

PRAGMATIC FEDERALISM AND THE CONSTITUTIONAL IDENTITY OF THE EU

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Over the past month, two prominent European personalities have taken the lead in getting the European Union (EU) back on its feet. In [his Oviedo lecture](#) of late October, Mario Draghi made a plea for pragmatic federalism, while Koen Lenaerts argued in [his Cyprus address](#) of 4 November that the EU should overcome the traditional ambiguity about the end goal of integration and profess its commitment to its constitutional identity as a democratic union of democracies. This commentary aims to explore whether these appeals are mutually reinforcing and to see if they point at a way forward.

Pragmatic federalism

The former President of the European Central Bank Mario Draghi observed that the political conditions for the creation of a federal state of Europe are currently non-existent and called on political leaders to adopt a practical approach to European integration. He notably suggested forming 'coalitions of the willing' in order to ensure further progress on the road to ever closer union among the peoples of Europe.

The boldness of this suggestion can be fully appreciated only against the background of the longstanding debate about the nature and the political finality of the evolving European polity. Traditionally, the proponents of the United States of Europe argued post-1945 that 'the old continent' had a federal vocation and insisted that the process of European integration was destined to result in the creation of a federal state with a bicameral parliament and an independent judiciary. In their analysis, the nation-states were guilty of exposing the peoples of Europe to utter destruction and had

to evaporate into an overarching state in order to secure peace on the continent.

In all European states, the federal thinkers were opposed by scholars and politicians propagating a more prudent approach. The intergovernmentalists agreed that war should be ended and democracy restored but wanted to make the existing states instrumental to these goals rather than to abolish them altogether. They argued that the states of Europe should voluntarily rein in their absolute sovereignty for the sake of the survival of the continent. Recalling the principle of self-determination, they envisaged the creation of a *Europe de patries*, in which the participating states would be cooperating instead of preparing for war.

75 years onward, the original Coal and Steel Community of 6 countries has developed into an EU consisting of well over 400 million citizens and 27 Member States. The citizens of the Member States have become European citizens too. They are not only entitled to enjoy the benefits of an area of freedom, security and justice but also to participate in the democratic life of the Union. As it has created essential institutions such as a directly elected Parliament, an independent Court of Justice and a Central Bank, the EU has established itself as a polity in its own right. Yet, the debate about the political finality of the EU has not moved a single inch forward! The two mainstream ideologies continue to oppose each other along the same lines and with the same arguments as three-quarters of a century ago. Their only achievement appears to consist of their agreement to disagree about the end goal of European integration by describing the polity as an organisation sui generis. In times of increasing external and internal threats, however, this compromise fails to contribute to the protection of the Union's constitutional achievements. So, it is especially interesting to assess Draghi's remarks in the light of the stalled debate about the future of Europe.

Can international organisations be democratic?

Draghi's assertion that the conditions for the establishment of a federal European state do not exist for the time being touches upon the question of whether or not international organisations can be democratic. Until recently, the academic *communis opinio* answered this question in the negative. The American political theorist Robert Dahl [categorically posited](#) in 1999 that international organisations cannot be democratic. His views were [corroborated by the legal scholar Joe Weiler](#), who posited at the height of the Eurocrisis in 2012 that "democracy is not in the legal DNA of the EU". A couple of years later, the [British political theorist Bellamy concluded](#) that the EU undermined the national democracies of the Member States and advised them to restore national democracy by "taking back control". Scholars continuing to think along these lines dismiss the wisdom of Draghi's suggestion and keep on insisting that international organisations like the EU cannot pretend to function democratically if and as long as they have not established themselves as federal states.

The Westphalian system of international relations

Conceptual analysis reveals, however, that the common denominator of these academic conclusions consists of the presumption of the absolute sovereignty of states. This principle lies at the heart of the prevailing paradigm in international relations, known as the Westphalian system. While the Westphalian model has been praised by Jean Jacques Rousseau as the [eternal foundation of international relations](#), it emphasises the absolute sovereignty of states and holds that democracy and the rule of law can only thrive

within the borders of a sovereign state. Remarkably enough, however, the advocates of the Westphalian approach persistently overlook the fact that the EU and its predecessors have broken with the traditional template from the outset. The departure from the Westphalian system had been [duly observed](#) already in 1970 by the authors of a leading textbook on the law of the European Communities, which qualified the construction of the European Coal and Steel Community as "a revolutionary breakaway from the traditional pattern of international relations".

This departure from the prevailing paradigm was symbolised by the determination to lay the foundations for an ever closer union among the peoples of Europe as proclaimed in the preamble to the 1957 Treaty of Rome and repeated in every treaty thereafter. In conceptual terms, the replacement of the principle of absolute sovereignty with the desire for ever closer union implied the substitution of a Spinozistic aspiration to achieve a *bonum commune* for the Westphalian principle of perennial animosity between states. Consequently, theorists could and should have observed from the outset that the states participating in the process of European integration had ceased to regard each other as potential enemies. Instead, the lesson the founding states drew from two World Wars in one generation was that the only way to save 'the old continent' lay in surpassing the Westphalian system. In this vein, the European Court of Justice (ECJ) clarified in 1963 that the Member States had created a new legal order for the benefit of which they had limited their sovereign rights. 10 years after the famous *Van Gend en Loos* verdict, the Member States presented themselves in the [Declaration on European Identity](#) as a Union of democratic States. As the Member States also expressed their determination to make their union democratic too, the 1973 Declaration put beyond doubt that the process of European integration was no longer a Westphalian zero-sum game but had changed into an

unprecedented effort to create a transnational democratic polity. It was informed by the democratic imperative that, if democratic states agree to share the exercise of sovereignty in ever wider fields with a view to attaining common goals, the organisation they establish for this purpose must be democratic, too.

Towards a democratic union of democratic states

From this perspective, the democratisation of the EU can be summarised as follows. Implementing their determination to make their polity democratic too, the member states changed the Parliamentary Assembly into a directly elected Parliament and organised the first European elections in 1979. Subsequently, they grasped the opportunity of the foundation of the EU in 1992 for establishing a citizenship of the Union. Henceforth, the nationals of the Member States were to be citizens of the Union too. The 1997 Amsterdam Treaty introduced the values of the Union, while the proclamation of the Charter of Fundamental Rights gave the citizens their bill of rights. As the 2007 Lisbon Treaty constructed the EU as a democracy without turning the Union into a state, the 1973 pledge to create a system of dual democracy had been realised only 33 years later. So, the conceptual hallmark of 'Lisbon' is that it applies constitutional values in an international organisation. To put it differently, the EU is the only international organisation that works as a constitutional democracy. Despite the evidence provided by the treaties, however, political theorists and international lawyers held on to Weiler's opinion that "democracy is not in the legal DNA of the EU".

In the following decades, the inherent structure of the Lisbon Treaty has been revealed by the ECJ in its rich case law. The ECJ notably clarified the meaning and scope of EU citizenship by pointing out, inter alia, that EU

citizenship is the primary status of the nationals of the Member States and that the citizens are entitled to say "*Civis Europaeus sum*". In the Democracy Verdicts of 2019, [the ECJ established](#) that the EU enjoys not only legal but also democratic autonomy. Refuting the entirely Westphalian claim of Poland and Hungary in 2022 that the withholding of funds by the EU for violation of the values of the Union amounted to undue interference in the internal affairs of sovereign states, [the Court emphasised](#) in its Conditionality Verdicts that the EU is entitled to defend its values. As if to enlighten the participants in the stalled debate about the 'nature of the beast', the ECJ not only explicated that the EU had outgrown the Westphalian paradigm but also demonstrated how it had done so. In the analysis of the Court, the Member States had firstly agreed on their common values and subsequently applied these values to their organisation. The EU has evolved from a Union of democratic States (Copenhagen 1973) to a union of democratic states which also constitutes a democracy of its own. In short, the ECJ's jurisprudence allows for the EU to be described with a new term as a democratic union of democratic states.

Conclusion

Although Mario Draghi and Koen Lenaerts have been addressing different audiences on separate occasions, their lectures have a common denominator. They have both overcome the ideological prejudices of the past and made, in their respective fields, an analysis of the strengths and flaws of the EU as it is 75 years after the start of the process of European integration. Fortunately, but not surprisingly, their diagnoses reinforce each other. In fact, Draghi's call for pragmatism is entirely compatible with Lenaert's conclusions about the constitutional identity of the EU. The latter can perfectly serve as the legal basis for the political appeal for pragmatism of the former European Central Bank president. So, the EU institutions should follow their lead by

professing their commitment to the constitutional identity of the Union, while academics should leave their ideological trenches and develop a proper philosophy for the EU as a European democracy.

It has been observed earlier that federalism has many faces. There is no shame for the EU in developing its own model of transnational democracy geared to the needs and wants of 27 Member States and well over 400 million citizens. The real shame would be not to recognise and welcome the European model of federalism and to fail to defend it!

All the opinions expressed in this publication are the sole view of the author, and do not represent the position of the Trans European Policy Studies Association (TEPSA) or its members.

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