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**Europe's Union in the 21st Century:
From Decision Trap to Politics Trap**

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Abstract

This paper begins with the proposition that the EU faces a problem of politics or to put it another way is characterized by a politics trap and that trap is consequential. A trap, for the purpose of this paper, is defined as a position or situation from which it is difficult or impossible to escape. The idea of a trap draws on the seminal article by Scharpf on the joint-decision trap (Scharpf, 1988) which had a major impact on the study of the EU. The focus of this paper is an analysis the politics trap by examining the three components of political order-polity, policy and politics. The politics trap is significantly more complex and multifaceted than the decision trap, which is one mode of decision making whereas the politics trap is a product of the nature of the EU itself and the structuring of politics in Europe. The compound character of the EU polity (states and peoples) is identified as the root structural cause of the Union's politics trap. There remains a deep tension but also multiple binding ties between the national and the European, between the new polity and the older order of Europe's nation states.

Keywords

European Union, politics trap, political order, Polity, Policy and politics.

For we must face the fact that in 30 or 40 years Europe will constitute a UPO-a sort of unidentified political object, Delors, 1985

Introduction

As we approach the third decade of the 21st century, the European Union (EU) has embarked on one of its periodic deliberations on the future of the Union. The drive to reopen the reform debate stems from a decade long crisis that the Union endured including the global financial crisis, the refugee crisis, the decision by the United Kingdom (UK) to opt for exit over voice in June 2016 and the Covid19 pandemic. The multiple crises that befell the Union severely tested its governance capacity and the EU itself became a hotly contested political issue across a continent characterized by rising Euroscepticism. The EU and its member states struggle for the necessary political authority and legitimacy to respond to the political and policy challenges they face. Pressure on Europe to supply more governance stems from acute policy pressures and international turbulence while politicization acts as a constraint.

This paper begins with the proposition that the EU faces a problem of politics or to put it another way is characterized by a politics trap and that trap is consequential. A trap, for the purpose of this paper, is defined as a position or situation from which it is difficult or impossible to escape. The idea of a trap draws on the seminal article by Scharpf on the joint-decision trap (Scharpf, 1988) which had a major impact on the study of the EU. Section one of the paper adopts a historical perspective to support the argument that the process of European integration has always been decidedly political. We move to an exploration of the joint-decision trap from which the EU found escape routes. The analysis then pivots to the politics trap by examining the three components of political order-polity, policy and politics. The politics trap is significantly more complex and multifaceted than the decision trap, which is one mode of decision making whereas the politics trap is a product of the nature of the EU itself and the structuring of politics in Europe. We adopted a two-step approach to analyzing the key features of the politics trap: a historical inquiry structured along the three dimensions to identify the most salient factors contributing to the politics trap, followed by a contemporaneous inquiry that evaluates how these features affect the fit between constitutional/functional integration on the one hand and political/social integration on the other. The approach is explorative in character, one of 'soaking and poking', with the purpose of identifying the most salient factors that contribute to the politics trap and explaining why these matter to the dynamic of integration. This is not an analysis of democracy in the EU although the politics trap makes it more problematic to address democratic deficits.

The Primacy of Politics

The Joint Declaration that accompanied the signing of the European Coal and Steel Community (ECSC) treaty on April 18, 1951 underlined just how political the project of European integration was from the outset. The declaration included the following: 'All these efforts are inspired by the growing conviction that the countries of free Europe are inter-dependent and share a common destiny' (ECSC Declaration, 1951). The member states claimed to 'have given proof of their determination to set up the first supra- national institution and thus to lay the real foundations of an organized Europe' (ECSC, 1951). Invoking a common destiny, a supranational institutions, political community and an organized Europe was an appeal to the language of political order. The intent was radical and had two inter-related objectives the first was to transform relationships among states in Europe from diplomacy to politics, to domesticate interstate relations. The second was equally radical but

far more ambitious and that was to transform relations among Europe's peoples. This duality, states and peoples, was hardwired into the EU from the beginning.

Just what kind of political order could or would emerge from this post-war experiment was unknowable; there was no ready-made design or model to guide the early community builders. From the perspective of a state dominated international system, European integration was an experiment in building political and policy space beyond the national. From the perspective of the nation state, European polity building represented interlinked processes de-nationalization, boundary transcendence and the rescaling of political space (Bartolini, 2005, Zürn, 2000). Three initial scope conditions would greatly influence the building of the Union. First, it was an open voluntary process, without recourse to the coercive power so instrumental in the consolidation of the nation state. Second, organized Europe would build on pre-existing nation states with their embedded constitutional, institutional, political and legal systems. Third, member state political elites, particularly those in office, would drive integration. Christian democracy later followed by social democracy fostered an elite consensus. The political fulcrum of the EU was broadly centrist (inverted U curve) which was strengthened by the reinforced majorities or unanimity required for action.

The goal was political integration but European integration could not replicate the content, form and processes of politics that characterized the nation state. By the beginning of the 1990s, the elite led dynamic of European integration began to falter. The process became more politicized as the EU assumed greater salience and weighted more heavily on the autonomy and sovereignty of its member states. This should come as no surprise to students of centre formation and state building that involved processes riven by fundamental conflicts and deep cleavages (Rokkan & Libset, 1967, Flora et al, 1999). Writing in 1971 when neo-functionalism was the dominant grand theory in the analysis of integration, Nye was one of the first scholars to predict that over the course of time, politicization would become a more significant feature of integration as it became more salient for the mass public and political decision makers (Nye 1971, 88). Politicization implied increased conflict, controversy and a broadening of the range of actors drawn into the integration process. For Nye, the challenge facing integration was not politicization but 'premature politicization before supportive attitudes have become intense and structured' (Nye, 1971, 89). Nye was hinting at the potential dangers of politicization for the EU, which could undermine its legitimacy unless the EU had garnered sufficient public support and buffers to weather contestation. The integration process became subject to the much more intense controversy and the politicization predicted by Nye turned out to be one of the most important dynamics in the process of integration from the early 1990s onwards (De Wilde, 2011, De Wilde et al, 2016, Hix 2008, Zürn, 2016). Even prior to this intense politicization, the EU governance system was prone to blockage because of structural features identified by Scharpf (1998) as a joint-decision trap.

The Joint Decision Trap

Scharpf was among the early scholars to identify the multi-jurisdictional nature of the EU and the consequences of this for policy-making and policy outcomes. Although Scharpf did not deploy the concept of multilevel governance, this was implied by his attention to multiple levels. By comparing EU decision making and German federalism, his 1988 article had a major impact on EU studies as it moved scholarship beyond the EU as a single case and facilitated a wave of analysis of EU policy making that offered an alternative to what had become a rather sterile theoretical debate between neo-functionalism and intergovernmentalism. In the 1988 paper Scharpf classified the joint decision trap as decision blockages and sub-optimal policy outcomes in multi-jurisdictional systems that were dependent on the agreement of lower tier jurisdictions. Scharpf revisited the joint decision trap

and emphasized that it was just one mode of EU decision making as he further identified a hierarchical mode, which according to him came in two versions (Scharpf, 2006). The first was joint problem solving with Commission leadership and the second a non-political hierarchical mode led by the ECJ and the ECB. The hierarchical mode enabled the Commission, the European Court of Justice or the European Central Bank to exercise important policy functions without the involvement of political actors in the Council and the European Parliament (Scharpf, 2006). The hierarchical mode facilitated policy action unconstrained by the joint decision trap. However, it also contributed to the politics trap, as we will see later. The joint-decision trap was an invitation to scholars to explore if and how such traps, deadlock or blockages might be overcome. A number of major studies identified a myriad of mechanisms by which the EU escaped deadlock, such as arena shifting, vague political commitments to be built on, threats of litigation, strategic selection of decision rules, package deals and differentiated integration (Heritier, 1997, 1999, Falkner, 2012). Soft modes of governance offered an additional escape route from the joint decision trap (Sabel and Zeitlin, 2008). Escaping deadlock relied on covert integration, subterfuge and integration by stealth (Majone, 2006, Heritier, 2014). Covert integration was functionally necessary to achieve policy and legislative action but it came at a cost as it obfuscated political choice and channels of accountability.

The Politics Trap

The literature on the EU has been bifurcated between a body of knowledge on the EU's policy process and governance, on the one hand, and EU politics, on the other. Each body brings to the fore tensions and contradictions in European (dis)integration. What transpires is how deeply the EU has become enmeshed in politics; the political project itself, the growing politicization of the integration process, battles within policy areas, struggles for power across institutions and the diverse ways in which Europe plays domestically. What is less clear is how one can come to grips with this multifarious reality. The approach taken here is to first break down the complexity of EU politics into the three established dimensions of political order, namely, the three Ps, polity, policy, and politics. All three dimensions need to be included in a historical analysis of the Union's political order. While this analysis may seem telescopic, there is considerable analytical leverage in combining these dimensions in a single macro-systemic frame:

- Polity is the concept that embodies the form and configuration of a political system. Polities are configured around constitutional and legal structures and accompanying institutional systems. The polity houses the political community and structures its values. The focus is on constitutional, legal structures, political community and values.
- Policy addresses the content of politics. Public policies are the output of political processes that respond to the demand for public intervention. The scope of public policies grew significantly with the emergence and consolidation of the nation state and welfare state. Since the EU is not a scaled up version of the nation state, the aim is to analyse the EU's policy mix and its competence across different policy fields.
- Politics in this context refers to political processes, notably the channels of representation and the cleavages that structure politics.

The analysis begins with polity followed by the Union's policy mix and then the structure EU politics.

Polity

The search for an 'organized Europe', which animated those who signed the ECSC Treaty in 1951 led by 1970 to a collective institution defined by Lindberg and Scheingold as *Europe's Would be Polity* (Lindberg and Scheingold, 1970). Organizing Europe involved 'polity building and grand issues of political architecture' (Hooghe and Marks, 1997). This section is designed to draw out the key features of the EU polity and identify the glue that holds the Union together. From the outset, the essential structural feature was its compound form; it was a polity of polities consisting of the whole and the parts, the member states, but the EU was more than simply the sum of the participating states. Dashwood argued that the constitutional order of the Union preserved 'the unique character of the Union as a polity having sovereign States as its component political entities' (Dashwood, 2004). The member states as the 'High Contracting Parties' retained their constituent power. The polity-building objective was not to transcend the nation state but to establish 'a special type of relationship between states' (Pescatore, 1974). That special relationship necessitated the collective pooling of sovereignty.

Accession to the EU brought each member state into the realm of co-existence with the other member states and the Union as a whole, captured by the idea that being a member state involved regard for the Union as a whole. The treaties provided for 'sincere co-operation', 'mutual respect, and the fulfilment of the 'obligations' arising from the treaties by the member states in what was referred to as the loyalty clause (TEU, Article 4). The treaties progressively specified the normative frame, the values, notably in Article 2 TEU, of this collective polity.

The building blocks of the European polity were found in EU treaties and laws, a constitutive feature of the Union polity. The fundamental role of law did not result from the deliberate design of those who negotiated the founding treaties. The High Contracting parties were intent on creating a framework of decision-making, a set of goals and institutions with the purpose of establishing a coal and steel community and a common market not an autonomous legal order (Augenstein, 2016). The treaties provided for a court with the responsibility to ensure that 'the law is observed' in the application and interpretation of the treaties. From this rather sparse provision a supranational legal order that was neither domestic nor international evolved. The first polity moment occurred in the legal sphere not the political realm when the European Court of Justice (ECJ) constitutionalized the treaties by establishing the principles of supremacy and direct effect in a number of seminal cases in the 1960s (Weiler, 1999, 10-16). In tandem, Article 177 on preliminary rulings opened up the judicial systems of the member states to direct engagement with the supranational legal order. According to Walker: 'The normative interlocking of EU law with national legal orders is in all instances and on all possible interpretations far greater than in the case of any previous merely 'international' as opposed to 'supranational' legal regime' (Walker, 2005, 583). The EU polity was a source of law but was also very much a product of law; 'integration through law' was and remains a constituent feature of the polity (Cappelletti, Seccombe & Weiler 1986). For Augenstein 'while law is a product of the polity, the polity is also to some extent a creature of the law' (Augenstein, 2016).

The compound nature of the EU polity raised the issue of political community in a particularly acute manner. The dominant form of political community in 20th century was the nation state which represented a convergence of territory, identity, solidarity and a set of functions undertaken by public authority. The symbiotic link between nation and state, bounded territory and bonded people, proved a powerful and enduring form of social organization. Europe's nation states, the parties to European treaties defined their collective aim as 'ever closer Union among the peoples of Europe'. This formulation captured the duality of the EU, the singularity of the Union and the plurality of the 'peoples of Europe'. It also implied a

future oriented project evoked by the words 'ever closer'. What kind of political community and political identity could or should develop in the polity of polities that is the EU? Could national political identity embrace politics above the level of the state and if yes in what way? Scholars remain deeply divided on these questions. At one end, there are those who argue that political community is 'only possible within the framework of a *demos*, ie. a political community with the potential for democratic self-governance as expressed in the concept of the modern nation state' (Zürn, 2000, 191). In the absence of a *demos* there can be no political community and hence democratic governance beyond the state. This approach to the identitive character of states was contested by other perspectives emphasizing the distinctiveness of the EU. Nicoladis argued that:

In the half-century since its creation, the EU has established itself as a new kind of political community: one that is defined not by a uniform identity-a *demos* but by the persistent plurality of its peoples-its *demosi* (Nicolaidis, 2003, 101).

This Europe of multiple *demosi* translated into a European *demoicracy*, a Union of states and peoples (Nicolaidis, 2003, 2004, Cheneval & Schimmelfennig, 2013). From this perspective national *demosi* will persist well into the future and will not be superseded by a European *demos*. Notwithstanding this, the EU actively engaged in 'top down' strategies of identity building, a form of Euronationalism. The Euro, the European flag, the anthem, and the European designation on driving licenses, car number plates and health cards evolved as symbols of belonging and sharing that most Europeans have some familiarity with. Euro coins captured well the EU's dual character with a shared European symbol on one side and a diversity of member state symbols on the other. The creation of European symbols was accompanied by the development of EU citizenship, which bestowed rights but nested in citizenship of a member state. Efforts at European identity building and the creation of European citizenship has not transcended national identities or national citizenship. It has, however, opened up political space for additional layers of identity and altered what it was to be a citizen of an EU member state. The European flag was transformed from a symbol into a powerful political statement. The UK decision to 'exit' the EU is experienced by millions of UK citizens as a loss of identity and shared rights but by others as the regaining of political control and agency. A *demoicracy* framing of political community captured the nested political identities of a compound polity but did not adequately capture the emergence of entangled identities, the breaking out of the national that characterizes contemporary Europe. Much of the day-to-day business of the EU falls under the heading of policy-making and implementation. The Union was a problem-solving arena that sought to address policy issues that required a European level response. Underpinning the Union's policy making machinery is a distinctive compound polity of states and their peoples that enmeshes the member states in an innovative constitutional and legal order and offers their peoples markers of identity that go beyond the national which they may embrace, reject or remain indifferent to.

Policies

The Union's evolution as a polity and its policy competence were intertwined because what the EU does was always bound up with how it does it. The treaties divided Union policy competence between those areas (few in number) where it had exclusive competence and three other legal bases for action. These were 'shared competences' where the EU and the member states could adopt laws in defined fields, a Union 'competence to support, coordinate or supplement policies' of the member states and a competence to create arrangements that facilitate the coordination of national policies (Art 2-6, TFEU). The competence of the Union was strongest where it had exclusive competence and weakest where it was limited to creating frameworks for the coordination of member state policies. The most prevalent policy power that the EU had related to shared competence. Consequently,

there was no neat or clear division between EU and member state competences across a whole range of policy fields. The Union's policy competence reflected the progressive widening of the policy problems that were propelled onto the EU agenda and the agreement of the member states to collectively address a wider policy range.

The fourfold classification of policies developed by Lowi (1972) who distinguished between constituent, regulatory, distributive and redistributive policies provides the analytical frame to probe the distinctive policy mix that evolved in the EU. Although the difficulty of assigning complex public policies to one or other category has been highlighted in the literature (Anderson 2005), the typology offered a macro-level classification that aids our understanding of the Union's policy mix which differs significantly from that of its member states. What Lowi defined as *constituent* policy occupied a significant place in the policy mix because the EU was not the product of a one off treaty. Treaty making was a crucial part of the evolution of the EU beginning with the original founding treaties. Since then there have been major revisions and additions to the Union's treaty architecture.

Constitutional politics in the Union has always been high politics usually involving a framing exercise by a preparatory body (Reflection Group or Convention), the formal establishment of an Intergovernmental Conference (IGC) and tough intergovernmental bargaining among the member state governments. Overtime, EU level institutions such as the European parliament and the Commission have gained a foothold in treaty making although the end game in Treaty negotiations is in the hands of the European Council. The member states remained masters of the treaties in so far as their agreement was necessary to secure treaty change. Because the treaties were primary law, each treaty required national ratification according to the constitutional provisions of the member states. The domestic ratification process of any EU treaty may be politicized. This was particularly the case when Governments must or opt to put the treaty to a popular referendum. The ratification of the Constitutional Treaty stalled after failed referendums in France and the Netherlands in 2005 and the ratification of the Treaty on European Union (TEU), Nice and Lisbon required second referendums in Denmark in 1993 and Ireland in 2002 and 2009. The 2012 Stability Treaty or Compact offered another ratification track because it was an intergovernmental treaty agreed by 25 EU states that came into force when ratified by twelve of the seventeen Eurozone states.

Regulatory policies dominated the EU's panoply of public powers and have two dimensions, namely, what was prohibited (thou shalt not) and what was permitted in particular domains. The emergence of Europe's regulatory state, first captured by Majone (Majone, 1994) led to a burgeoning literature on EU regulation. Regulation was the core source of public power in the EU as the Union developed its formidable law making capacity since its inception. The *acquis communautaire* which represented the Union's body of law runs to over 80,000 items. The focus on EU regulation coincided with the development of the single market project at the end of the 1980s; there was an extensive programme of de-regulation at national level and re-regulation at the EU level. The single market led to the development of EU regulatory regimes in the economic, social and environmental spheres and the growth of EU level regulatory agencies. The resort to regulation was accentuated by the Commission's lack of budgetary authority.

The regulatory turn in the EU had important implications for EU politics. The deepening of the Union's regulatory reach was spearheaded by the Commission and enhanced the technocratic and expert led character of policymaking. This was evident in the development of non-majoritarian EU level agencies involving dense networks of national agencies. The agencification of EU governance was an important development of the EU polity and altered the configuration of executive power in the Union. In 2017, the EU had 44 agencies set up under EU law to conduct technical, legal and scientific tasks within the Union. Regulatory

decision-making 'aims for consensus rather than controversy; regulatory policy issues are framed as functional problems; regulatory venues exclude party political representation and contestation' (Mabbett & Schelke, 2009, 699). EU regulation given its extent of the fields covered has not been the subject of extensive controversy with the exception of the services directive, the habitats directive and the posted workers directive. Most EU regulation goes under the political radar. EU regulation had distributional consequences but regulatory processes were designed to obfuscate these consequences.

The EU had much weaker competence in *distributive* and *re-distributive* policies than in either constitutive or regulatory policies. The common agricultural policy, which effectively distributed subsidies to farmers was the Union's main distributive policy and the Union's role in redistribution was much weaker than the national welfare states. The Rome Treaty contained a commitment to overcoming the 'backwardness of the less favoured regions' which was treaty language for poor regions. Since then the question of EU cohesion and solidarity and the strengthening of the EU's public finance capacity has been a recurrent theme on the Union's agenda. Overtime political agreement was reached to develop EU level policy instruments to foster the catch-up of Europe's poorer regions. This began with the 1975 establishment of the European Regional Development Fund (ERDF) but received a major boost in 1988 when it was agreed that the funds flowing to what were objective one regions would double by 1992. This was a response to the internal market programme and the fear that market liberalization would favour Europe's core regions. This commitment spread to the accession countries of East Central Europe when they joined from 2004 onwards. The political commitment to redistribution was to economic 'catch-up' rather than permanent interregional transfers found in most federal systems. Interpersonal transfers remained a national prerogative. The Euro crisis and its continuing legacy was a major test of whether a limited form of solidarity was sufficient to sustain the EU, particularly an EU with a common currency. The question of solidarity was placed firmly on the European agenda and how it is processed is very much in the realm of politics. Agreement to a Recovery and Resilience Facility (RRF) in July 2020 marked a major evolution in the history of the EU as the member states agreed to EU level borrowing.

Politics

EU politics for the purposes of this analysis has two inter-related dimensions, namely EU political processes and the politics of the EU, the EU as project. The compound nature of the EU polity played a central role in the multiple political settings that animated EU politics and the unsettled and dynamic nature of the EU project itself acted as a catalyst for a politics of the EU. The electoral channel involving the participation of citizens in EU politics included national elections (domestic route) and the five yearly direct elections to the EP (EU route). National elections underlined the significance of territorial politics in the Union. The outcome of national elections influenced who represents a member state at the European Council and the Council of Ministers through government formation and the balance of forces in national parliaments. Referendums were an additional channel for citizen participation in EU politics and there has been a growing number of EU related referendums in the member states since the early 1990s. The EP elections offered citizens an opportunity to elect representatives to the transnational European Parliament but did not offer them a choice about who should govern.

The second dimension of EU politics, the polity dimension, was captured by the continuous debate on 'The Future of Europe' and EU reform, on the one hand, and contestation about the EU, on the other. The European flag and anthem have been used as symbols of both these dynamics; when elected President Macron emerged to a multitude of European flags and the 'Ode to Joy' but the burning of the European flag was also evident during the anti-austerity

protests during the Great Recession. Contestation concerning the EU polity has intensified over the last twenty years and was manifest in public discourse, elections and referendums. Opposition to the EU, Euroscepticism, was and remains an increasingly salient and politically visible phenomenon across the member states (De Vries, 2018). The politicization of the integration process has had profound consequences for the EU as a polity, what it might become, for the structuring of European politics and what it is to be a member state. Writing in 2009, Hooghe and Marks concluded that mass publics were increasingly interested in the processes of European integration and concerned about the trajectory of the EU polity. Heightened interest translated into questioning the actions of Europe's political elites and the legitimacy of the EU itself (Hooghe & Marks, 2009). The famed 'permissive consensus' was replaced by a 'constraining dissensus' which limited the political freedom of elites (Hooghe and Marks, 2009).

In 2000, Mair argued that Europe as an issue had failed to penetrate domestic party systems as political leaders preferred to keep it at a remove from domestic politics (Mair, 2000). Since then centrist parties have struggled to keep Europe off the domestic political agendas leading to the politicization of national electoral arenas (Hutter and Grande, 2014). Hutter and Grande's analysis found that European integration had been politicized but that there was a marked difference in 'the level, timing and patterns of politicization across countries' (Hutter & Grande, 2014, 1015). The pace of politicization accelerated during the global financial crisis particularly in Eurozone member states. In the first round of crisis elections, eight incumbent Governments lost power through elections and two governments were replaced with technocratic governments. Europe's citizens used the electoral channel to 'kick the rascals out'. According to Hernández and Kriesi (2016: 210), 'incumbent parties have been more severely punished as the economic conditions of their country worsened while they were in office'. Punishment was severe and historically unprecedented with some mainstream parties losing between 7 per cent and 25 per cent of their vote. In most countries, voters opted for the available traditional opposition party or parties except in Greece where Syriza, a challenger party, gained power in January 2015. The volatility of electoral behaviour and the fragmentation of party systems continued in the second round of crisis/post-crisis elections. The 2018 Italian elections delivered over 60% of the popular vote to Eurosceptic parties. Citizens' responses to Europe have become deeply entangled with other structural changes in domestic politics.

The second channel of representation for EU citizens' was the five yearly European elections which were launched with much fanfare in 1979. The expectation back then was that the EP elections would serve to complement domestic politics with transnational politics and that a directly elected parliament would add to the legitimacy of the EU. Almost 40 years later, direct elections have failed to create a robust form of transnational politics or a vibrant transnational political space in Europe. The elections have served to enhance the powers of the EP and its role in the legislative process. The 'second order' significance of European elections and the low, albeit varied, turnout across the Union was evidence of the weak capacity of these elections to bring European issues to the citizens and to act as a channel of representation. Given the limited stakes in these elections, they offered a low cost option for citizens to demonstrate discontent with parties in power or opposition mainstream parties. Challenger parties have increasingly used EP elections as a platform to strengthen their political presence and influence subsequent national elections. Embryonic transnational parties have emerged but were dominated by member state parties and there is no evidence of a European party system emerging. The Spitzenkandidat process used for the first time in the appointment of Jean-Claude Juncker as Commission president in 2014 was an attempt to insert choice about executive leadership into the elections. It played a central role in the competition for institutional power, Commission Presidency, rather than a politically meaningful offer to European citizens.

The third channel of representation for European citizens was direct democracy or referendums which have become a more prevalent feature of EU politics over the last 20 years. There was no treaty provision for Europe wide referendums with the result that EU related referendums took place within national settings. A total of 59 (44 in current EU member states) referendums on European issues have taken place since 1951 in which yes was the outcome in 70% of cases. Negative votes in referendums concerning membership were not systemic for the EU as the country in question did not join the union. Nor were referendums on membership of particular EU regimes such as the Euro and Schengen particularly problematic. The countries in question opted out of those initiatives which reinforced the EU as a system of differentiation integration. Referendums on European treaties given the requirement of unanimity had the capacity to prevent constitutional change in the Union and thus have a systemic impact on the Union. There is a more recent phenomenon of member states holding referendums to strengthen their bargaining power in dealing with the EU, notably the Greek 2015 referendum and the 2016 Hungarian referendum on refugee quotas. A popular initiative in the Netherlands in 2016 on the EU-Ukraine Association Agreement might have derailed a major Union treaty with a neighbour. The 2016 decision by the UK electorate to exit the Union is systemic because the process of exit is much more problematic than accession and the Union is confronting this for the first time. Referendums have become a pronounced feature of EU politics during this politicized phase of integration but their consequences for the Union is dependent on the nature of the question and the willingness of the EU to re-visit negotiations within very constrained limits.

Nature of Europe's Politics Trap

The compound character of the EU polity (states and peoples) was the root structural cause of the Union's politics trap. There was a deep tension but also multiple binding ties between the national and the European, between the new polity and the older order of Europe's nation states. The EU polity relied on the political and material resources of the member states and molded them for European purposes. The emerging polity disturbed the bounded and bonded character of its member states in processes that might be described as the breaking open of the national. This breaking open involved a struggle, which has gathered pace, to reimagine boundaries, state identity, symbols, political identities, solidarity and belonging. Europe's deep diversity on so many fundamental dimensions made this especially challenging and historically innovative. The EU have always faced a two-fold challenge, (a) to combine the member states with EU level supranational institutions in a collective polity that had sufficient order and political authority to engage collective action and (b) to ensure that this collective action could command sufficient legitimacy in the eyes of European publics. These challenges became more demanding given the growth of member state heterogeneity, the rise of Euroscepticism, and the volatility of domestic politics in Europe. Following Nye (1971) who suggested it would be fruitful to break open the concept of integration, we distinguish between constitutional and functional integration, one the one hand and political and social integration, on the other. This distinction was influenced by a classical distinction found in social theory between system and social integration, terms that encompass both order and conflict (Lockwood, 1964, Archer 1996). Transforming relations among states was a matter of system integration whereas relations among their peoples was a matter of social integration.

Constitutional and Functional Integration

The integration project of transforming relations among states in Europe, system integration, evident in treaties, laws, institutions, shared policies and governance modes, was and remains

substantially deeper than political and social integration. Encased by treaties and a distinctive European legal system, integration was exemplified by 'integration through law' and a 'rules based system' in contrast to the traditional power politics of the European interstate system. The EU amassed authority and created order based on treaties and law. Integration through law gathered pace in the late 1980s and 1990s as the Union embarked on a deepening of market integration largely through regulation. Although the member states remained 'masters of the treaties', the constitutionalization of the treaties by the ECJ and its growing jurisprudence put the living system beyond state control. ECJ led hierarchical deliberation and case law, identified by Scharpf, narrowed the policy space for domestic governments in a process that has been classified as over-constitutionalization (Scharpf, 2006, Schmidt, 2018).

The EU's policy mix, as analyzed above, relied disproportionately on rules rather than other forms of public power such as the power of the purse or public finance. This had a major impact on the politics that animated the EU polity and what the EU could or could not do to address societal demands and public policy problems. The limited size of the EU budget militated against addressing problems, however pressing, that required public finance and severely limited the capacity of the Union to re-distribute resources across the member states. Even within its limited means, the EU budget was characterized by considerable path dependency and it has proved difficult to alter priorities and shift funding to urgent issues. The constraints created by this distinctive policy mix and sources of public power have led to an 'expectations-capabilities gap' whereby citizens expected more from the EU than it was capable of delivering (Hill, 1993).

Overtime, the Union's regulatory reach extended into core state powers, notably in security and fiscal policy that go to the essence of what it is to be a state (Genschel & Jachtenfuchs, 2018). Historically federal systems proceeded largely by building state capacity rather than relying on rules in the area of core state powers (Genschel & Jachtenfuchs, 2018). The pattern in the EU was to 'mobilize core state powers for European purposes rather than establish genuine European core state powers' (ibid, 252). There is a darker side to this, which is captured by the growing intrusion of the EU into the domestic in areas of limited EU competence. The EU through the Growth and Stability Pact has become a surveillance Union that seeks to mold and constrain domestic fiscal policy via rules, limits and monitoring. The political impact of EU level rule-making in areas that were traditionally in the hands of technocrats at domestic level, such as product standards, are qualitatively different to EU rule-making in fiscal policy. The dominance of rules rather than capacity building limits the ability of the EU but also its member states to be responsive to the public.

From an 'integration through law' perspective, domestic politics in a number of EU states since 2010 have stretched the Union's legal system and normative frame to its core. The essential glue that treaties and law provided the Union is being tested by the struggle to up-hold collective values. The arrival in power of a Hungarian Government led by Victor Orban and his party Fidez in 2010 followed in 2015 by PiS in Poland exposed the weak capacity of the Union to address serious breaches of the core values of the Union. The weakly coercive nature of the Union and the tradition of regarding domestic politics as a 'chasse gardee' gave ample opportunity to both governments to undermine the rule of law, the checks and balances within their domestic systems and media freedom. Membership of powerful EP party groupings, notably, EPP and SD, has shielded them from political sanction by their peers. This has left the Commission struggling for support as it attempts to sanction them by deploying Article 7 of the treaty. The deliberate undermining of democracy by a member state goes to the heart of the EU as a community of values and exposes the weak capacity of the collective to ensure that the Union's normative foundations are not permanently damaged.

Political and Social Integration

For much of the history of the EU, there was an adequate fit between constitutional and functional integration and political integration and social integration. The fit was secured by the role of member state political elites particularly governing elites and the broadly permissive nature of domestic public opinion. Traditional parties of the left and right generally supported the evolution of EU laws, policies and governance and had little incentive to politicize EU issues in domestic politics. Public opinion was supportive or at least indifferent. A confluence of three major factors served to alter this. First, the salience of the EU and the widening of its policy range as a result of the single market project, the Euro and the evolution of JHA brought the Union into the 'nooks and crannies' of the member states. Second, these projects required treaty change, which brought the EU to the fore in national parliaments and for some publics given a series of treaty related referendums in the member states; in less than 20 years, European treaties were defeated in five member state referendums. Third, both phenomena were accompanied by a widening of the membership of the Union as it became continental in reach and scale. The scope and depth of change in the Union from the mid-1980s to the mid-2000s unsettled the Union but was also unsettling for the member states and their peoples. Opposition to the EU in the form of Euroscepticism gained traction beyond the political margins. The refugee crisis of 2015 further politicized migration, which fed into the political agendas of the radical right, a powerful source of Euroscepticism. These trends were amplified by underlying structural changes in domestic politics, notably, in the infrastructure of politics with a decline of the role of traditional parties, the emergence of new actors, increased volatility in political behavior, a fragmentation of political space. The traditional producers of EU governance, the centrist parties were exposed on both the left and right to challenger parties.

The battle for the future of the EU and European integration is being contested in all member state societies and across Europe. To simplify, the peoples of Europe might usefully be thought of as consisting of three different groups. Genus one are the cultural nationalists with a preference for closed identities, are anti-pluralist, oppose migration and are Eurosceptic. In the UK, this group favored exit over voice but in the rest of the EU, Eurosceptic forces increasingly want an EU that reflects their preferences. Genus two might best be defined as liberal nationalists, with a preference for inclusive and open societies but remain rooted in their societies and attached to the nation state. Concerning the future of Europe their preference is for bounded integration but they are not Eurosceptic. Genus three are those Europeans who are highly mobile, live and work in multicultural and multinational environments, support multiculturalism and have a post-sovereign view of the world. A central EU paradox is that as it evolved, EU rights privileged the mobile; those who move to work, for education or to retire in other member states and those who travel frequently. The organization of political Europe on the other hand privileges the settled because of the dominance of territorial politics in Europe's democracy.

Conclusions

As the EU confronts multiple challenges in an environment of constrained political choice, it is valuable to take a telescopic view of the EU and its politics. Both scholarly and media portrayal of the EU emphasize the gaps between the demand for EU governance and its supply without paying sufficient attention to its core features as an experimental political order with limited capacity. The core features, analyzed in this paper, are the reliance of the EU on 'integration through law', a set of collective institutions underpinned by a nascent political community and a policy mix that is skewed towards regulation. The politicization of integration, growing Euroscepticism and structural changes in domestic politics underline the limits of 'integration through law' at a time when constitutive features of legal integration are under threat from the

rise of authoritarian governments in the Union. The structuring of politics privileges domestic politics and referendums over collective EU transnational politics as EP elections are parallel national contests. The evolution of transnational governance in the Union has not been matched by the development of transnational politics. Political actors offer a number of different strategies to address the politics trap, notably the *Spitzenkandidaten* process, Citizenship initiatives, transnational lists for the European elections, the use of citizen's to provide mechanisms and channels for transnational politics. These piecemeal experiments may well offer a thin form of transnational politics but will not replicate the coherence or thickness of national democratic politics. Nor should this be expected given the impossibility of reproducing at the EU level the congruence between political boundaries and political identities that characterized the nation state. The Brexit process demonstrates that retrenchment to the national may not be viable given the deep interdependence that characterizes European societies. Disintegration of the EU, although possible, will not return Europe's publics to the heyday of the nation state. It appears as if the social and political identities of Europeans will have to cope with multiple levels and layers of belonging to a polity of loosely coupled institutions with thin political agency.

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