

The Political Economy of Europe's Future and Identity

Integration in crisis mode

Edited by
Annette Bongardt & Francisco Torres



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Noi si mura

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Il Ratto di Europa

by Onofrio Pepe, maestro scultore e mitografo,
Florence (EUI collection)

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CHAPTER 3

Democratic respect in times of crisis: The case of the NextGenerationEU fund

Kalypso Nicolaïdis

1. Introduction

Crisis may generate policies that open new political vistas, pushing back the limits of the possible, or on the contrary policies that constrain our collective agency, giving defenders of the existing order a pretext on which to seek to consolidate it (White, 2022). To ask under what conditions are crises horizon-expanding instead of horizon-shrinking is not to ask whether politicians and policy makers manage to “solve” a given crisis, or in the period examined in this book, a series of crises, but rather whether the manner in which it is solved opens up new transformative possibilities that had not been imagined before (Nicolaïdis, 2022).

I believe that the so-called perma-crisis that has come to characterise the EU in the last 15 years has offered horizon-expanding potentials that will only be actualised through bold moves and a general ethos of what I refer to here as ‘demo-

cratic respect'. I define democratic respect as an attitudinal disposition by which decision-makers engage in politics and policy shaping as a function not only of the "public interest" as they so conceive but as a function of the public's claim to self-government. This understanding sets out to overcome the a-priori tension between responsiveness and responsibility posited by Mair (2005) popularised by Juncker's infamous "we know what is to be done, we just don't know how to get re-elected when we do it". In contrast, an attitude of democratic respect sees the tension not as essential feature of the political landscape but rather as endogenous to the way decisions are approached and taken.

As discussed in several chapters in this book, the NextGenerationEU fund (NGEU) was conceived by the European Commission and the member states as both a way to absorb and "emerge stronger" from the economic shock created by the COVID-19 pandemic and a mechanism to operationalise a renewed commitment to European public goods, including the European Green Deal (Bongardt and Torres, 2022). Through its centrepiece, the Recovery and Resilience Facility (RRF) the EU has raised funds by borrowing on the capital markets and issuing bonds on its behalf that it makes available to its member states to implement reforms and investments to "make their economies and societies more sustainable, resilient and prepared for the green and digital transitions" as well as "address the challenges identified in country-specific recommendations under the European Semester framework of economic and social policy coordination". And in addition, it helps implement the REPowerEU plan to address socio-economic hardships and global energy market disruptions caused by Russia's invasion of Ukraine.

Here, I revisit the design and operation of NGEU as a test case for the effective expression of democratic respect and offer a normative justification for two ways to operationalise this ethos: the democratic panopticon and democratic deliberation.

2. NGEU Fund: Three Shifts

As I have argued elsewhere (Nicolaidis, 2022) we ought to consider the potential opened up by the NGEU not just as the material injection of funds but rather as both a potential trigger and an expression of three (incomplete) shifts in EU policies with important implications for the EU polity and the question of democratic respect.

First is what we can call ‘deference with purpose’. Considering that relations between states are characterised by an ever-shifting balance between mutual deference and mutual interference, crises tend to lead to new equilibria between the two that may or may not be enshrined in new rules. In this sense, the EU is constantly revisiting Europe’s Westphalian bargain, which simultaneously enshrined sovereign recognition and therefore deference, and its conditionality and therefore interference, reminding us that states’ recognition of each other’s autonomy tends to be predicated on their *droit de regard* inside each other’s realm, as a function of mutual trust.

As we witnessed first and foremost in the case of Greece, the Euro-crisis will be remembered as a moment when EU institutions presided over a radical jump in asymmetric mutual interference allowance under the cover of debt. Such asymmetric interference combined in effect the traditional creditors conditionality playbook à la International Monetary Fund (IMF) with the much more far-reaching core competences of the EU. And this “great merger” turned the shared polity into the kind of enforcer which hitherto had been a role reserved for agents like the IMF, with the caveat that the IMF is both externally and temporarily involved.

Against this backdrop, the NGEU on the other hand, can be seen as a shift of the pendulum back to deference, based as it is on a bottom-up process of national commitments. In order to access the funds, the member states need to present ambitious investment programmes which integrate the digital and climate transition imperatives. The Commission allocates budgetary envelopes to the member states which generate their own distribution key between projects. To be sure, EU monitoring and its concurrent emergency break is still part of the equation, but linked not only to financial solvency but to the country’s continued contribution to shared purposes.

The second shift is more tentative and has to do with the modes and extent of accountability associated with the first shift. It may be premature to say that horizontal interference between states has been replaced by accountability *all the way down* at the domestic level bolstered by transnational networks. Here the mutual engagement which accompanies the sharing of funds extends beyond the diplomatic realm, taking place under the implicit auspices of the public sphere and the interconnected democracy spaces of the member state. At stake is indeed the question of whether the agency regained by EU institutions in the wake of the Covid-19 pandemic can be put to work for democratically-chosen ends.

Last but not least, and connectedly, the third shift has to do with the political-economic underpinning of the second shift, namely the nature of the funds at stake at the first mutualisation of debt in the EU, which in itself has key implications in democratic terms. This can be summarised in three stages: “*no spending without taxation*,” “*no taxation without representation*” and “*no representation without participation*”.

1. “*No spending without taxation*”: the NGEU cannot escape the old imperative that new debts are bound to imply new responsibilities. There will be mighty political fights in the future which will unfold in the public arena, including on whether the spending will be covered by old or new taxes, how to balance EU fiscal autonomy with national fiscal primacy, the distributional implications for richer and poorer member states and most fundamentally, to what extent EU-wide taxes ought to mirror EU-wide benefits – from European taxation of digital multinationals, the «GAFA» (Google, Amazon, Facebook, Apple) for the benefit of EU-wide digital infrastructures to a carbon border tax so that the EU Emissions Trading System (ETS) does not result in competitive distortions facing EU firms in international trade (Bongardt, 2023, this volume). After all, the new taxes will bear important implications for each European citizen, even if on corporations and/or at the border, given fiscal crowding out, induced inflation, and so on. The core democratic tensions between considerations of distributional fairness and electoral savviness are bound to be at play. In all of these ways and more, the hike in taxation opened up by NGEU, even if at the EU level, will have crucial democratic implications.
2. *No taxation without representation*. Although extensive monitoring and reporting mechanisms have been put in place to support the Recovery and Resilience Fund (RRF) it is not clear how democratic they might be. They provide benchmarks to the public on how the funds are used in different countries according to alternative criteria of output and outcome, collated in databases such as the research infrastructure FENIX. But there is no such data at the micro project level.
3. *No representation without participation*. This is indeed the broader context in which the unfolding of NGEU takes place, a context where the EU increasingly recognises that participatory democracy is no longer a mere appendix to representative institutions but deserves an eco-system in its own right. Under this premise, the spending of the funds needs to be scru-

tinized by any actor who wishes to and is able to do so, thus bringing to bear the wealth of collective intelligence in deploying the EU's resources. The general public, the media and the organisations involved in formal and informal activism may stand at the end of long chains of scrutiny, but they are the ultimate stakeholders in the kind of democratic control called for by such an ambitious programme. Unfortunately, beyond being informed on their country's or region's performance of specific targets, monitoring does not extend to the project level whereby the public would be granted the means for granular assessment of 'where the money goes'.

How then can we envisage to address the triple democratic challenge raised by these three shifts?

3. The democratic panopticon: Democratic respect through radical transparency

I have suggested elsewhere (Nicolaïdis, 2021) the idea of subverting the ominous idea of Bentham's surveillance panopticon to herald the creation of a *democratic* panopticon, whereby decision-makers, like Bentham's prison inmates, will be effectively compelled to regulate their own behaviour under the assumption that citizens might be watching at least some of the time, their power both visible and unverifiable. Publicity takes the place of surveillance, a way to guard the guardians, and social control becomes control by society, not of society. In effect, what we should be advocating in the age of the internet and widespread literacy is a kind of monitory democracy on steroids, as one element of a broader democratic ecosystem in the EU. The implementation of the NGEU may serve as the testing ground for such a democratic panopticon. Forget *la revolution permanente*, long live *la participation permanente*.

But could NGEU serve as the test case for such a democratic panopticon in the EU? To be sure, there has been attempts in this direction with regards to the Common Agricultural Policy.

When it comes to classical electoral representation, it is fair to say that much depends on the vigilance of national parliaments themselves. In short, the NGEU offers two modes of scrutiny: First, a policy mode where country programmes are assessed and audited on the basis of performance-based criteria, gathered in an aptly named FENIX data base where disbursement follows investment performance. Second, an ethical mode based first and foremost on national systems

which control *ex-post* for fraud or conflict of interest, monitored by the Commission (see ARARCHNE data base). On both counts, this gap in reimbursement opens up the potential for expanded scrutiny since assessing whether funds have been spent appropriately tends to require time. But how democratic has this scrutiny been until now or is likely to be? Have governments published the data in accessible ways? What is the optimal democratic division of labour in the process?

These questions vary depending between two different moments in the RRF cycle:

- a. The *ex-ante* approval process of the spending plans where one would expect a primary (budgetary) role for national parliaments to mitigate the risk that executives both be judge and party. Up to now however, and while every country operates under a different tradition of parliamentary control, such scrutiny has generally been wanting. Some argue that national parliaments cannot be involved in the details of every sectoral allocation but need to set budgetary priorities and overall rules of conduct (in Italy for instance the parliament added an obligation to channel 40 per cent of the funds to the South). Is this sufficient? How should this process relate to electoral cycles? What happens with a change of government in the middle of the procedure? Should the European Parliament (EP) fill the gap of time consistency?
- b. When it comes to the execution of the plans through procurement and specific projects, questions of scrutiny become all the more critical. To what extent should control remain mainly retroactive as it is today? The current process emphasizes targets and the role of national control and audit system (CAS) which needed to be in place before the plans (rooted in national legislation and the structural funds machinery). In theory the EU acts as a power of enabler, allowing for instance parliaments to hold hearings and ask the CAS agency for detail. But what kind of data is made available to them? On what grounds can they assess projects? Should the EP be given a greater role to assess performance on top of the Commission's more narrow or technical assessment of outcomes based on milestones and targets? And if the EP's role is to introduce greater political judgement in these assessments, should it not work closely with national parliaments?

Clearly, most national parliaments are having a difficult time discharging this democratic oversight function. This is why the third leg of our democratic call stands on the premise: no representation without (citizens') participation.

Yet, when it comes to participation from civil society and the public at large, the democratic deficit is even wider. To be sure, even if degrees of transparency vary between member states, and between different levels of government, no member state seems to have embraced the idea of radical transparency to enhance the legitimacy and efficacy of the funds. To counter this state of affairs, the project labelled “the recovery files project” initiated by the Dutch company “follow the money”, has gathered journalists from about 20 member states to conduct their own assessment and transparency advocacy. As they point out, even the European Court of Auditors has recognised that it does not have enough resources to scrutinise properly. An early mover, the *Coalición Pro Acceso* and the Open Generation EU Platform have publicly called on the Spanish government to open the files. And the Helsinki committee in Hungary has demonstrated risks of government-led corruption in its preliminary reports, nepotism, with EU moneys often used to subsidise political messaging against EU. More generally, social partners across countries have started to question on what grounds country strategies can assess what is ‘incomplete reforms’ (as in judiciary, pensions, labour markets, tax) which were traditionally negotiated with social partners and stakeholder.

The compass for such a journey has an old democratic pedigree: inclusion. In some ways, the process of deepening the reach of democracy remains the same as it has been, namely a series of struggle to expand the franchise, to include more citizens under its tent. This time around, it is a franchise that does not necessarily express itself through the right to vote in periodic elections, but rather through widespread inclusion in the political process in all its forms, including the process of allocating the biggest funding drive ever available in the EU. We need no less than a democratic panopticon to ensure that those funds are allocated fairly.

4. Deliberative Citizens’ Assemblies

The other side of the coin of democratic control goes beyond the idea of monitory democracy to advocate a control of these funds by Citizens’ Panels or local assemblies whose members are selected by lottery to be involved in decision-making. Such a demarche in phase with a decades-long tradition of participatory budgeting, has already been experimented with regard to how cohesion policy funds get prioritised and spent (see Cantabria in 2021-22). And indeed, many citizens across Europe are engaged in democratic innovations at the local and national levels. At the EU level, the Conference on the Future of Europe (CoFE), 2021-2022, has opened a window of opportunity by offering a fascinating experiment with its

four Citizens' Panels that each brought together 200 people selected by lottery from across 27 member states to deliberate in 24 languages for around six days. The European Commission has since continued commissioning Citizens' Panels to inform its policy making processes in 2022-2023.

The time has come to make a qualitative step forward, to move the needle on the EU's democratic paradigm and open up a path for EU institutions to give people genuine voice and power in shaping EU-level decisions. A standing EU Citizens' Assembly could connect everyday European citizens (directly to one another, and not only through their institutions). By existing on an on-going basis with rotating members it could avoid arbitrariness and cherry-picking on when and how such assemblies are convened, while at the same time opening up the promise for learning over time. Such an assembly in turn could meet in different configurations, including to monitor the spending of European funds at local level. In other words, citizens assemblies can serve here as the main vehicle against state capture and corruption. When funds are distributed on the scale engineered by the NGEU, there is little doubt that such citizens' empowerment would bolster the EU.

5. Our democratic imagination

Whether this triple shift is actually at work remains to be seen but I believe that it has to do as much with our political imagination as with the constellation of economic interests that have been directing the combined hands of the market and the state involved in delivering NGEU. Put simply, what is at stake with the NGEU is whether it will serve as a conduit for the reinvention of Europe's greatest asset in the face of the global autocratic onslaught: democratic authorship and the collective intelligence that comes with it.

This appeal to our democratic imagination rests on a simple diagnostic regarding public opinion in the EU. Scholars like Virginie Van Ingelgom (2014), Catherine De Vries (2018) or Sarah Hobolt (Hobolt and De Vries, 2016) have demonstrated that 'the median European' is neither Eurosceptic nor Europhile but that Europeans tend to be integrationist in substance and sovereigntist in method. They approve of 'more Europe' to address crises like a pandemic, but also of more decentralised, local engineering of crisis response. In this spirit, we need to manage democratic interdependence between its member states all the way down, progressively promoting norms and processes that connect national democratic conversations horizontally supported but not captured vertically by Brussels.

This is what I mean when I say that the EU can be understood as a ‘demoicracy’ in the making, a union of peoples who govern together but not as one, where a shared political identity resides with the empowerment of national democracy by the centre and with caring about what happens in our respective national or subnational democratic space, spaces that are becoming increasingly politically vulnerable to each other. For sure European demoicracy is unstable and vulnerable, given the centrifugal and centripetal forces of bureaucratic centralization and populist renationalization that feed each other’s justificatory narratives. But this makes the challenge all the more appealing.

Such a demoicratic vision of what the EU is about, I believe, is much more ambitious than the dream of those who advocate making it ever more state-like, ever more centralised and harmonized (or ‘federal’ in the traditional way). A demoicratic union is the most ambitious reading of what European integration is about: deep horizontal mutual recognition through democratic agency to allow for togetherness among utterly diverse peoples. The paradox of this EU third way is thus: the most densely institutionalised cooperation among states in the world, yet between the most deeply entrenched nation-states in the world.

We have long bemoaned the fact that something is clearly missing in European politics in times of crisis. If a demoicratic order is about process rather than *finalité*, this process has neither been linear nor uncontested, owing in part to the tension between the messianic logic that has prevailed in the EU since its inception (Weiler, 2012) and a more open-ended demoicratic ethos and praxis. Traditionally erected on the two separate pillars of indirect (intergovernmental) and direct (supranational) electoral democratic legitimacy, the EU is evolving into a transnational democratic system relying for its evolving legitimacy on multifaceted representation, deliberation and participation which the label of ‘demoicracy,’ seeks to capture (Lord and Magnette, 2004; Lord et al., 2022). But demoicrats can differ on the interrelationship between three types of transformative dynamics which shape the novel transnational order on which a demoicratic EU builds: (i) the transformation of the European state system away from a classic regional order of sovereign states; (ii) the transformation of nation states into member states; (iii) the transformation of a diplomatic contract through intergovernmental EU treaties into a democratic contract within and between the peoples of Europe. In theory at least, this third transformation is underpinned by the transformation of national societies through processes of horizontal Europeanisation. Such a three-pronged ‘transformative’ logic unfolds in contrast with the ‘mimetic’ logic behind endeavours to build a continental state - at least in so far as it remains open-ended.

Democratic respect is the more critical part of a democracy, as participating states must abide by the commitment to make their citizens author the laws that apply to them, thus putting national modes of authorisation of EU decisions and rules at the centre. If the EU is primarily accountable to its demos, not just to their states, “when governments make commitments to one another about their future behaviour, they simultaneously need to be responsible and accountable to their domestic populations in order to retain their political legitimacy” (Bellamy and Weale, 2015: 259). If the democratic legitimacy of the Union starts with whether the EU polity takes roots in the democratic practices of the member states, the Euro crisis has exposed the insufficient effort made by national institutions to channel citizens’ participation in European affairs and to allow for adequate controls over collective decision-making. EU accountability implies that every national democratic public, and not just their governments have the last word on EU law that matters most.

The key to EU democracy is to focus on the various channels of democracy from below, empowering both formal and informal civil society to make good on the Lisbon Treaty’s provision on participatory democracy (Liebert, Gattig and Evas, 2016). To counter democratic disaffection and the fragmentation of the European public sphere we also need to move beyond voting and other traditional rights associated with citizenship (Van Reybrouck, 2018). A democratic ethos explores a ‘right to participate and deliberate’ jointly with citizens from other states, beyond traditional models of representative democracy which cannot achieve direct democratic interaction and debates across national or metropolitan polities and citizens in Europe. A democratic research agenda explores new ways of linking representation and participatory process in the EU context, thus interrogating the meaning of ‘representation’ itself.

In this regard, the EU’s Conference on the Future of Europe was a greatly valuable democratic experiment. Its use of European Citizens’ panels demonstrated that transnational deliberative processes can be effective in enhancing the kind of mutual knowledge and entanglement called for by a sustainable democracy (Alemanno and Nicolaïdis, 2021). The democratic case is strong for democracy-through-sortition (Sintomer, 2023) at the EU level that would lead to substantive powers for transnational citizens assemblies, whose workings would empower citizens and civil society organisations through their deliberative, monitoring and mobilising functions. More broadly, CoFE has opened a new window of opportunity for reflection on new kinds of political agency and interaction between citizens, political elites and bureaucracies to bring the deliberative wave, which

has so far concerned only the local/national (Chwalisz, 2019) to the next level as a crucial way of managing democratic interdependence. Hence, we need to ask how the twin challenges associated with mere changes of scale and with the transnational character of deliberation can be combined (Vergne, 2013). Accordingly, the EU could offer a new space for citizens' empowerment by refining modes of multilingual and transnational communications for a radically renovated European democratic public sphere (Evas, Liebert and Lord, 2012).

5. Conclusion

Crisis can be the harbinger of radical change. If the NGEU was to be the trigger to set out a process of genuine public accountability, there would be hope for the EU to stand out in the landscape of democratic experiments not by claiming to be 'more advanced' than the rest of the world, but by investing in scaling up the kind of participatory and digital democracy that has burgeoned around the world from the national or subnational level to the transnational, and from the vertical to the horizontal. In this spirit, I have tried to suggest how effective democratic control of NGEU will in the years connect taxation, representation and participation in a genuine attempt to do away with the kind of state capture that has given democracy a bad name in our turbulent era.

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