Spadaro<sup>82</sup> rightly points out that the referendum for Brexit was won by barely 2 percentage points, which is an insignificant difference for a decision of this magnitude. When the share of abstainers (about 27.8%) is considered, the winning majority represents a minority of those eligible to vote: only 37.4%. The challenge is to find a balance (both formal and conceptual) that can protect minorities without letting the majority succumb to them. It is an ambitious challenge that deserves to be set at a time of great transition such as the EU is experiencing. The epochal challenge to which we

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<sup>81</sup>Spadaro A., (2017), "Su alcuni rischi, forse mortali, della democrazia costituzionale contemporanea. Prime considerazioni" in *Rivista AIC – Associazione Italiana dei Costituzionalisti*, n. 1:2017, Original Version: "Occorre perciò che la democrazia – per non degenerare – diventi "costituzionale. [...] i valori costituzionali sono in grado di costituire un "limite" reale alla sovranità popolare, e quindi al potere democratico, solo a condizione che anch'essi non siano semplicemente procedimentali, ma sostanziali, e di derivazione non solo democratica. [...] Per evitare di incappare in un'aporia logica insuperabile, [...] appare impensabile, infatti, che una procedura (la democrazia) venga limitata semplicemente ed esclusivamente da un'altra procedura (la Costituzione, almeno intesa secondo l'approccio puro o formalistico). [...] Le regole del gioco democratico devono essere ispirate e limitate, quindi, da valori sostanziali e metademocratici."

<sup>82</sup> Spadaro A., (2017), "Su alcuni rischi, forse mortali, della democrazia costituzionale contemporanea. Prime considerazioni" in *Rivista AIC – Associazione Italiana dei Costituzionalisti*, n. 1:2017

are called offers a pretext for raising the bar of goals. The European need to create a new order, different from that of the nation-states, gives the possibility to answer existential questions between past, present, and future. What balance between minority and majority is only one of the many questions that can be asked. For example, what is the alternative that allows individual freedom and collective freedom to coexist? But more importantly, is there such an alternative? These are core questions in this research as I believe that the European Union can be an attempt to find new answers to old questions.

### **3.3 The European democratic deficit**

We have seen that democracy brings with her several problems, many of which have repercussions on the functioning of governments. In the European Union, these inefficiencies have, over the years, served as an indication of a structural problem underlying the functioning of the European institutions. The underlying problem is the legitimacy of the Union's power of government. The political class can hold power in two ways, through imposition (e.g., by exercising military force, economic, etc.) or through consent. In the second formula, the political class acts based on a delivery received from voters. This one is the formula for the exercise of power chosen by democracy. Weber calls this form of legitimation "Internal Assent." This expression is particularly interesting and deserves to be explored further. "Internal" refers to the public forum that is not simply the square, the audience of governing politicians but also a place of debate, understood with a metaphorical meaning, that belongs to every individual. The forum is the place where opinions, ideas, preferences meet. This forum is also present in each individual who, in a second moment, reports his synthesis in the public forum where his preferences meet other citizens'. The deeper meaning of this procedure is to justify the decisions made: to link them back to shared values. In this way, citizens perceive collective decisions as "right" and "fair". This form of legitimacy, coming from within the psyche of every citizen, is by far the strongest. In reality, internal legitimacy is confused with external legitimacy (exercised, for example, by the law), but it is the former that guarantees stability to a government in the long run. In modern democracies, the public forum is no longer the square but the



parliament's arena. In this sense, the *dèmos* no longer has the power (understood as the possibility of exercising it) that it had in ancient democracies but it still holds the ownership of power. This ownership is the common thread that binds ancient and modern democracy. This ownership is the thread that binds ancient democracy to modern democracy and is the principle that enshrines the idea that the citizen has the freedom to choose and govern.

The reality, however, differs from theory. First of all, nowadays the justification for power comes mainly from the Constitution, not from the people. The purpose of the constitution is to place limits on the majority that would otherwise risk abusing power at the expense of minorities. The prevalence of an external source of legitimacy over an internal one (which remains but to a secondary extent) is risky. It creates a dangerous distance between the citizen and the government: the citizen perceives the government as unjust (he does not perceive as unfair the decisions the government makes but the very fact that it makes decisions that he perceives as far from his daily life). It is no coincidence, in fact, that many separatist/autonomist movements leverage precisely on the distance between government and citizens. The new leaders present themselves as close (often physically) to the interests and needs of the voters.

Second, in recent years we have witnessed a progressive weakening of parliaments in favor of executives, i.e., the representative bodies responsible for shortening the distance between the citizen and the state. This change in the balance further increases the distance highlighted earlier and creates a lack of legitimacy of political power. The direct consequence of this lack of legitimacy is an unstable political class (let's think of how many governments have not reached the end of their term) and unable of making strong decisions.

Moving to the European level, it is easy to realize how alarming is what is known as the "democratic deficit". The political forum is infinitely larger, both in terms of the number of citizens and in terms of geographic area. Moreover, Europe does not have a constitution capable, even from the outside, of legitimizing the work of its parliament. To identify the root of the problem, one must ask who, at the European level, holds the ownership of power? If in national democracies, at least on this question, there are no doubts (the *dèmos*), at the European level the answer is more

problematic. It is difficult to speak of a European People in the strict sense. Moreover, the Union was wanted by a group of politicians who, despite having received a mandate from their governments (and having thus been legitimized at the outset), were so small that it was difficult to speak of legitimization on a large scale. In the beginning, however, we must remember that Europe was an economic project and therefore required a much lower level of legitimacy than what it started to demand by becoming a political project with implications for identity and sovereignty. Nevola helps us to reconstruct what happened in this evolution. Without going into too much detail, for a long time, most have simply ignored the issue and those few academics who raised it from time to time. This indifference gave rise to the term "democratic insensitivity", which, according to Nevola, conceals two political-cultural factors: democratic elitism and democratic revisionism. The first factor refers to the complexity that would result from the active and real involvement of all European citizens that propels the elites to "a political action of a technocratic type". (This propensity is actually found even within the nation-states). Politicians did not begin to address this problem until the beginning of 2000 when the democratic issue entered the public agenda. From that moment on, the political debate focused on what was needed so that the Union does not stop at the "Maastricht Model" and therefore at a predominantly (and almost exclusively) economic integration.

«Three requirements were imposed on the others:

- improve the functioning of the European institutions [...];
- respond to the growing Euroscepticism [...];
- find democratic legitimacy for the European Union, its institutions, and its policy-making pretensions and practices.»<sup>83</sup>

The second factor, instead, refers to the evolution of democracy over the centuries and suggests the need for a revision of the doctrine that studies it.

Having identified the problem, we should now analyze what has been done to solve it, which can be summarized in small institutional reforms and constitutional attempts. The inadequacy of the measures adopted is well expressed in the words

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<sup>83</sup> Nevola G., (2007), *Democrazia, costituzione, identità. Prospettive e limiti dell'integrazione europea*, Torino, ed. Liviana

of Sacriste and Vauchez, regarding the consequences of the lack of legitimacy on economic policies:

«It is not enough to inject a "dose" of democracy. We cannot be satisfied with the modest technical adjustments proposed by the impressive doctrine, nor with the reports, roadmaps, and other memoranda proposing methods to "fix the Euro" and calling for formulas in which the imprecision of the terms clashes with the vagueness of the objectives, the strengthening of democratic governance or the greater involvement of national parliaments, etc. The challenge is completely different. To get out of the context of an eclipsed democracy, it is not enough to think of parliaments as instances of validation of deliberations and decisions taken elsewhere and in their absence.»<sup>84</sup>

The wish for a reform of the parliament is present in the words of several scholars. Simone Benvenuti makes an interesting analysis that focuses on the concept of democratic disconnection rather than democratic deficit:

«The metaphor of disconnection - [...] where the deficit evokes an absence -declines the lack of democratic legitimacy in the form of a gap to be healed between the European headquarters -of the political decision and the State headquarters -of democratic legitimacy.»<sup>85</sup>

Starting from this concept, he analyzes two processes that have taken place as a result of the transformation of Europe in the 1990s: the increase of the powers of the European Parliament (through the Maastricht, Amsterdam, and Lisbon Treaties) and the involvement of national parliaments which is still a marginal process.

«According to Gavin Barrett, national parliaments “are outsiders to the European level policymaking process, being neither geographically close to the locus of EU decision-making nor institutionally involved in the actual process of decision-making”.»<sup>86</sup>

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<sup>84</sup> Sacriste G., Vauchez A., (2020) L’“eurizzazione” dell’europa. Il percorso di una politica costruita “fuori le mura” dinanzi alle nuove questioni democratiche europee. Parlamenti e democrazia, Bologna, edit. Il Mulino. Original Version: “non è sufficiente iniettare una «dose» di democrazia. Non ci si può accontentare dei modesti adeguamenti tecnici proposti dall’imponente dottrina né dei reports, delle tabelle di marcia e degli altri memorandum che propongono metodi per “aggiustare l’euro (fix the Euro) e che richiamano formule in cui l’imprecisione dei termini si scontra con la vaghezza degli obiettivi, con il rafforzamento della governance democratica o con un maggiore coinvolgimento dei Parlamenti nazionali, ecc. La sfida è completamente diversa. Per uscire dal contesto di una democrazia eclissata, non ci si può accontentare di pensare ai Parlamenti come istanze di convalida delle deliberazioni e delle decisioni prese altrove e in loro assenza”

<sup>85</sup> Benvenuti S., (2019) “Parlamenti nazionali, legittimazione democratica e democrazia rappresentativa nell’Unione Europea” in Saggi-DPCE Online, 4:2019, Original Version: “La metafora della disconnessione - [...] laddove il deficit evoca un’assenza –declina la carenza di legittimazione democratica sotto forma di uno iato da sanare tra la sede –europea –della decisione politica e la sede –statale –della legittimazione democratica.”

<sup>86</sup> Barret G., (2018), The evolving role of national parliaments in the European Union, Manchester, edit. Manchester University Press

The interesting aspect is the reflection on the type of legitimacy that their further involvement could bring:

«It does not strengthen the incoming democratic legitimacy, which concerns the institutional complex that takes the relevant political decisions. It acts on the procedural legitimacy, which relates to the character of the deliberative process prior to the decision or its ex-post correction.»<sup>87</sup>

The conclusion, therefore, seems to be the need to find a way of involving the European citizen directly or, in any case, not through the national parliaments.

### **3.4 The representative issue**

In the modern state, representation is the instrument that gives legitimacy to the work of the entire state organization. To complete the analysis of democracy and the functioning of her logic, it is also necessary to analyze the system of representation. As we shall see, it is a mechanism with several problems, some of which affect the level of democratic legitimacy of states or, at the European level, of the Union as a whole. This concept is embedded in the conceptual framework that constitutes the architecture of the nation-state. It is not possible to analyze it as separate from the notions of power and sovereignty but, in some ways, also from a specific conception of People. In this analysis, I will focus only on the concept of modern representation, trying to lay the groundwork to follow in the following paragraph Duso's attempt to overcome this system in favor of a new political order. Representation forms, in reality, there have been even earlier (think, for example, of the representation by classes in France of the *ancient regime*). The representation system as intended nowadays came into being, together with the nation-state, to allow the political participation of individual citizens in a political context which, due to its size and plurality, could no longer allow direct participation on the model

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<sup>87</sup>Benvenuti S., (2019) "Parlamenti nazionali, legittimazione democratica e democrazia rappresentativa nell'Unione Europea" in *Saggi-DPCE Online*, 4:2019, Original Version: "non potenzia la legittimazione democratica in entrata, che riguarda il complesso istituzionale deputato ad assumere le decisioni politiche rilevanti. Essa agisce bensì sulla legittimazione procedurale, che attiene ai caratteri del processo deliberativo preliminare alla decisione o a una sua correzione ex post."

of the Greek *polis*. Upon closer inspection, it becomes evident that allowing citizen participation is only a superficial goal if not almost a consequence of a mechanism designed to address deeper needs. As explained by the philosopher, the functions of the system of representation are mainly two.

The first objective is the creation of a true collective dimension. It is easily confused with allowing citizens to participate in political life, but it is much more. Without the representation system, the body of citizens would remain a collection of individualities difficult to define People. In this sense, modern democracy could not exist without representation. This representation process makes that mass of individuals a single collective body. This mechanism not only brings out the collective will but builds it. The basic unit in the system of representation is the individual. At the same time, the basic unit in the democratic system is the collective, the people. The modern representation system creates the collective will through the voting process. Such collective will is much more than the synthesis of each individual's preference. The fact that the basic unit is the individual is the main difference between modern representation and previous historical representation's experiences. (I refer, for example, to the representation system by classes in France of the *ancient regime*).

«It is no longer a question of representing parts of society or individual the instance constituted by the royal figure, but rather to express the sovereign will of the nation, i.e. the will of the collective body, which is made up of all individuals.»<sup>88</sup>

Apparently, representation has historically been able to find answers to questions that have moved the thinking of various scholars and on which this work builds. What is the relationship between the multitude of individuals and the singularity of the people? What is the alternative that allows individual freedom and collective freedom to coexist? But more importantly, is there such an alternative? These questions are particularly relevant when considering the scope of possible answers. The same many-to-one relationship that is found between citizens and the community within the nation-state is also found, albeit with some differences, in

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<sup>88</sup> Duso G., (2003), “La rappresentanza politica. Genesi e crisi del concetto”, Milano, edit. Franco Angeli, Original version: “Non si tratta più di rappresentare parti della società o bisogni particolari, di fronte all’istanza costituita dalla figura regale, ma piuttosto di esprimere la volontà sovrana della nazione, cioè la volontà del corpo collettivo, che risulta formato da tutti gli individui”

the relationship between many (nation-states) and one (European Union). It is essential to resolve the inconsistencies identified at the state level: these would inevitably appear at the European level, too. Here, - due to the further expansion of the political arena - such inconsistencies are much more complex to resolve. In Duso's opinion, a solution without a radical change of direction would not be decisive. To explain this need, he takes up a line of Hegelian thought:

«The logical problem that jus-naturalistic dualism would not be able to solve is that of the many-to-one relationship. On the one hand, the multiplicity of individuals, which is at the basis of the construction, requires the principle of unity to resolve conflict and anarchy, but on the other hand, the unity which characterizes the juridical state inevitably manifests itself in relation to the many individuals who become subjects, in the form of otherness, of otherness which an otherness that seems to deny that value of the individual from which we started, as it is experienced by individuals as a relationship of domination.»<sup>89</sup>

In the collective will creation, the plurality (richness and specificity) of the will of individuals is lost. This loss - not only demonstrates an inefficiency of the representation system - but also generates several problematic repercussions in terms of identity. Individual citizens end up no longer identifying themselves with the collective will that is perceived as 'other' from them.

The second objective of the representation system is the legitimation of the exercise of power. But why the need to legitimize power? Legitimacy guarantees internal assent to government action: this mechanism facilitates the maintenance of law and order. The alternative would be the use of (often violent) imposition that is not internally legitimate. In addition, culture also plays a role: Western societies morally accept the use of force as a means of defense only. Here, political forces are more likely to seek internal assent. The leading question for those in power is: what is the advantage of seeking an internal consensus? Seeking internal consent rather than the use of force is more binding: politicians have an obligation towards

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<sup>89</sup> Duso G., (2003), "La rappresentanza politica. Genesi e crisi del concetto", Milano, edit. Franco Angeli, Original version: "Il problema logico che il dualismo giusnaturalista non riuscirebbe a risolvere è quello del rapporto multi-uno. Da una parte la molteplicità degli individui, che sta alla base della costruzione, richiede il principio dell'unità per risolvere il conflitto e l'anarchia, ma dall'altra l'unità, che caratterizza lo stato giuridico, si manifesta inevitabilmente, nei confronti dei molti individui che diventano sudditi, nella forma dell'alterità, di un'alterità che sembra negare quel valore dell'individuo da cui si è partiti, in quanto è vissuta dai singoli come un rapporto di dominio"

their electorate. But, on the other side, it is less strenuous in the long run (after conquering a country militarily, one must also maintain it). Beyond this, the great advantage is the possession of *legitimate* power. In Weber's theory of power, when power meets legitimization, it becomes an *authority*. This is the idea behind the representation system. I would like to briefly review Weber's theory because it is from this theory that Duso intends to distance himself in formulating his alternative. It is helpful to know this theory since it is the point from which Duso deviates. According to Weber, the three main sources of legitimacy he identifies are:

1. tradition (the logic of "it has always been that way");
2. Charisma (appeals to divine grace, it is a kind of legitimization from above);
3. Legality-rationality (the system of representation is mainly here).

There are, in fact, other forms of legitimation of power: first and foremost, strength, but also number (the idea of democracy recalls this method - the problems dictated by the dictatorship of the majority derive from here) and the quality of the subjects. In reality, the different forms contribute (sometimes together) to legitimize political power. What is relevant is that the legitimation is present to connect the concept of power to that of sovereignty. Duso explains it through these words:

«The modern concept of representation shows not only the mode of exercise of political power but the procedure of its genesis. The political body to which power belongs is conceived through a process of legitimation in which authority is founded: it is the process of authorization in which everyone becomes the author of the actions that the actor, the representative, that is, the one who exercises power, will perform. [...] The foundation of power from below is thus the secret of the birth of sovereignty.»<sup>90</sup>

This 'authorization process' actually hides at least three problems.

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<sup>90</sup> Duso G., (2010), "Pensare il federalismo: tra categorie e costituzione" in *Come pensare il federalismo? Nuove categorie e trasformazioni istituzionali*, Milano, edit. Polimetrica, Original version: "Il concetto moderno di rappresentanza non mostra solo la modalità di esercizio del potere politico, ma la procedura della sua genesi. Il corpo politico a cui appartiene il potere è pensato attraverso un processo di legittimazione in cui viene fondata l'autorità: è il processo di autorizzazione in cui tutti si fanno autori delle azioni che compirà l'attore, il rappresentante, cioè colui che esercita il potere. [...] La fondazione dal basso del potere è dunque il segreto della nascita della sovranità. [...]"

The first is related to the role of the representative. The political mandate - the electors give to the representative during the elections - is bounding. This constraint is called "mandate dependency": the representative must stick to what he promised (during the election campaign), or he will end up no longer being representative of the represented. Nowadays, this constraint seems increasingly fragile: politicians often break their promises or keep them just long enough to ensure re-election in the next term.

The problem of the "mandate dependency" goes hand in hand with that of the "independence of the representative". If the latter's independence is lost, he will no longer perform his task properly. Antonio Campati helps us to see a possible way out of this tangle:

«The "puzzle" of the contrast between mandate and independence only arises when we think of the representation of persons, since they may have different opinions as to what is the best benefit to be derived from a given action and thus possibly clash with the representative's decision. If, on the other hand, the notion of interest is introduced, it is more likely that some of the fog surrounding the relationship between obligation and mandate will be lifted.»<sup>91</sup>

From his words emerges the need to go beyond the instance of the individual in some way. We can see the idea of a representation not based on the individual that Duso would later develop.

The parties-ideology to which these representatives belong constitutes an aspect of this constraint. The party system is very influential in the representation system, and - according to Duso - the lack of awareness of their mediating role and functioning is one of the obstacles to overcome them.

In the parliamentary system, citizens vote for the parliament through the parties; the parliament, thus legitimized, appoints the President of the Republic. The citizens in this process do not legitimize the government.

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<sup>91</sup> Campati A., (2018), "Democrazia e rappresentanza politica. Un'alleanza sempre più incerta?" in *Open Journal Edition*, 8:2018, Original Version: "il «rompicapo» della contrapposizione tra mandato e indipendenza si verifica solo quando pensiamo alla rappresentanza *di persone* dal momento che queste possono avere opinioni diverse su quale sia il migliore beneficio da trarre da una determinata azione e quindi eventualmente scontrarsi con la decisione del rappresentante. Invece, se si introduce la nozione di *interesse* è più probabile che si riesca a dipanare un po' della nebbia che circonda il rapporto tra vincolo e mandato."



«The President of the Republic appoints the President of the Council of Ministers and, on his proposal, the ministers».<sup>92</sup>

In order to obtain legitimacy, therefore, the government 'asks for confidence' from parliament. The whole representation system passes through the parties, which is why we often hear the term "party state". The role of parties ends up being disproportionate. It is precisely from this imbalance that phenomena like *populism* and *leaderism* emerge. Duso argues that these spasmodic searches for legitimacy:

«are not mere degenerations of representative democracy, but are rooted in the very logic of modern representation.»<sup>93</sup>

The constitutional apparatus does not seem to safeguard a healthy balance of powers and would therefore require a thorough overhaul. The Italian Association of Constitutionals is aware of this and, on the subject of the phenomenon of populism, says:

«If democracy continually produces the protest of those who do not feel adequately represented, then populism is the form of protest that generally complains about the deafness of the ruling 'elites' to the needs of the 'people', i.e. the governed as a whole.»<sup>94</sup>

Giovanni Sartori thus explains how the electoral dynamics that the constitution fails to correct lead to the manifestation of what is known as the "tyranny of the minority":

«The single-member constituency gives life and strength to the 'blackmail parties'. The antecedent is that none of our major parties - and this is a legacy of proportionalism - is capable of winning able to win alone in almost any (single-electoral) constituency. And since winning or losing a constituency can be just a few percentage points, any small party which collects as many votes as necessary to make the strongest party lose (if it presents itself), can blackmail it with this argument I will withdraw here, but in

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<sup>92</sup> Italian Government, "La formazione del governo", Official website: <https://www.governo.it/it/il-governo-funzioni-struttura-e-storia/la-formazione-del-governo/186>

<sup>93</sup> Bozzon M., Comazzetto G., (2021) "Crisi della rappresentanza, federalismo ed europa. Intervista a Giuseppe Duso" in *Pandora Rivista Online*, Original Version: "non sono semplici degenerazioni della democrazia rappresentativa, ma hanno la loro radice nella logica stessa della rappresentanza moderna."

<sup>94</sup> Manetti M., (2017), *Relazione al Convegno AIC "Democrazia, Oggi"*, Modena, Original Version: "Se la democrazia produce continuamente la protesta di coloro che non si sentono adeguatamente rappresentati, il populismo è quella forma di contestazione che lamenta in generale la sordità delle "élites" governanti rispetto alle esigenze del "popolo", ossia dell'insieme dei governati"

exchange, you will let me win elsewhere. And so small parties that would not win not even one seat with their votes, they end up with fifty.»<sup>95</sup>

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<sup>95</sup> Sartori G., (2013), “Verso una Costituzione incostituzionale?”, Appendice Alla 5<sup>a</sup> edizione di “Ingegneria Costituzionale Comparata” di prossima pubblicazione per l’editrice “Il Mulino”, Original Version: “il collegio uninominale dà vita e forza ai “partitini ricatto”. L’antefatto è che nessuno dei nostri maggiori partiti – e questo è un lascito del proporzionalismo – è in grado di vincere da solo in quasi nessun collegio (uninominale). E siccome per vincere o perdere un collegio possono bastare pochi punti percentuali, qualsiasi partitino che raccoglie tanti voti quanti bastano per far perdere (se si presenta) il partito più forte, è in grado di ricattarlo con questo argomento: io mi ritiro qui, ma in cambio tu mi fai vincere altrove. E così partitini che non vincerebbero, con i loro voti, nemmeno un seggio si ritrovano ad averne cinquanta.

## 4. FEDERALIST PERSPECTIVES

«The faculty of deluding ourselves that today's reality is the only true one, if on the one hand it sustains us, on the other it plunges us into an endless void, because today's reality is destined to discover tomorrow's illusion. And life does not end. It cannot conclude. If it concludes, it is over.» Luigi Pirandello - *One, no one and One hundred Thousand* <sup>96</sup>

### 4.1 Duso's federalism

One of the risks of writing a critique of established concepts is to appear defeatist: pointing out aporias, inconsistencies, and anachronisms without showing where this type of reflection leads is not constructive. The first point of arrival, which is also a point of departure, is the need to identify and create an alternative political dimension, moving away from the logic of thought in which we are currently involved. No alternative will ever be the only one possible. Among the possible options, there is the risk that they remain anchored in the plane of thought and do not find a concrete application.

Giovanni Duso, an Italian philosopher, proposes a concrete alternative. He provides us with both the analysis he went through and the practical instructions for new politics. Duso's proposal for the European Union is to move toward a new form of federalism that has never yet found application, and we cannot predict whether it ever will. However, this *federalism* has nothing to do with a federation of states (like the USA - the first reference to the word *federalism*), nor with a federal state (such as Switzerland). On the contrary, Duso appealing to the thought of Ortino and Beaud distances himself from previous federalist experiences:

«almost all the realities that had had a federalist genesis ended up assuming the guise of the state with its centralist logic and the loss of the function of plurality.»<sup>97</sup>

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<sup>96</sup> Pirandello L., (1926), *Uno nessuno e centomila*, Milano, edit. Rizzoli, Original Version: “La facoltà d’illuderci che la realtà d’oggi sia la sola vera, se da un canto ci sostiene, dall’altro ci precipita in un vuoto senza fine, perché la realtà d’oggi è destinata a scoprire l’illusione domani. E la vita non conclude. Non può concludere. Se conclude, è finita.”

<sup>97</sup> Duso G., (2010), “Pensare il federalismo: tra categorie e costituzione” in *Come pensare il federalismo? Nuove categorie e trasformazioni istituzionali*, Milano, edit. Polimetrica, Original version: “la quasi totalità delle realtà che avevano avuto una genesi federalistica hanno finito per

The originality of his thought resides in having painted a possible future for the Union, without referring to any of the pasts we have experienced. There are no similar historical precedents. A big difference between the new federalism and the examples just mentioned is the cultural framework of reference. Duso's ambitious aim is to go beyond Weber's traditional theory of power to find a new balance.

«We shall see that federalist thinking implies overcoming the very concept of legitimate power and the formal despotism that underpins it.»<sup>98</sup>

To understand this new federalism, we need to go beyond the idea of representation we have seen in the previous chapter. We concluded that representation brings together many instances and transforms them into a single collective will. This mechanism makes the *demos*, as a unitary body, sovereign; in doing so, political plurality is lost. What Duso wants to achieve is a political order that safeguards plurality: not the plurality of opinion (the modern one - still present in the collective will) but the kind of plurality that "implies a difference between the parts of the political body":

«Plurality is certainly not that of individuals as such, nor is it identified with the pluralism of opinion: modern pluralism of opinions goes hand in hand with the political unity of sovereignty. On the contrary, plurality implies a difference between the parts of the political body: a difference that cannot be the infinite and indefinite difference between individuals, but precisely that expressed by groups: differences in needs, experiences, and knowledge, which must be expressed politically.»<sup>99</sup>

Electoral abstentionism is not a symptom of the citizen's lack of interest in politics, but of the fact that the citizen does not perceive the election as helpful for his active

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assumere la veste dello Stato con la sua logica centralistica e con la perdita della funzione della pluralità."

<sup>98</sup> Duso G., (2010), "Pensare il federalismo: tra categorie e costituzione" in *Come pensare il federalismo? Nuove categorie e trasformazioni istituzionali*, Milano, edit. Polimetrica, Original Version: "Vedremo che un pensiero federalista implica il superamento dello stesso concetto di potere legittimo e del dispotismo formale che lo sorregge"

<sup>99</sup> Bozzon M., Comazzetto G., (2021) "Crisi della rappresentanza, federalismo ed europa. Intervista a Giuseppe Duso" in *Pandora Rivista Online*. Original Version: "La pluralità non è certo quella degli individui in quanto tali, né si identifica con il pluralismo delle opinioni: il pluralismo moderno delle opinioni va di pari passo con l'unità politica della sovranità. La pluralità implica invece differenza tra le parti del corpo politico, una differenza che non può essere quella infinita e indefinita che c'è tra gli individui, ma appunto quella espressa dai gruppi: differenze di bisogni, esperienze e saperi, che si devono esprimere politicamente."

participation. Citizens do not feel represented; instead, they manifest themselves through other forms of aggregation. This is the plurality that Duso wants to safeguard. Recalling Ronsvallon, he explains:

«In manifestations of contestation, resistance and verification of institutional decisions, groups of citizens tend to make themselves heard [...]: that is, to express political action, not by authorizing someone to act, but precisely in their role as governed.»<sup>100</sup>

It is difficult to institutionalize such participation without running into the risk of falling into the vices of representation; here is where the need for constitutional transformation comes in. Duso's proposal takes the form of a Federal general assembly. At first glance, this might look like a parliament but, in fact, it is the exact opposite. In the nation-state, parliament is the place for collective and unitary decision-making - it is the place where sovereignty takes place. In the Federal assembly, no unified decision takes place, but an *agreement* between different positions. This is how plurality actively intervenes in politics. It is a relationship among plural actors who produces decisions. It is not the sovereign decision of which Smith spoke, nor Weber's exercise of power (vertical, hierarchical, and rigid): it's an overcoming of the majority concept. This is why many federalists refer to the unanimity method:

«It is a decision conditioned from above by the rules of justice recognized by the federal assembly, and from below by those aggregations that are the territorial autonomies.»<sup>101</sup>

The assembly, through the agreement, produces a decision that can no longer be called a law. Unlike a law, this decision is not a command to the people: it is a decision that appeals to the idea of justice. It is not the government that determines this justice but the collegial body where the plurality of the governed is expressed. This is the process through which federal legitimacy is established.

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<sup>100</sup> Duso G., (2010), "Pensare il federalismo: tra categorie e costituzione" in *Come pensare il federalismo? Nuove categorie e trasformazioni istituzionali*, Milano, edit. Polimetrica, Original version: "Nelle manifestazioni di contestazione, resistenza e verifica delle decisioni istituzionali, i gruppi di cittadini tendono a farsi sentire: cioè ad esprimere azione politica, e ciò non autorizzando qualcuno ad agire, ma proprio nella loro figura di governati."

<sup>101</sup> Duso G., (2010), "Pensare il federalismo: tra categorie e costituzione" in *Come pensare il federalismo? Nuove categorie e trasformazioni istituzionali*, Milano, edit. Polimetrica, Original Version: "una decisione condizionata dall'alto dalle regole di giustizia riconosciute dall'assemblea federale, e dal basso da quelle aggregazioni che sono le autonomie territoriali"

In this federalism, the executive power changes too. The need for legitimacy in representative democracy means that the compromise among political parties affects both the parliament and government. Today's parties (because of the representation system) are no longer able to protect political plurality. The direct effect is the concentration of power on the government. In European federalism, the function of government:

«The more plural the assembly, the more unitary the government action must be. However, as I have said, this *depends* on the assembly and, to the greatest extent, on the forms of organization of the members.»<sup>102</sup>

The government *follows* the assembly. This new architecture makes it possible to rethink conflict: it is no longer something to be eliminated (by majority law) but a mode of relationship that bears fruit in agreement. This is one of the most fascinating aspects of this perspective as well as the element that allows us to extend the reasoning to broader contexts.

The "forms of the member organization," the "groups" that interact "from below" of which Duso speaks, deserve further study. The philosopher seeks an overcoming of parties. For example, lobbies and interest groups come close to the type of organization he is talking about. An even more interesting organizational model - which has been gaining momentum in recent years and deserves further study - is the example of Volt Europa. Volt Europa is the first pan-European political party, founded in 2017 by Andrea Venzon. The first relevant aspect is that it is not a national party that has then established itself at the European level, but it is a party thought - since its birth - to be European. Volt exceeds does not "cross" the national border: it asserts itself in a dimension above it. From a legal point of view, Volt is constituted as an association of parties and persons, whose guidelines are contained in a Statute<sup>103</sup>. It recalls the Treaty on European Union, but, on the other hand, in promoting many of the objectives contained therein, goes beyond several concepts.

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<sup>102</sup> Bozzon M., Comazzetto G., (2021) "Crisi della rappresentanza, federalismo ed europa. Intervista a Giuseppe Duso" in *Pandora Rivista Online*. Original Version: "è necessaria una funzione di governo che deve essere unitaria, forte: quanto più è plurale l'assemblea, tanto più deve essere unitaria l'azione di governo. La quale però, come ho detto, dipende dall'assemblea e si confronta al massimo con le forme di organizzazione dei membri"

<sup>103</sup> Volt Europa "Statutes of Volt Europa AISBL", Official website, visited in 05/03/2022, available at the link: <https://assets.volteuropa.org/2020-11/Statutes-of-Volt-Europa-AISBL.pdf>

«The Association is open to natural persons, regardless whether they are citizens of a member state of the EU or not, and legal persons that are legally incorporated under the law of the member state of the EU in which they have their seat.»

By opening the doors of the association not only to European citizens but to natural persons too, regardless of their citizenship, Volt transcends the boundaries and constraints of the nation-state. In addition, among the various goals this association promotes:

«a strengthened European identity, complementary to the national and local ones, to foster a sense of solidarity, cooperation, and belonging in the European people, enabling a common future of sustainable peace, shared prosperity, and international relevance.»

If we read this sentence in conjunction with the previous article, this purpose is extremely relevant and innovative. First of all, it defines the relationship between European identity and national identities (which, as seen in the Copenhagen conference of 1973, had remained to be defined and then never revised). Secondly, and most important, being a movement released from belonging to a state (and therefore from citizenship and therefore from the legal apparatus of that state), Volt is implementing a new form of representation, close, in my opinion, to what Duso proposes. It neither rejects nor disavows national identities but makes them non-binding. The membership requirement is not juridical (citizenship), but it is the sharing of purposes and interests that the association wants to implement. It is evident that the emergence of an organization capable of overcoming the concepts of national sovereignty is not sufficient to reform the entire structure of representation. A broader reformulation (and, at least partially, from above) would be necessary. However, it is precisely from this seed that one can sense the concreteness and feasibility of Duso's proposal. In this sense, Volt constitutes the link between a theory (to which application is still extremely distant) and a reality that needs to reform itself.

#### **4.2 Other perspectives**

Duso's perspective is something new in the political landscape. For this reason, the scenario he proposes is one of the most innovative, not least because it is free of reference to other past political experiences. However, it is not the only possible alternative. We cannot even delude ourselves that the future of the Union will be so

extraordinary (without value judgments, far from the orderly political experiences that dominate our daily lives). For the sake of completeness, it is worth knowing the other possible developments. Many are not innovative and can hardly be called an 'evolution' of today's European Union. But these are possible scenarios too. It is from this awareness that the urgency of the alternative derives. I will focus on three main possible developments.

The first (and in my opinion also one of the most likely) is a path of inertia. In this scenario, the Union will continue to focus on secondary issues that will absorb most of the energies and efforts of its institutions. The definition of these issues as 'secondary' is linked to a perspective that gives precedence to the political/conceptual dimension over the economic/operational one. I am using this perspective in this thesis because of a specific reason. As we have seen concerning the challenge of European integration, political deepening is a choice of the Union's leaders. At the same time, the various failures (first and foremost those of the constitutional process) show, if not a rather timid will, at least a weak stance regarding the political deepening. The efforts made in the economic sphere have been much more shared and effective. Of course, the political sphere involves particular risks which, if not properly thought through, could lead to losing more than one can gain. Moreover, objectives such as a European Constitution's adoption might seem almost utopian today. However, we must not forget that other goals also seemed a mission impossible at first. The free movement of goods, persons, and capital is the best example. It is not plausible to think of an open renunciation of the objective of political deepening. On the other hand, it is easy to think of a feeble reaffirmation of these intentions, reduced to mere rhetoric, while the institutions concentrate their efforts on concluding economic agreements. In this perspective, the ideal development of the Union will be left to political philosophers, far from the political tables. It was precisely the philosophical collectives that supported Duso in formulating his federal Europe. However, inertia is never a particularly fruitful motor, and it is hard to imagine that this situation can be last long. On the other hand, this is the engine that has driven Europe in recent years, particularly after the failure of Laeken. The consequences of such a path are twofold. The first is that an event on a global scale shakes the entire European



structure (and its concepts) to its foundations and lays the foundations for a revolutionary reformulation. The tragic events of the last period in Ukraine could be a starting point. The second, more likely, is that by continuing with inertia, the Union will eventually disintegrate, allowing the centrifugal forces that dominate it and the spiral of Euro-scepticism that poisons it to win. Under this interpretation, Brexit would be the first break of a long wave of divorces with no return.

The second possible development is an economic one. In the words of Nevola<sup>104</sup>, this scenario recalls the Hanseatic League. In antiquity, the Hanseatic League was a trading alliance founded in about 1350 that lasted for five hundred years. Several cities were part of it: together, they held a monopoly on trade in northern Europe and the Baltic Sea from the late Middle Ages until the beginning of the modern era. Today, the 'New Hanseatic League' is an informal alliance composed of the Netherlands, Denmark, Finland, Sweden, Ireland, Estonia, Latvia, and Lithuania. 'Informal' in the sense that there is no treaty to formalize the alliance. The respective finance ministers meet periodically to discuss economic matters and to - in fact - define some common lines. At the origin of this practice, there is a proximity of interests. According to the Professor, if this scenario were to extend to the whole European Union, it would be a retreat from the actual level of political integration. He states:

«This is ultimately the model to which the British historical eye continues to look in particular: a (very) enlarged Europe of the common economic market and a system of legal rules to support it.»<sup>105</sup>

It should be unmistakable that Nevola wrote his book in 2007, before the Brexit, and this informal league has only existed since 2017. Opposition to the political integration process and to the transfer of powers are two of the main reasons for Britain's exit from the EU. Vissol Thierry, economist and historian, underlines:

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<sup>104</sup> Nevola G., (2007), *Democrazia, costituzione, identità. Prospettive e limiti dell'integrazione europea*, Torino, ed. Liviana

<sup>105</sup> Nevola G., (2007), *Democrazia, costituzione, identità. Prospettive e limiti dell'integrazione europea*, Torino, ed. Liviana, Original Version: "Si tratta, in definitiva, del modello al quale continua a guardare in particolare l'occhio storico britannico: un'Europa (molto) allargata del mercato economico comune e di un sistema di norme giuridiche a suo sostegno."

«This coalition wants a strengthening of the rules on economic policies and opposes both a transfer of competences and a Eurozone balance sheet, all measures that could meet a lot of criticism from Eurosceptics.»<sup>106</sup>

The approach of this league is not only related to the economic sphere but also to the method used to develop this sphere. A more Community-oriented approach, such as a common economic budget, implies a different view. It was France and Germany (which ideally constitute the opposite pole from the Nordic countries) in 2018 that made this latest proposal. The topic has entered the debate between Eurosceptics and Euro-optimists precisely because it implies the transfer of a slice of national sovereignty to Europe.

«While the Maastricht Treaty adopted the opposite position, based on the preservation of fiscal sovereignty at the national level and on a surveillance model, the sovereign debt crisis and the difficulty of ensuring the stability of the euro area have inevitably reaffirmed the desirability of creating an ad hoc budget for the euro area in order to overcome the asymmetry between economic and monetary union.»<sup>107</sup>

The last possible development for the European Union, according to Nevola<sup>108</sup>, is a "neo-imperial" scenario. He does not develop this perspective further in his book, merely saying that it is difficult to imagine what results from such a project could achieve. On the other hand, Davide Denti (PhD in International Studies at the University of Trento working on European integration in the Western Balkans) explains it very well:

«In what sense, empire? Not necessarily in the critical sense of Hardt and Negri's Imperium. Empire, according to Beck and Grande (2011), is that international organization of authority that has opposite characteristics to the Westphalian system of nation-states. Where the Westphalian system is made up of symmetrical and

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<sup>106</sup> Thierry V., (2019), "l'Europa alla prova del voto: risultati e sfide per il futuro" in *Coordinamento Riviste Italiane di Cultura 6:2019*, Original Version: "Questa coalizione vuole un rafforzamento delle regole in materia di politiche economiche e si oppone sia a un trasferimento di competenze sia ad un bilancio della zona Euro, tutte misure che potrebbero rispondere a molte critiche degli euroscettici."

<sup>107</sup> Lionello L., Santini A., (2019) "La proposta franco-tedesca per a creazione di un bilancio della zona euro: criticità e prospettive" in *The federalist a political review*, Original Version: Mentre nel Trattato di Maastricht veniva adottata una posizione opposta, fondata sulla conservazione della sovranità fiscale a livello nazionale e su un modello di sorveglianza, la crisi del debito sovrano e la difficoltà di garantire la stabilità della zona euro hanno inevitabilmente riaffermato l'opportunità di creare un bilancio *ad hoc* per la zona euro al fine di superare l'asimmetria tra l'unione economica e l'unione monetaria."

<sup>108</sup> Nevola G., (2007), *Democrazia, costituzione, identità. Prospettive e limiti dell'integrazione europea*, Torino, ed. Liviana

unintegrated units, i.e. a community of formally equal and independent states (cf. the UN system), empire combines the territorial integration of its constituent units with asymmetry in their relations: these constituent units are formally, as well as substantially, unequal and linked by a relationship between the center and the peripheries. In so doing, the empire also differs from the world state (symmetrical and integrated) and the hegemonic order (asymmetrical and non-integrated).»<sup>109</sup>

This solution, in some ways 'easy' because it already has a historical precedent (unlike the federal model proposed by Duso), runs counter to the Union's current objectives. Moreover, according to Zelionka: «the imperial form is perhaps the only one capable of effectively managing the current levels of diversity and pluralism». <sup>110</sup> I think Duso's federal proposal also succeeds in bringing peace between diversity and pluralism. Despite the differences, what the federal model and the neo-imperial model have in common is the recognition of the urgent need to overcome the 'nation-state' model.

It is impossible to say with certainty which path Europe will take in the near future. However, we must not think that a change - even a radical one - of the European political structure should mean the denial of what we have today. In the 30's, before the birth of the union,

«Benedetto Croce wrote [...] already in every part of Europe we can see the germination of a new conscience, of a new nationality (because nations are not natural data, but states of conscience and historical formations); and in the same way that, seventy years ago, a Neapolitan from the old Kingdom or a Piedmontese from the subalpine kingdom became Italian, not by denying their previous being but by raising it and resolving it in that new being. So the French, Germans, and Italians and all the others will rise up as

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<sup>109</sup> Denti D., (2014), "Unione europea: il tempo dell'impero" in *East Journal*, Original Version: "In che senso, impero? Non necessariamente nell'accezione critica dell'Imperium di Hardt e Negri. Impero, secondo Beck e Grande (2011), è quell'organizzazione internazionale dell'autorità che ha caratteristiche opposte al sistema westfaliano di stati-nazione. Laddove il sistema westfaliano è formato da unità simmetriche e non integrate, ossia una comunità di stati formalmente paritari e indipendenti (cf. il sistema ONU), l'impero combina l'integrazione territoriale delle sue unità formative con l'asimmetria nelle loro relazioni: tali unità costitutive sono formalmente, oltre che sostanzialmente, ineguali e legate da una relazione tra centro e periferie. Così facendo, l'impero si differenzia anche dallo stato mondiale (simmetrico e integrato) e dall'ordine egemonico (asimmetrico e non integrato)."

<sup>110</sup> Denti D., (2014), "Unione europea: il tempo dell'impero" in *East Journal*, Original Version: la forma imperiale è forse l'unica in grado di gestire efficacemente gli attuali livelli di diversità e pluralismo."

Europeans and their thoughts will address Europe and their hearts will beat for her as before for the smaller homelands, not forgotten, but better loved. »<sup>111</sup>

### 4.3 Some further considerations

The red thread of this paper is the search for an alternative point of view: an alternative for the future to the European Union of yesterday and today, an alternative to the nation-state, an alternative to the concepts of power and sovereignty, an alternative to democracy as understood today. The alternative I am looking for is first ideological and then concrete and stems from two findings.

The first push stems from the daily perception of a widespread nationalist feeling. Europeanism is limited to a few academic circles and narrow political arenas. This perception derives in part from my belonging to a specific state; it is relevant to underline that the perception of a citizen of another EU country might be different:

«Among the founding countries of the EU, Italy is the only one where an absolute sovereignist majority wins and is in power, with negative consequences on its influence.»<sup>112</sup>

The spontaneous question that arises is whether the political class, having an interest in carrying out a specific distribution of power, tends to convey a sovereignist message. The question on the other side of the medal is whether, on the contrary, it is the people who, under the nationalist sentiment, elect sovereignist representatives. These are just two among the possible causes of the Euroscepticism that we breathe every day in Italy, and one does not exclude the other. There are several answers to these questions, but they all point to a European difficulty. The data on the last European elections show that the Union - as it stands today - cannot

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<sup>111</sup> Nevola G., (2007), *Democrazia, costituzione, identità. Prospettive e limiti dell'integrazione europea*, Torino, ed. Liviana, Original Version: "Scriveva Benedetto Croce [...] già in ogni parte d'Europa si assiste al germinare di una nuova coscienza, di una nuova nazionalità (perché [...] le nazioni non sono dati naturali, ma stati di coscienza e formazioni storiche); e a quel modo che, or sono settant'anni, un napoletano dell'Antico Regno o un piemontese del regno subalpino si fecero italiani non rinnegando l'esser loro anteriore ma innalzandolo e risolvendolo in un nuovo essere. Così francesi, tedeschi, e italiani e tutti gli altri s'innalzeranno a europei e i loro pensieri indirizzeranno all'Europa e i loro cuori batteranno per lei come prima per le patrie più piccole, non dimenticate, ma meglio amate."

<sup>112</sup> Vissol T., (2019), "l'Europa alla prova del voto: risultati e sfide per il futuro" in *Coordinamento Riviste Italiane di Cultura* 6:2019, Original Version: "Tra i Paesi fondatori dell'UE, l'Italia è il solo dove vince ed è al potere una maggioranza assoluta sovranista, con conseguenze negative sulla sua influenza"

satisfy everyone (that would be utopian) but neither please the majority. There are several answers to these questions, but they all point to a European difficulty in meeting the hearts and interests of its citizens.

This difficulty relates mainly to the social sphere but has strong political repercussions. The second reason for urgency is the political failure - with relevant economic and social consequences - that the Union has witnessed in recent days. The Union was born from the ashes of the Second World War with the primary objective of ensuring stability and peace. Such balance and peace were to be ensured in Europe, but not only:

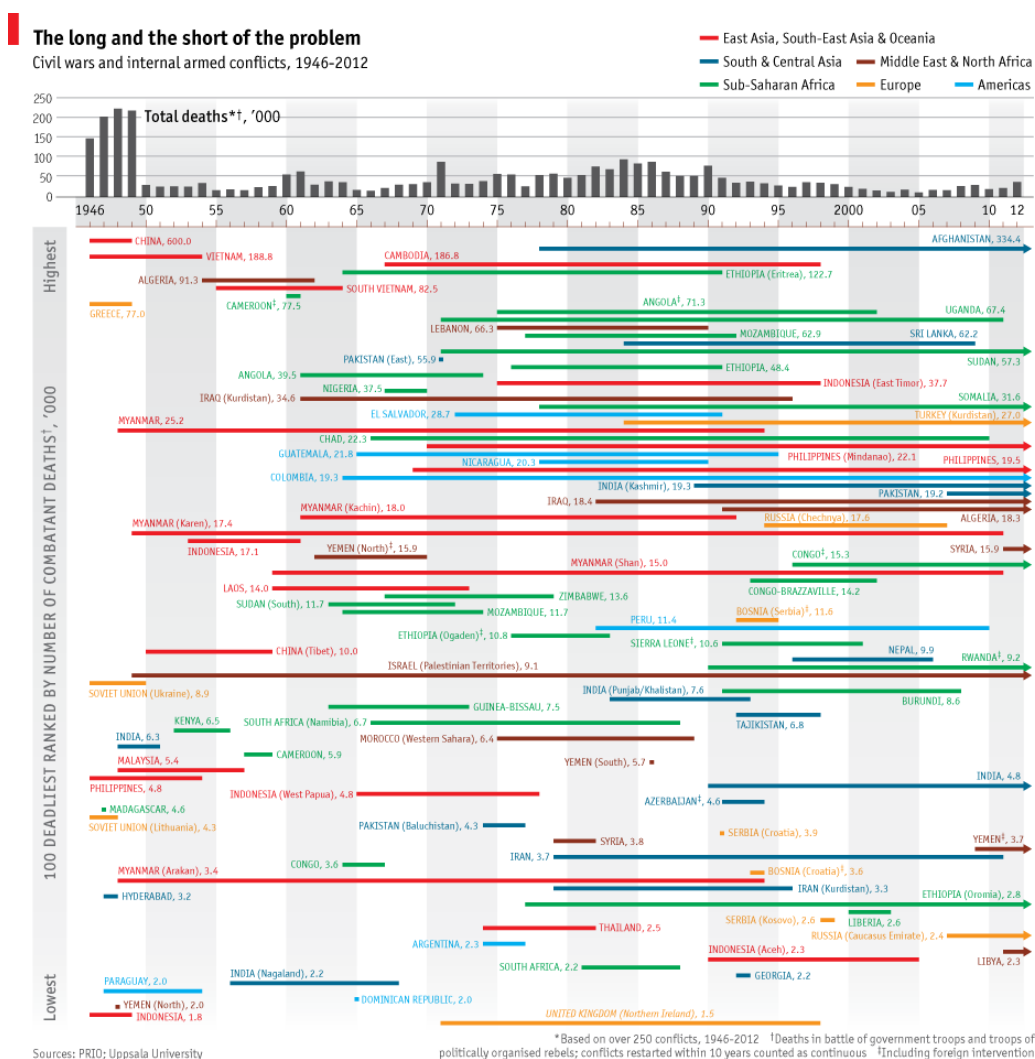
«RESOLVED to implement a common foreign and security policy including the eventual framing of a common defense policy, which might in time lead to a common defense, thereby reinforcing the European identity and its independence in order to promote peace, security, and progress in Europe and in the world»<sup>113</sup>

In the interconnected and globalized world, any large-scale conflict would have repercussions on the Union and its citizens: securing peace even outside Europe became fundamental. There has been no shortage of wars in the world since the ECSC foundation, but - in our perception - none of them resembles the one that recently broke out in Ukraine on the doorstep of the Union.

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<sup>113</sup> Council of the European Communities, Commission of the European Communities, “Treaty on European Union;

Graphic 1<sup>114</sup>. Civil wars and internal armed conflicts, 1946-2012:



There are so many wars, and they are causing many civilian deaths. Despite it, the western perception of these wars is always very blurred. The feeling is that they do not concern us, that they do not affect us, and that we cannot do anything about them (even when our army is fighting them, or at least our government is financing them). [It is interesting, in this respect, to note that globalization only drives certain realities.] Beyond Europe's ambition to become the guarantor of world peace, the many 'forgotten' wars - as they are often called - can hardly be considered a failure

<sup>114</sup> "Civil wars and internal armed conflicts", from Peace Research Institute Oslo - Uppsala University

of the European Union. The war in Ukraine is a different story. Among the facts that make this war a failure for Europe, we find the fact that geographically it is on the eastern border of the Union, that for years the country has wanted to join the membership, and - last but not least - the democratic ideals that drive it westwards away from Russia. It does not mean that the Union's efforts since its inception have not been successful at all. The Union has, within its borders, guaranteed more than half a century of peace. The democratic glue has been strong enough that there has never been so much distance between different member states to generate a war. Distances have appeared over the years, and regimes that can hardly be considered democratic have emerged too. An example is Orban's Hungary. According to Freedom House<sup>115</sup>, Hungary is only 'partly free' concerning civil liberties and political rights. However, the distances of ideology, values, interests, and means have remained sufficiently contained for the country to keep its place in the Union. Internal centrifugal forces (related to the Eurosceptic current) have so far remained contained. So why did the Union's conceptual framework work internally but not externally? Russia presents itself with different and often antithetical values. Faced with this, the Union remains disarmed and speechless. Why was the European conceptual framework unable, if not to prevent war, at least to open a dialogue in the face of an alternative framework?

Without pretending to find an unequivocal and universally shared answer, I believe that at least three considerations - made in the wake of the reasoning of this thesis - will help us understand the events of these days and why an alternative view is needed.

1. The first critical issue is the specter of the imposition of values: the European Union has, over the years, repeatedly attempted to impose its values (democracy, rights, freedom) on its interlocutors. This is exactly one of the motivations Putin brought to his war speech:

«the attempts to destroy our traditional values and impose on us their pseudo-values that would corrode us, our people, did not stop. [...] where the West comes to establish its own order, the result being bleeding, unhealed wounds.»

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<sup>115</sup> Freedom House, 2021, "Hungary", Official website, visited in 10/01/2022, available at the link: <https://freedomhouse.org/country/hungary/freedom-world/2021>

The EU did so indirectly too, by making it a condition (not always stringent) for annexation first and then, gradually, for trade agreements as well. I will not linger long in pointing out the ineffectiveness of this approach which can, at best, achieve a formal adaptation to these values and certainly not a substantial one. What I would like to highlight, instead, is that the Union, with her approach, implicitly conveys a moral judgment. The imposition stems from the belief that only the European set of values is "right" while the ideology of others ends up being considered wrong. With this attitude, the Union has precluded itself from grasping the possibilities that alternative systems to its own offer. She has "crystallized" in her form, remaining anchored to her principles even when these are no longer adequate to support her development. This development - recalling the definition of identity seen in the first chapter according to which it needs to be reaffirmed to continue to exist - is necessary for her survival.

2. The second issue is the self-referential nature of the thinking logic adopted by the Union. When imposing her point of view, the Union justifies her position by using every time the same concepts. The same values (democracy, freedom, law) end up being goals, means, and founding premises. This dynamic naturally generates a certain inconsistency in the European arguments, which - to the outside eye - appear inconsistent, self-contained, and peremptory. The European attitude seems like that of a dog biting its own tail. The EU is so focused on internal reflection that it fails to open up to new values, ideas, and instruments. The Union creates an obvious obstacle in the dialogue with the outside world, and such dialogue is a necessary objective of peacekeeping. Also, the Union triggers a process of impoverishment of its values. By never opening itself up to the confrontation, she fails to reaffirm democratic values that end up being insubstantial.
3. The third and last issue I will focus on refers to the inability of the Union to admit other alternatives as coexisting. As I have mentioned, even inside Europe, there are some internal actors that, for the values they advocate, they create distances from the central ideology. In the attempt to make an



objective analysis of these fractures, without any moral judgment, I find it helpful to quote some of Orban's words:

«as we break with the dogmas and ideologies adopted by the West and remain independent of them, we try to find the form of community organization, the new Hungarian state, capable of making our community competitive in the great global competition for decades to come...to this end we must make statements that the liberal world regards as blasphemy. *We must declare that democracy does not necessarily have to be liberal. Even if a state is not liberal, it can still be a democracy.*»<sup>116</sup>

The distance from European values is evident. Regardless of whether or not one agrees with such a position, the European response is one of distance.

«The resolution of the European Parliament, which addresses to the Council the request to activate Article 7.1 TEU, lists analytically [...] the various stages of Hungary's illiberal degeneration since 2011 that justify the danger of a systematic violation of the values of the Union as summarised in Article 2 TEU.»<sup>117</sup>

The Hungarian position is a '*degeneration*', and the assertion of alternative values is a '*danger*'. There is no dialogue, let alone an attempt to understand the 'other' position. The continuous assumption of a defensive position only underlines the internal fragility of a reality that is unable to affirm its values without the 'moral disqualification' of those of others. If the Union cannot find a dimension where alternative values and ideas coexist, it will be impossible to continue effectively in the building

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<sup>116</sup> Di Gregorio A., (2018), "L'Ungheria e i valori europei. Un matrimonio difficile", in *Diritto Pubblico Comparato Europeo*, Original Version: "nel momento in cui rompiano con i dogmi e le ideologie adottate dall'Occidente e mantenendoci indipendenti da esse, tentiamo di trovare la forma dell'organizzazione della comunità, il nuovo Stato ungherese, capace di rendere la nostra comunità competitiva nella grande competizione globale per i decenni a venire...a tal fine bisogna fare affermazioni che il mondo liberale considera come blasfemia. *Dobbiamo dichiarare che una democrazia non necessariamente deve essere liberale. Anche se uno Stato non è liberale, può ancora essere una democrazia*"

<sup>117</sup> Di Gregorio A., (2018), "L'Ungheria e i valori europei. Un matrimonio difficile", in *Diritto Pubblico Comparato Europeo*, Original Version: "La Risoluzione del Parlamento europeo, che rivolge al Consiglio la richiesta di attivazione dell'art. 7.1 del TUE, elenca analiticamente (seppure con alcune imprecisioni e lacune) le varie tappe della degenerazione illiberale ungherese a partire dal 2011 che giustificano il pericolo di una violazione sistematica dei valori dell'Unione come sintetizzati nell'art. 2 del TUE."

and reaffirming of a European identity where the plurality (and diversity) of its citizens could recognize themselves.

The great European challenge is not to *see* and *recognize* alternatives. We do not need to go very far to find dimensions that appear alternative: we have seen that there are also among us. The real challenge, where the Union has not yet risen to the occasion, is to find a solution that allows (peaceful and recognized) *coexistence* with the alternative. The coexistence to be sought is one that reconciles the freedom of the individual with the freedom of the people, one that overcomes the distribution of power as we know it today.

## CONCLUSIONS

This research work, lacking concrete answers to the questions that generated it, risks to appear inconclusive. Several times I have referred to the impossibility of finding univocal answers, on pain of drastically reducing the horizon within which our thinking could move. This thesis was intended to be an exercise in critical and transversal thinking. I wanted to investigate, in a critical manner, the identitarian challenge in the European Union. The first hope, in doing so, was to discover new ways of thinking about Europe. The second hope was to understand better all those aspects of the EU that the institutions only apparently explain. What I never expected in this research work - and what unfortunately happened - was to find myself facing a dramatic and epochal event such as the outbreak of war. In this context, I found myself with a critical lens to interpret not only the enemy but the very institutions that represent me, too. Once again, a new and different way is needed. What is needed is an alternative able to break the logic of thought to which we are accustomed. In this logic, every new question is a potential new answer. The problem does not arise when we no longer find answers. The problem will arise when we no longer find questions.

Far from being a conclusion, further questions arise from these reflections. Which of the possible developments of the European Union could, at least on a theoretical level, admit the coexistence of apparently irreconcilable values and ideologies?

The perpetuation of the *de facto* state - without in-depth reflection by the European institutions - certainly not. The clash in Ukraine led Europe to show unity by overcoming, at least in appearance, the internal anti-European forces. This may induce someone to think that European values will become less necessary in the near future. It is an apparent unity because the conflict requires a response that the European Union can only give united. Just two years ago, when the COVID pandemic rose, nationalist voices were the prevalent ones. This different reaction (War – Europeanism Vs Covid – nationalism) is due to the fact that the pandemic emergency, not involving an Other (at the European level), did not provoke an identity counterthrust. Precisely behind this apparent unity, the Union presents itself on the international scene carrying forward the same values that cause the

internal fractures. We have proof of this by reading the conclusions of the European Council of 24 February<sup>118</sup>. From the very first article, the reference to law (the opposite instrument of legitimization to the military one we are dealing with) appears strongly:

«With its illegal military actions, Russia is blatantly violating international law and the principles of the UN Charter and undermining European and global security and stability.»

Moving on to the second article, we find the reference to sovereignty, territorial integrity, and (political) independence:

«The European Council demands that Russia immediately cease its military actions, unconditionally withdraw all military forces and equipment from the entire territory of Ukraine and fully respect the territorial integrity, sovereignty, and independence of Ukraine within its internationally recognized borders.»

Safeguarding human lives will always remain the highest priority. No consideration will ever justify the atrocity of war and those who fight it. I do not, in any way, want to question the purpose of the various peace attempts. The criticism I will move to the Union is *methodical* only. However, I would like to point out some critical aspects of the European attitude. The urgency of the situation cannot legitimize this attitude. Western terms (including the American position) are peremptory, imposing themselves on the opponent using the rhetoric that only certain values are valid and must be protected. This rhetoric identifies a political entity that is not yet open to frank debate, free to not judge the position of others or to impose its own. Admitting the coexistence of alternatives will require a change of path.

Not even the second scenario, a new Hanseatic League, will be able - in my opinion - to guarantee such a result. Since it shifts the focus from the political to the economic level, there is a lack of ideological prerequisites to think of this evolution. Ideological concepts of the political order are also reflected in economics. The reference is to the fiscal sovereignty mentioned by Maastricht. However, I am convinced that economics is not the field for such a reflection, mainly because the

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<sup>118</sup> European Council, 2022, “European Council conclusions, 24 February 2022”, available at the website: <https://www.consilium.europa.eu/it/press/press-releases/2022/02/24/european-council-conclusions-24-february-2022/>

aims of economics are functional and are a consequence - not a premise - of a specific political identity.

The empire scenario does not seem to meet the requirements of this research too. Although it constitutes an alternative order, it does not admit, within it, the alternatives coexist.

The last scenario, Duso's one, is the only one that comes close to a solution even though it presents some criticalities. From a theoretical point of view, the construct of the philosopher might represent an adequate framework. Apparently, his path seems to be missing a step: the one that would allow him to leave the European horizon.

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