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The Institutional Future of the European Union

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Abstract

The ink of the Lisbon Treaty's signatories was not yet dry before the financial crisis, which took a serious turn for the worse in 2010, called that Treaty into question. The financial bankruptcy of Greece and Ireland and the serious financial difficulties of Portugal and Spain have, in fact, determined the need for us to reconsider the "EU institutional arrangement", which was so painstakingly constructed in the course of the first decade of the century. Under the pressure, on one hand, of domestic electoral and constitutional constraints and, on the other, of the financial threat of the collapse of the euro, the EU heads of state and government have finally ended up radically reforming the EU system of economic governance. At the crucial European Council held on 24-25 March 2011, fundamental decisions were adopted, such as: the reinforcement of macroeconomic surveillance, the strengthening of the stability and growth pact, a corrective mechanism for macroeconomic imbalances, the European semester, the Euro Plus pact and the European Stability Mechanism (ESM). This new economic governance system mainly concerns the EU member states who have adopted the euro. The most striking of these innovations, the ESM, implies the establishment of a new treaty by the euro-area member states "as an intergovernmental organisation under public international law", a treaty located outside the EU's institutional framework, though justified by a proposal of an amendment to Article 136 of the TFEU. Are these decisions a challenge to the integrity of the treaty-based system of the EU or do they represent a radical step forward in the integration process? This paper tries to answer this question, with a critical discussion of the two main paradigms interpreting the EU (the *sui generis* and the parliamentary options). It reaches the conclusion that those paradigms are unsatisfactory for explaining those decisions, thus proposing a new paradigm, defined as *unionist*, for interpreting the latter and fine-tuning their implications.

Keywords: Lisbon Treaty, European exceptionalism, EU democratic deficit, parliamentarization, union of states.

Introduction

The Treaty of Lisbon came into force on 1 December 2009 as the outcome of the long constitutional odyssey of the European Union (EU). The odyssey had begun immediately after the Berlin Wall came down and culminated with the Treaty for the Establishment of a Constitution in Europe (or Constitutional Treaty), which was drafted by a convention that met in Brussels between 2002 and 2003. The latter treaty was solemnly signed by the heads of state or government in Rome, in October 2004, and then rejected by referendums held in France and the Netherlands, in the next May and June, respectively. Most of the Constitutional Treaty, however, was salvaged in the form of two amendments to the consolidated treaties (the Treaty of Rome of 1957 establishing the European Economic Community – renamed the Treaty on the functioning of the European Union or TFEU – and the 1992 Treaty of Maastricht on European Union or TEU). Together with the Declaration concerning the Charter of Fundamental Rights of the European Union, which was annexed to the Final Act, these amendments were then signed by the heads of state or government in Lisbon on 13 December 2007¹. In this version, the Lisbon Treaty was first rejected and then approved by Irish voters in two successive referendums held in June 2008 and October 2009, respectively. This is why Ireland's approval, and the subsequent entry into force of the Treaty of Lisbon two months later, raised high hopes that the constitutional odyssey of the EU was finally over. It soon became clear, however, that those hopes had in fact been unrealistic².

The Treaty of Lisbon: conflicting viewpoints

The Treaty of Lisbon scrapped the constitutional symbolism present in the treaty rejected by the French and Dutch voters, although it finally defined the institutional structure of the EU, enabling it to start functioning, despite the growing number of member states. (This rose to 27 after the enlargement to the east and south of 1 May 2004 and 1 January 2007). It is plausible to argue that the Lisbon Treaty set up a *system of government*, going beyond the long historical phase in which the EU only functioned through a *system of governance*. As in all consolidated democracies, *government* and *governance* will continue to be intertwined in the EU, i.e. vertical decision-making

¹ See N. Foster, *EU Treaties and Legislation 2010-2011*, Oxford, Oxford University Press, 2010.

² On the contrasted nature of the process of constitutionalizing the EU, see S. Fabbrini, *To Contest a Constitution: What Lessons Are to Be Learned from the Experience of the European Union and the United States?*, in Stelios Stavridis (ed.), *Understanding and Evaluating the European Union: Theoretical and Empirical Approaches*, Nicosia, University of Nicosia Press, 2009, pp.39-72.

(typical of *government*) will continue to interact with horizontal decision-making (typical of *governance*). In Brussels today a formalised system is in place for taking authoritative decisions, not so differently from what is happening in other consolidated democracies. This is why the EU should also be analysed according to the two basic criteria (*effectiveness* and *accountability*) that any democratic government is required to satisfy.

However, as a result of the financial crisis that erupted in 2008 and took a serious turn for the worse in 2010, the new institutional structure soon started to totter. The financial bankruptcy of Greece and Ireland and the serious financial difficulties of Portugal and Spain have, in fact, determined the need to reconsider the EU institutional arrangement, which was so painstakingly constructed in the course of an entire decade, the first of the new century. Under the pressure, on one hand, of domestic electoral and constitutional constraints and, on the other, the real financial threat of the collapse of the euro, the EU heads of state and government have finally decided to radically reform the EU system of economic governance. At the crucial European Council held 24-25 March 2011, fundamental decisions were adopted, such as: the reinforcement of the macroeconomic surveillance, a strengthening of the stability and growth pact, a corrective mechanism for macroeconomic imbalances, the European semester, the Euro Plus pact and the European Stability Mechanism (ESM). This new economic governance system mainly concerns the EU member states who have adopted the euro. However, the most striking of these innovations, the ESM, implies the establishment of a new treaty among the euro-area member states “as an intergovernmental organisation under public international law”, a treaty located outside the EU’s institutional framework, though justified by a proposal of an amendment to Article 136 of the TFEU, which states that: “The member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole”. As the European Parliament has noted, this “permanent stability mechanism outside the EU institutional framework poses a risk to the integrity of the treaty-based system” of the EU³.

It has been argued that the use of the flexibility clause (Art. 351 of the TFEU) or the enhanced cooperation clause (Title III of the TFEU) for creating the ESM was prevented by the electoral and constitutional constraints of a few member states, Germany in particular. Through a new *ad hoc* treaty, in fact, the German government will be able to bypass the constraints imposed by the German constitutional court’s decision of June 2009 on further transfer of powers from national to EU institutions. The net effect of this strategy is to create a sort of dual Europe, an ‘inner Europe’ consisting of those member states who have adopted the euro plus those member states aiming to coordinate their currencies with the euro (Denmark, Poland, Latvia, Lithuania, Bulgaria

³ Text adopted by the European Parliament at the sitting of Wednesday 23 March 2011, O.7.

and Romania) and an ‘outer Europe’ consisting of the member states (starting with the United Kingdom) that wish to maintain full sovereignty in monetary affairs and also wish to regain sovereignty in other previously Europeanized policy fields⁴. At the same time, the political crisis that exploded in North Africa in the winter and spring of 2011 has shown the inadequacy, if not the ambiguity, of the institutional mechanism defined in the Lisbon Treaty for pursuing both a Common Foreign and Security Policy (CFSP) and a Common Security and Defence Policy (CSDP). The EU has played no significant role in the crisis, partly because of the dramatic personal inadequacy of the EU High Representative, Baroness Ashton, and her staff.

In sum, the financial and political crises have highlighted how the EU institutional arrangement that emerged from the Lisbon Treaty has maintained many aspects of operational ineffectiveness and institutional ambiguity, even though it represents a positive step forward compared to the prior situation. In a context of increasingly euro-sceptical public opinion and the expanding re-nationalization of the attitudes of the elite in many member states, the EU has been obliged to breathe new life into its own institutional system, starting with the one dealing with economic governance, though it will probably end up with discussion of the foreign and security policy framework as well. Certainly, the institutional future of the EU will depend on the nature and importance of the *events* pressuring its functioning, though also, probably, on the paradigm utilized by the main political actors, at the domestic and European levels, to interpret the EU and define its aims. This paper is an exercise in identifying those paradigms, assuming a paradigm as a conceptual construct finalized to explain an empirical phenomenon and orient human intervention in it. Here I will consider the two main paradigms that have dominated the public debate on the EU institutional system, arguing that most of the problems that the EU has come up against, and will continue to come up against in the future, cannot be dealt with by relying on them.

I will call the first the *sui generis* paradigm⁵ and the second the *parliamentary* paradigm⁶ of EU government. The former is based on the assumption that the EU is an exceptional political system, unprecedented, unique in nature. Therefore, its system of government should be constructed according to specific *ad hoc* procedures, which need not necessarily take into account the criteria

⁴ The UK parliament (House of Commons and House of Lords) has approved a *European Union Act 2011* which dramatically calls into question the constitutionalization of the EU brought about by the European Court of Justice’s decisions of the 1960s on direct effect and supremacy of Community law. Indeed, the Act states that “there are no circumstances in which the jurisprudence of the Court of Justice can elevate Community Law to a status within the corpus of English domestic law to which it could not aspire by any route of English law itself (...). The conditions of Parliament’s legislative supremacy in the UK necessarily remain in the UK’s “s hands”. For a detailed examination of the Act, see M. P. Chiti, *Il tramonto della sovranazionalità europea?*, Mimeo, April 2011.

⁵ The most representative scholar of the *sui generis* of thought is J. H. H. Weiler: “Federalism and Constitutionalism: Europe’s Sonderweg”, *Harvard Law School, Jean Monnet Chair Working Papers*, *The Constitution of Europe*, Cambridge University Press, 1999.

⁶ The most representative scholar of the parliamentary school of thought is S. Hix, *What’s Wrong with the European Union and How to Fix It*, Cambridge, Polity, 2008.

that inspire, or have inspired, other democratic systems of government, including those (of the United States and Switzerland, for example) that are the outcome of an aggregation of previously independent states. On the contrary, the latter is based on the assumption that the EU should be a political system that does not differ from those of its member states. And given that they have (all) developed democratically from the principle of placing popular sovereignty into the hands of a parliament, starting with the British and Scandinavian experiences, the EU should also adopt a parliamentary approach, by subjecting its executive branch to the (political majority existing in its) legislative branch. While the former paradigm tends to preserve the *status quo*, the latter is rather critical of it. According to the *sui generis* paradigm, the EU is perfectly all right as it is now. It is “democratic enough” as long as its constituent states are democratic. Not only are its efficiency and accountability acceptable for the union’s purposes, but they should not be an issue, if they are guaranteed at the level of the constituent states. However, according to the *parliamentary* paradigm, the EU is not “good enough” as it is now. On the contrary, it features a deficit in democracy that calls its legitimacy among the people into question. We can say that the former tends to justify the *confusion* that still exists among the Community powers, while the latter calls for a *fusion* of the Community powers, as in the EU member states. Let us see why the two paradigms are inadequate.

The EU as a *sui generis* system

The *sui generis* paradigm is inadequate because it does not recognise the applicability of the democratic criteria of effectiveness and accountability to the EU. As the prisoner of an undeclared ideology of European exceptionalism, this paradigm assumes that the EU can do without a distinction between institutions and functions, a distinction that would make the *process of government* more visible and therefore more *accountable*. Like all theories of exceptionalism, this too is a good recipe for parochialism. The fundamental distinction (institutional or functional) in every system of government between the *executive* and *legislative* branches (and between these and the *judiciary*) tends to become blurred in the *sui generis* view of the EU. Despite the fact that the development of European integration necessarily requires the acknowledgement of this distinction, the *sui generis* paradigm has continued to jeopardise its consistent implementation. The Lisbon Treaty has marked a step forward in this direction (I limit my analysis here to the distinction between the executive and legislative branches), in particular by strengthening the European Parliament and institutionalizing the European Council. By granting the Parliament joint decision-making powers with the Council of Ministers (now simply called the Council) with respect to most Community policies, the treaty has institutionalised a two-chamber legislative branch, consisting of a lower chamber representing the European electorate (i.e. the European Parliament) and an upper

chamber representing the governments of the member states (i.e. the Council).

At the same time, it has recognised the European Council as the body responsible for setting EU priorities and general political guidelines. This European Council consists of the EU heads of state or government and is chaired by one of its members, who is elected by a majority of the latter for a two-and-a-half year term and can be re-elected for a second term of equal length. With this recognition, the treaty has finally transformed it into an executive body on an equal standing with the Commission. The European Council, therefore, can no longer be considered as a body linked to the Council, because the latter exercises purely legislative functions (even though it consists of the representatives of the member states' governments), while the former exercises purely executive functions. The Lisbon Treaty has thus built a four-sided institutional framework for governing the European Union, with a two-chamber legislative branch and a dual executive branch.

Despite the progress made to date, however, ambiguity and inconsistency survives within the new system of government as the following examples illustrate. The General Affairs Council, which is the most important body within the Council as it is responsible for ensuring the “consistency” of the activities carried out by the Council's different configurations, also performs executive functions, preparing the work of the European Council and then implementing its decisions. Or, again, the High Representative of the Union for Foreign Affairs and Security Policy (who is appointed by the European Council in agreement with the President of the Commission, though the appointment must then be approved by the European Parliament) is a member of both the executive (in his or her capacity as the Vice President of the Commission) and legislative branches (because he or she permanently chairs the Foreign Affairs Council, which is unique in that it is chaired by the High Representative rather than the holder of the half-yearly rotating Presidency of the Council). Both cases might be considered expression of the persistence of *sui generis* traits in the EU, whose implication is a *confusion* rather than distinction of powers. An odd implication, if one considers that the distinction between the executive and legislative branches does not spring from purely nominalistic needs⁷. That distinction, in fact, was motivated by the need to clearly specify *who is supposed to do what* (which is consistent with the principle of efficiency), so that it is easier to *control who does what* (which is consistent with the principle of accountability).

Of course, the distinction has been and may be organised differently, from an institutional point of view⁸. However, it can hardly be put aside and neglected in the case of the EU. Indeed, the neglect of the two basic criteria of efficiency and accountability is the source of many of the EU's troubles. Because the EU is taking decisions for a growing number of policies, especially after the

⁷ See the classic by S. Finer, *The History of Government from the Earliest Time*, Oxford, Oxford University Press, 1997.

⁸ For a comparative perspective on governmental structures, see A. Lijphart, *Patterns of Democracy*, New Haven, CT, Yale University Press.

Lisbon Treaty, the institutional conditions for the decision-makers to act effectively and for the citizens to keep those decision-makers accountable are indispensable. To achieve this, however, it will be necessary to abandon the idea that the EU is a *sui generis* political system, or that its effectiveness and accountability are a dependent variable of the structure and behaviour of its member states' governments. From this perspective, the decisions taken at the 24-25 March 2011 European Council (in particular the one setting up the ESM through a new intergovernmental treaty) seem to be coherent with the *sui generis* perspective, which stresses the growth of the EU by means of *institutional evolution* through *ad hoc* answers to specific and unexpected events. However, these solutions will be the source of new problems, thus increasing the popular dissatisfaction with the EU (for being unable to act effectively and transparently). Although it might have been necessary to pass through a new intergovernmental treaty, however the effectiveness of the latter will soon be called into question by the rivalries and competing interests of the constituent states. Exactly as it has happened in the North African crisis – where the intergovernmental decision-making regime of foreign and security policy has let the EU to melt away because the member states' governments have been unable to find and implement a common position.

In sum, the *sui generis* approach cannot help to increase the EU's effectiveness and accountability. It is necessary to change the perspective on the EU in order to move forward with regard to both criteria. The EU is a union of states and citizens that can no longer be assimilated to/equated with an international organisation or, mainly, an intergovernmental system⁹, which then justifies its institutional anomalies. Although it cannot be compared to a domestic political system, the EU nevertheless takes authoritative decisions that directly affect the citizens of the member states, and not just their governments (as in the case of international organisations). For this reason, the EU should satisfy the two criteria of any governmental system, a possibility denied by the *sui generis* perspective. In this sense, the *sui generis* paradigm is not only inadequate but it is also a cognitive constraint on the EU's democratization. Stressing the anomaly of the EU means keeping it in the condition of under-performance as a governmental system. Because the EU does not respect the basic criteria that any governmental system should respect, then it should not be a surprise the growing popular mood of criticism towards it.

The parliamentarist strategy

An alternative paradigm has been developed, for some time now¹⁰, to explain what the EU

⁹ See A. Moravcsick, *The Choice for Europe*, Ithaca, NY, Cornell University Press, 1998 and A. M. Slaughter, *A New World Order*, Princeton, Princeton University Press, 2007, 2nd edition.

¹⁰ Starting with D. Marquand, *A Parliament for Europe*, London, Jonathan Cape, 1979.

should become. This paradigm has supported/underpinned a movement of opinion aimed at achieving the parliamentarisation of the EU, in a manner that is consistent with its members' systems of government. This paradigm correctly assumes that the EU is a political system¹¹, one, moreover, that has been constitutionalised since the historical rulings by the Court of Justice of the European Union in the 1960s. By interpreting the treaties as being almost tantamount to a constitution, the Court has fostered the formation of an integrated legal order within the Union, an order that has required the constant definition of powers. In many cases, the intergovernmental conferences (of the heads of state or government of the member states) have ended up providing an institutional answer to the legal decisions of the Court, rationalising the implications entailed by the latter¹². However, even if constitutionalised, the EU has continued to show – according to the scholars adopting this paradigm – a democratic deficit with regard to legitimation by the people. Nobody knows *who is responsible for what* within the EU. Authoritative decisions are taken according to obscure procedures and, above all, there is no direct relationship between the executive and the legislative branches. For this paradigm, in fact, democracy is substantiated in the formation of a vertical relationship between the executive (or government) and the citizens (voters), a relationship naturally mediated by the parliament. In other words, it is necessary for a democracy to be effectively a *fusion of powers*, by virtue of which the citizens elect their members of parliament and the latter (or, better, its majority) select the government. In this system it is clear *who is responsible for what*: it is the government, with the support of a parliamentary majority, which is the expression of the will (or sovereignty) of the voters. If the party (or parties) in the government is (are) thought to have acted positively then it is (they are) confirmed in office. Otherwise, it/they will be substituted by the erstwhile opposition.

The parliamentary model has unquestionably been very successful in Europe. It has made it possible to combine the limitations of modern-day representative democracy with the opportunities of ancient direct democracy. If it has worked so well in the EU member states, then why not apply it to the EU itself? In fact, according to this paradigm, the democratic deficit is primarily the result of the limited role that the European Parliament has played in the past, and continues to play, in the EU decision-making process¹³. Or, more precisely, to the fact that the Commission is not the expression of the majority of that parliament, depending more on the preferences and decisions of the national governments (which appoint its president and, with him, the commissioner for each member state, appointments that must then be approved by the European Parliament). In brief, the democratic deficit of the EU would disappear if the elections for the European Parliament could produce a

¹¹ See S. Hix, *The Political System of the European Union*, New York, NY, Palgrave Macmillan, 2005, 2nd edition.

¹² As shown by T. Christiansen and C. Reh, *Constitutionalizing the European Union*, New York, Palgrave Macmillan, 2009.

¹³ C. Lord, "The European Parliament, Not a Very European Parliament", *Politique Européenne*, No. 9, 2003, pp. 30-48.

political majority entitled to appoint a Commission comprising a president and commissioners who are politically consistent. Hence the proposal addressed to the main European parties – advanced by cultural foundations and individual political personalities at the European Parliament elections of 4-7 June 2009¹⁴ – to indicate the candidate for the presidency of the Commission they would support, in the event of their gaining a majority of seats in Parliament.

By indicating the candidate for the presidency of the Commission those parties could accelerate the process of their Europeanization, thus becoming proper transnational organisations (the largest ones at least, such as the People's Party, Socialists and Democrats, Liberal Democrats and Greens). With the assumption that the Commission is the proper executive of the EU, its link with Parliament would lead to the streamlining of the EU decision-making process (thus increasing its effectiveness), and would also increase the accountability of the European executive to the European electorate. Thus, the EU could have its own political government, accountable to the European electorates and not to the governments of the member states. At the same time, European politics might develop according to the familiar pattern of competition or co-operation between the left, centre and right, thus producing governments that represent a parliamentary majority. After all, it may be true that the Lisbon Treaty lays down that the president must be chosen by the European Council, but this should be “based on the results of the elections for the European Parliament” and it should be the latter that then “elects” the president. In short, by stepping up the development of parliament, the EU machine could start running again in both economic and foreign policies.

According to the parliamentary paradigm, the decisions taken at the European Council of 24-25 March 2011 (and in particular the one concerning the ESM) represent a serious threat to the democratization of the EU. The setting up of an intergovernmental mechanism for the economic governance of the EU will inevitably increase its democratic deficit, even if “The Term Sheet on the ESM” recognizes an important role for the Commission (and the IMF) in detecting the debt sustainability of the euro-area member states. According to this paradigm, the EU should dilute its intergovernmental features, in order to strengthen the supra-national ones. The decision of the European Council of 24-25 March 2011 to set up an ESM outside the EU institutional framework should thus be reversed, bringing the new stability mechanism within the framework of the single market. At the same time, the other decisions on economic governance should recognise a major role for both the Commission and Parliament. For this paradigm, the future of the EU should reside solely in its supranational institutions.

¹⁴ G. Bonvicini (ed.), *Democracy in the EU and the Role of the European Parliament*, A Study and a Call, by Istituto Affari Internazionali (Rome), Centro Studi sul Federalismo (Turin), Institut für Europäische Politik (Berlin), Notre Europe (Paris), and The Federal Trust (London), published as Quaderno IAI, Rome, 2009.

The weak points of the parliamentarist strategy

The parliamentary paradigm too seems inadequate. Stepping up this development might, in fact, lead the EU into the ravine of instability. The EU cannot be parliamentarised for structural reasons, because it is an *asymmetrical* union of member states and not a territorially decentralised nation state¹⁵. Parliamentarism cannot be reconciled with territorial asymmetry. The demographical asymmetry, besides the historical, economic and cultural differences, that exists among the EU member states hampers and precludes any strategy for centralising decision-making, which is a typical feature of all parliamentary models. Of course, parliamentarism can be reconciled with a federal system, provided however that the federal territorial units substantiating the latter are relatively symmetrical (as in the case of Germany, whose *laender* were designed by the Allied military authorities at the end of World War II, in order to ensure a certain balance and avoid the resurgence of new territorial hegemonies). In Germany (as in Canada or Australia) it has been possible to combine the fusion of powers at the governmental (horizontal) level with the separation of powers at the territorial (vertical) level. But this combination is not plausible in the EU, unless the decision is made to move several million Germans to Luxembourg or Malta. Or it might be, if it is assumed that the divisions between the member states are much less significant than those between the political parties, that the *cleavage* between right and left is capable of organising the various national societies¹⁶ transversely.

But this assumption is clearly unrealistic. In the EU the divisions between the member states (big states vs. small states) or geographical regions (Mediterranean countries vs. northern countries, or western countries vs. eastern countries) is far more relevant than the partisan distinction between left and right. The latter, in fact, can manifest itself with respect to certain economic and social matters or with respect to civil rights *within* the European Parliament, but it is definitely not the main division *across* the different Community institutions. More specifically, the right vs. left divide cannot reabsorb the fundamental division between the member states and public opinions that want *more* political integration and the member states and public opinions that want *less* of it. This is why the parliamentarisation of this complex situation would lead to the institutional instability of the EU. If the European Parliament were the only focus of institutional power, the expression of the popular will of European citizens, then unquestionably the citizens of Germany (or France, the UK, Italy, Spain or Poland) would weigh more than the citizens of Malta or Luxembourg (or all the other small and medium-sized countries) in the main legislative decisions.

¹⁵ See my publication, S. Fabbrini, *Compound Democracies: Why the United States and Europe Are Becoming Similar*, Oxford, Oxford University Press, 2010, 2nd edition.

¹⁶ As argued by S. Hix, A. Noury and G. Roland, *Democratic Politics in the European Parliament*, Cambridge, Cambridge University Press.

But, if this were the case, why then should the latter remain in the Union? And if they did decide to remain, would they not be accepting an almost neo-colonial subordination to the bigger countries?

Without acknowledging the difference between an asymmetrical union of states and a nation state albeit territorially decentralised, it will hardly be possible to develop effective strategies for democratising the former, precisely because the strategies will be distinct from those that have democratised the latter. An asymmetrical union of states needs neither the confusion nor the fusion of powers, but rather their clear *separation*. The organisation and output of an asymmetrical union of states cannot be assessed according to the typical criteria of nation states that have become culturally and institutionally uniform internally (even though this presumed uniformity is questioned today in a number of European states, from the UK to Spain and Italy). The facts show that the institutional evolution of the EU has moved inevitably/relentlessly towards a non-parliamentary model, even though the rhetoric has continued to claim the contrary. The call made to the European Council in the Lisbon Treaty (TEU, Art. 17.7) “[to take] into account the elections to the European Parliament” in the appointment of the president of the Commission is the price paid for this rhetoric, rather than an operational recommendation. In fact, what does that call mean when the elections for the European Parliament are held according to a highly proportional system which, by its very nature, will never be able to produce an electoral majority (and only, possibly, a post-electoral parliamentary majority, following lengthy negotiations between the different parties)? The same can be said about the claim (in the same article of the Lisbon Treaty) that the European Parliament will elect the president of the Commission. How can we speak of elections, when the power to appoint the president of the Commission is in the hands of the European Council? Rather, the European Parliament has the power of “advice and consent” with respect to decisions made by others and not that of “election” which, by its very nature, cannot be predetermined. Moreover, the very same distinction between intergovernmental and supranational features seem to have been radically called into question by the Lisbon Treaty.

The unionist paradigm

The EU has been built on the basis of an exclusive need: to end the period of combat and cold wars on the European continent. The EU is a *peace pact*. Its institutional organisation has developed (through/as a result of need rather than design) to achieve this basic yet crucial aim: peace. If this is the case, then all the member states (both large and small, old and new, prosperous and less prosperous) must feel part of the integration project. Feeling part of this project means participating in an institutional game that must produce positive results for everybody. An asymmetrical union of states is incompatible with the formation of permanent majorities or stable

directoires. Like other, similar unions of states, the EU has also been obliged to separate its powers, both horizontally (among Community institutions) and vertically (between these and domestic institutions) so that every member state has an opportunity to make its voice heard (in the European Parliament, the Council, the European Council and the Commission). This does not mean that that voice (or request, or interest) will necessarily be followed, but at least it will definitely be heard. The centralisation of decision-making power typical of the parliamentary model is irreconcilable with the need to give representation to asymmetric member states (besides individual citizens). Moreover, the parliamentary model implies the existence of a monocratic government, not a dual executive as in the EU. On the contrary, an asymmetrical union of states can be reconciled with a system of separation of powers built on a clear distinction between a dual executive and a bicameral legislature, each of them motivated to keep the others under control, thus favouring a balance between them based on the separated distinct communities of interest that they express (that is, member states' ministers in the case of the Council, European citizens in the case of the European Parliament, member states' heads of government in the case of the European Council, executive competences in the case of the Commission). A separation also guaranteed by the fact that the four institutions have different electoral schedules and each of them does not need the confidence of the others for operating. Thus, it would be impossible to bring the "king" (i.e. the Commission) to the (European) Parliament because the king is dual, rather it would be expedient to strengthen the latter to check the executive (both the Commission and the European Council) and to balance the (various configurations of the) legislative Council.

This is why it is expedient to silence the complaints about a democratic deficit. One cannot look at the EU through the eyes of its member states. If there is a democratic deficit in the EU it is not due to the fact that the European Parliament cannot appoint its own Commission, but to the fact that the European Parliament is still not strong enough to balance the legislative powers of the Council (for example, in foreign affairs, defence policies, agriculture and the budget) or check the decisions taken by the European Council (the political head of the executive) or the Commission (the technical head of the executive). Indeed, in the economic and financial crisis of the period 2008-2011, it has been the European Council (and its permanent president) that has played the role of the political head of the European executive, with the Commission and its president playing a technocratic role. The member states' governments have had less reason to oppose the strengthening of the European Council, of which they are members. After all, the Commission has exercised a crucial role in certain limited historical periods, as a result of particularly favourable political circumstances: it was thanks to the support of the French head of state and German head of government that Jacques Delors was able to act as the head of a European executive – and thanks to

the lack of such support that Romano Prodi could not act likewise¹⁷.

The Treaty of Lisbon left the door open to the possibility of the executive supremacy of the president of the European Council – compared to/rather than the president of the Commission – but stops short of enshrining the principle in law. On the contrary, it seems to foster a sort of competition between the two, with the former supported by the Council technocracy (the General Affairs Council) and the latter by the Commission technocracy. This competition is highly pernicious and seems to reflect the (French) need to set up a kind of semi-presidential model, rather than the (European) need to build a functional and balanced system of government for an asymmetrical union of states. In particular the decisions taken at the 24-25 March 2011 European Council have strengthened the latter's role in economic governance. From this perspective, the treaty establishing the ESM does not represent a threat to the EU framework, if the treaty recognises a political role for the European Parliament in checking the European Council and a technical role for the Commission in acting as a supervisory body, thus institutionalizing the decision-making quadrangle foreseen by the Lisbon Treaty. Indeed, the new economic governance mechanism of the euro-area might create the right conditions for the formation of an inner Europe that is also more integrated in foreign and security policy. Furthermore, the latter policy should indeed be absorbed by the European Council, with the High Representative playing a technical role in support of the political role, which should belong to the president of the European Council.

Conclusion

One can plausibly assume that, in the absence of prohibitions/restrictions in this respect in the Lisbon Treaty, the future development/evolution of the EU will eventually lead to the combining/a re-composition of the two presidencies in a single person. However, it is equally plausible to assume that the two presidencies will remain distinct, while the two bodies could be merged into a single EU executive, with the president of the Commission playing a technical role and the president of the European Council a political one. In fact, contrary to the Euro-federalists' hope, there is no guarantee that a re-composition in favour of the president of the Commission would benefit the integration project. If the dual executive remains, then it might be expedient to call the European Council the *European Presidency*, not only to avoid the current terminological confusion with the other (legislative) Council but also to signal its institutional role. Thus, the president of the current European Council would be supported by the administrative structure of the Commission and no longer by that of the Council. The president of the Commission and the

¹⁷ See J. Hayward (ed.), *Leaderless Europe*, Oxford, Oxford University Press, 2008.

commissioners would still be appointed by the European Council, with the “advice and consent” of the two-chamber legislative branch. This would also apply to the High Representative, who would become an official of the executive and lose his or her role as chair of a legislative committee as well. With the Lisbon Treaty, it might also have become unlikely to assume that the Commission is the supranational and the European Council the intergovernmental “government” of Europe: first, because, given that the Commission will be composed of a commissioner per member state till 2014 (and probably afterwards), it will end up to acquire an inter-governmental feature and, second, given the European Council will go to institutionalize its permanent presidency, the latter might likely acquire a supranational identity.

In short, the EU is going *beyond* the traditional debate between intergovernmental and supranational points of view. A new paradigm is necessary to interpret and inspire the functioning of the EU, emerging not only from the Lisbon Treaty but also the transformations induced by the financial and political crisis of the period 2008-2011. This paradigm has to recognize the EU as a union of states and citizens necessarily organized according to the logic of the separation of powers. Indeed, it should inspire the strengthening of the multiple separation of powers that is already the hallmark of the EU. This logic of separation requires a clear distinction between the executive and legislative roles, so that the former can become more effective and the latter can strengthen its checking and balancing functions. From this perspective, the future of European integration will depend on the consolidation of the EU type of separation of powers, a system whose engine will come from the competitive relation between the European Council (on the executive side) and the European Parliament (on the legislative side). In a period of growing public euro-scepticism, responsible political elites should operate to increase the effectiveness and accountability of EU institutions. The answer to the challenges brought about by the financial and political crisis does not rely on the re-nationalization of European policy-making, but on the better organization and functioning of a union of states and citizens.

In conclusion, there is an alternative to the two dominant paradigms for interpreting the EU and orienting its institutional future, an alternative that acknowledges how it is an asymmetrical union of states and their citizens which must be governed by a system of separation of powers and checks and balances. The EU is not a *sui generis* political system, nor can it ever become a *parliamentary* democracy. It already is, in practice, a *compound* democracy in search of a theoretical framework that can help it to better fine-tune its operation. It is time to find a new approach for interpreting (and possibly orienting) the political integration of Europe.

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