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# Merkel's Germany and the European Union: Between Emergency and the Rule of Rules

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## Abstract

The European Union is caught between technocracy and the politics of the exception, eroding in the process the very political sphere that makes democracy work. Partly a cause of this erosion and partly an effect, the EU retreats into the 'rule of rules' when faced with what are, in fact, profoundly political problems. Whether it be in response to the eurozone crisis, EU–Russia–Ukraine relations or the influx of refugees, the EU's policies led to conflicts over geopolitics, sovereignty and redistribution. Its apolitical responses were as ubiquitous as they were inadequate. They reflect Germany's preference for consensual politics, which is paradoxically enforced by Angela Merkel's dictum about there being 'no alternative'. In order to think of alternatives to the Europe that exists, we need to revive 'the political', theorized by the likes of Carl Schmitt, Max Weber and Hannah Arendt at times when democracy was under duress.

**Keywords:** Germany; the European Union; technocracy; politics of the exception; democracy; the political

'It is obviously a very hard board that we will have to drill through' (Geyer 2017). So said Angela Merkel in September 2017, after the Hungarian government dismissed the Court of Justice of the European Union's (CJEU) ruling that Hungary was obliged to accept the EU's refugee redistribution plan. Two years after her bold decision to open her country's borders to those fleeing civil war in Syria, the German chancellor responded to Hungarian intransigence by stressing the importance of EU law. This is doubly ironic. First, Merkel's actions in September 2015 arguably violated existing EU rules on the treatment of refugees (the so-called Dublin Regulation). Second, as many educated Germans would have understood, Merkel cited Max Weber and his dictum about politics meaning 'slow, powerful drilling through hard boards'; the very same Weber who despaired at technocratic tendencies in all modern polities and urged leaders to combine 'passion and a sense of proportion' (Weber 2004: 93). For a number of critics, it was precisely these qualities that Merkel lacked (Beck 2012; Mounk 2018; Nida-Rümelin 2017; Palmer 2017; Schwarz 2017; Streeck 2016a).

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The German chancellor, I suggest, is caught between Max Weber and Carl Schmitt. She is both too technocratic and too political. When Merkel admonishes Hungary with appeals to the rule of law, she is overburdening EU law on a question that requires political contestation. Yet when, in September 2015, she defied those very rules, Merkel behaved as a textbook example of Schmitt's sovereign by deciding on the emergency. This pattern echoes the German government's erratic behaviour during the eurozone crisis: the implicit backing given to Mario Draghi and his 'do whatever it takes' approach to monetary policy was followed by insistence on the importance of rules and reliance on technocratic rationality.

This article is not just about one particular political leader. Angela Merkel and her governing style – 'avoiding politics whenever possible' (Mueller 2018) – serve as a synecdoche that captures problems inherent in the European project. The EU too is caught between technocracy and the politics of the exception. 'Depoliticizing the integration process', as Hanspeter Kriesi (2016: 33) noted, may have 'served the pro-Europeans well'. But they can no longer get 'away with it'. The tautological article of faith that underpins apolitical supranational governance – that the rules must be obeyed because they are the rules – simply cannot sustain the EU's legitimacy in times of crisis. This defies the expectations of both neofunctionalism and liberal intergovernmentalism, which assume that EU governance is effective *because* it is depoliticized (Börzel and Risse 2018: 86). In fact, the crisis-prone EU has seen 'a return of politics: a pre-eminence of non-rule-based decisions' (Middelaar 2016: 496). However, this has occurred in an ad hoc manner, and mostly within member states, rather than at the EU level (de Wilde and Lord 2016: 145). Indeed, the populist rebellion in Italy unfolding at the time of writing illustrates the potentially destructive interplay between 're-politicized' national public and EU technocracy.

Europe's many problems are centred around Germany, the reluctant hegemon (Paterson 2011) whose leadership oscillates between acting in the name of the exception and insisting on an apolitical adherence to the rule of law. This is partly caused (and exacerbated) by the reluctance of German political elites to think of their nation's interests as separate from those of Europe at large. My proposed solution is somewhat German too: I advocate the revival of *the political*, which is a rather awkward translation of '*das Politische*'. This concept was theorized by the likes of Schmitt, Weber and Hannah Arendt. As crisis becomes Europe's new normal, these writers, who pondered earlier crises of democracy in Europe, become ever more relevant. Despite their radically different positions, they shared a fascination for 'the political' as the special realm in which we realize ourselves fully as humans. Arendt's (1960) notion of *vita activa* restates for modern times the Aristotelian ideal of man as a fundamentally political animal. Understood in this way, technocratic rule is no less a danger to democracy than the rise of populism, the focus on which tends to dominate media coverage and a great deal of academic studies devoted to Europe's many discontents. In other words, EU scholarship needs to pay even more attention to a development that has unfolded since the ratification of the Maastricht Treaty: the creeping empowerment of non-majoritarian regulatory bodies, and the concomitant hollowing-out of democracy in Europe (Mair 2013). This tendency was exacerbated by the outbreak of the eurozone crisis (Majone 2014; Streeck 2015) and was further reinforced through the refugee crisis (Krstev 2017: 13–14).

I advance my arguments in three parts. The first delves into key aspects of German political culture and the way they have framed Germany's relationship with Europe. The second part combines a brief discussion of the political with a suggestion of how it may be reinvigorated by 'thinking without a banister' (Arendt 2018). In the third part, I sketch how such thinking could be applied to three of Europe's most pressing challenges: the eurozone crisis, EU relations with Russia and Ukraine, and the refugee crisis. In all three crises, for better or worse, Merkel's Germany has played a disproportionate role. As I will discuss in the concluding remarks, the focus on Merkel's governing style provides a lens through which the EU's deep-seated structural flaws can be better understood and addressed. In order to succeed, the European project must be more political and less technocratic. For that to happen, contestation over substantive policy issues must be encouraged rather than suppressed, at both national and European level.

### German exceptionalism?

The crises of the past several years have contributed, in a number of EU member states, to a growing 'gap between pro-European elites and hostile publics' (Bickerton et al. 2015: 27). Until recently, Germany defied this trend. However, following the September 2017 elections, even Germany, the supposed anchor of European stability, is no longer stable. It too is threatened with crisis. Drawing on Arendt, Tracy Strong (2012: 333) posits that 'a crisis occurs when that which is unquestionable is questioned'. That is what happened when a new party, the Alternative für Deutschland (AfD – Alternative for Germany), entered the Bundestag. Its name being its programme, the AfD set out to question the post-war consensus that underlined German democracy: its firm commitment to Europe and the idea of the nation having a special responsibility to the world derived from its historical guilt. Considering Germany's position as the EU's 'leading state' (Bulmer and Paterson 2019: 6), its changing domestic situation greatly complicates EU politics too.

How did Germany's political crisis come about? We must look, in part, to what Robert A. Dahl called a 'surplus of consensus' (Dahl 1965: 19; cf. Mair 2007: 6); a phenomenon on full display in Germany's last two electoral cycles. If it was 'commonplace to call the 2013 election campaign the most boring in history' (Jacoby 2014: 71), the trope appeared equally apt in 2017. Once again, the campaign was exceedingly dull, with the ruling Christian Democratic Party seeking voters' support with vacuous slogans such as 'For a Germany where we like to live and live well', or even 'Have a nice holiday!' (Joffe 2017). This prompted Josef Joffe (2017) to muse about Friedrich Engels smiling in 'Red Heaven', as he 'famously predicted that, after the revolution, the "rule over men" would be replaced by the "administration of things" – by the end of politics, no less'. Joffe presented this development as something altogether positive, testifying to the robustness of the German post-war political system, in which centrism became 'Germany's civil religion'. By contrast, Claus Offe (2017) argued that the elections marked the end of German exceptionalism, aligning Germany with a number of contemporary Western democracies in which growing disillusionment with political elites is giving rise to anti-system parties and populism. Offe astutely identified consensual politics as a liability rather

than an asset, bemoaning the fact that important controversies such as ‘the EU debt crisis, migration and integration, the future of the EU, poverty/inequality ... were covered up by consensual silence’.

The consensual approach reflects a deep-seated strand in the German political tradition. As the nation that instigated some of the worst conflicts in Europe’s history, Germans are understandably wary of conflictual politics as such. The problem is not new. More than half a century ago, Otto Kirchheimer (1965: 246) bemoaned the ‘vanishing opposition’ in Germany, citing Willy Brandt’s 1961 speech in which the Social Democratic leader argued that ‘in a sound and developing democracy it is the norm rather than the exception that the parties put forward similar, even identical demands in a number of fields’. The problem is even more pronounced today as Germany is ruled by its third grand coalition (GC) government since 2005 (the fourth in its post-war history). As the mainstream parties attempt to marginalize the populist challenge from both the extreme left (Die Linke – the Left Party) and right (AfD), they are forced to downplay their differences. By doing so, paradoxically, they strengthen the attractiveness of radical parties, which can then claim truly to represent alternative perspectives ignored by the mainstream. Hence, one of the key questions for contemporary Germany is ‘whether the purported cure of a GC is sometimes worse than the populist challenge’ it seeks to check (Jacoby 2017: 330).<sup>1</sup>

Moreover, the suppression of political contestation engendered by German elites’ commitment to consensual politics is exacerbated by their tendency to treat politics as an epistemological enterprise, the aim of which is to find the truth of the matter. Ernst Vollrath (2003: 42) contrasts the Anglo-American tradition of political thinking that privileges the contest of opinions with the German proclivity to base it on *Vernunftwahrheit* (the truth of reason): ‘the opposition to which, and any derogation from which, is either demented or criminal – or even both demented and criminal’. Similarly, Karl-Heinz Bohrer (2011: 667) criticizes the German tendency to fetishize law ‘as a quasi metaphysically founded, absolute norm that is removed from any reality’, and ‘stands above politics’.

It is not accidental that one of Germany’s crucial contributions to the European project has been its conception of the *Europäische Rechtsgemeinschaft*, the European community of law, which remains a fixture of German political debates even as its credibility is diminishing.<sup>2</sup> As Armin von Bogdandy (2017) recently reminded us, the *Europäische Rechtsgemeinschaft* was an ingenious invention of Walter Hallstein, the first president of the European Commission. Early on, the *Europäische Rechtsgemeinschaft* represented a convincing normative aspiration because it was based on the ideal of voluntary cooperation, not compulsion. But when cooperation has to be enforced against rebellious member states and their reticent publics, the logic of Hallstein’s vision – a *voluntary* community of law – appears less compelling. When the European community of law is perceived as a dictate emanating from Berlin, Brussels and Frankfurt, the positive appeal contained in the original notion is lost. Hence, Christian Kreuder-Sonnen (2018) is right to warn of the dire consequences of ‘an authoritarian turn in Europe’ that is both enabled and masked by an apolitical approach to law.<sup>3</sup>

Germany’s preference for anti-conflictual politics extends to an uneasiness about the very notion of power and its traditional vehicle, national sovereignty. This helps

to explain Germany's exemplary commitment to European integration. Hans Kundnani (2014: 69) may have overstated the matter when he observed that Germany's 'post-heroic society' is 'no longer interested in power projection', but a certain wariness of overt demonstrations of power undoubtedly has shaped the post-war (West) German polity. To be sure, the post-unification Berlin republic has shown a greater willingness to assert itself in international affairs, as a burgeoning literature on 'The Puzzle of German Power' (Maull 2018) attests. Yet Germany's 'new normal' is, in many ways, still exceptional in Europe.<sup>4</sup>

Thus, overly ambitious as Jürgen Habermas's ideal for a 'postnational constellation' (2001) may be, Germans still approximate it better than any other nation in Europe.<sup>5</sup> In the words of a German commentator, 'We are proud not to be proud. Who would have thought of that? But it is a recipe for success' (Ulrich 2017). And as the European project in its very DNA is also anti-Schmittian, Germany and Europe combine into a perfect fit (Wessels 2003). This is not to suggest that German support for 'ever-closer union' is unqualified or uniform. It is not. In particular, the German Federal Constitutional Court (*Bundesverfassungsgericht*) has emerged as a robust advocate of German constitutional supremacy over EU law. Nevertheless, Karlsruhe's defence of German sovereignty remains mostly rhetorical. Despite having had numerous opportunities to do so, the court has never defied the authority of EU law in practice (Scicluna 2015).

At any rate, the apparent symbiosis between German and European ways of doing politics is not without its incongruities. Denial of power does not equal its absence. Indeed, in some ways, denial only serves to mask the impact of German policies on others. Habermas exemplifies this paradox. On the one hand, he implores his compatriots to understand that it is in the German national interest 'to permanently avoid the dilemma of a barely containable semi-hegemonic status' (Habermas 2015: 19). Yet on the other hand he praises Helmut Kohl, the chancellor of German unity, not for 'the reunification, but the fact that this fortunate national occurrence was coupled with the consistent continuation of a policy that integrates Germany firmly into Europe' (Habermas 2015: 18). The fact that the introduction of the euro – a crucial component of reunited Germany's integration into Europe – has decisively contributed to the country's current hegemonic position is overlooked (Streeck 2017: 247).

To be sure, Habermas has consistently criticized post-2010 German governments for not showing enough solidarity towards the nations on the eurozone's periphery, but he has failed to acknowledge that their peripheral status was greatly exacerbated by monetary integration. Thus, Habermas's argument unwittingly demonstrates one of the pitfalls of Germany's reluctant leadership of Europe. As Wolfgang Streeck (2016b: 7–10) commented: 'Germany has come to consider the European Union as an extension of itself, where what is right for Germany is by definition right for all others.'

The tendency to equate German with European interests is deeply problematic. It paradoxically reduces German political elites' awareness of their responsibility towards the outside world. Whether it was in relation to Putin's Russia in its dealings with Ukraine, the British referendum on EU membership, or the various decisions during the eurozone crisis: time and again Germany displayed a surprising lack of sensitivity towards its European partners. Having convinced themselves

that they pursued no interests apart from those that were European,<sup>6</sup> German political leaders were often blind to the fact that the interests of other European nations could conflict with theirs. This is also why the (peculiarly German) vision of a post-sovereign Europe is so damaging. Instead of viewing political conflicts as resulting from an open-ended contestation of competing interests of member states (and various constituents within and across these states), this worldview tends to cast them as mishaps caused by the misjudgements of others.

Two major crises that the EU continues to struggle with can then be reduced to two major ‘mistakes’. First, Greece’s fiscal profligacy is viewed as the primary cause of the eurozone crisis.<sup>7</sup> Second, the Hungarian government building a fence to stop asylum seekers from entering the EU’s Schengen Zone is claimed to have exacerbated the refugee emergency in the summer of 2015. In both cases legalistic positions are presented as unquestionably true. Whatever government the Greek people elect, it must pursue fiscal restraint. The Hungarian government must accept the principle of solidarity and receive a number of refugees determined through a redistribution key agreed to by the Council and endorsed by the CJEU.

Admittedly, making claims about the peculiarities of German political culture is problematic. What I present here is necessarily a broad-brush picture of the political thinking that characterizes Germany’s approach to Europe.<sup>8</sup> Nevertheless, it will help to illuminate a number of Germany’s current positions, and point towards the possibility of change.

### Thinking without a banister: the concept of the political in the age of uncertainty

Before discrediting himself (and a great deal of his scholarly output) by his endorsement of the Nazi dictatorship, Schmitt (2007) wrote a brilliant analysis of ‘the political’ which relied on the controversial distinction between friend and enemy. For Schmitt, as for Thomas Hobbes before him, conflict is at the heart of the political. Yet, there is no need to accept Schmitt’s emphasis on conflict and the friend–enemy distinction as eternally true. In fact, to think of the political in a timeless manner would go against his very understanding of the political, which ‘does not seek the essence but the specific’ (Szabó 2006: 32). Thus, it is enough to see Schmitt’s concept for what it was, particularly in the context of the turbulent political history of Germany and Europe in the first half of the 20th century: a major contribution to the ongoing debate about what constitutes politics (Moyn 2017). His concept of the political was an attempt to grapple with the ‘Age of Neutralizations and Depoliticizations’ (Schmitt 2007: 80–96).

In a similar vein, Weber feared that the relentless drive towards instrumental rationality diminished the presence of the political. For Weber, the modern tendency to assume that most, if not all, problems have rational, technocratic solutions is corrosive of democracy, and the political as such. ‘Bureaucracy’, Weber argued, ‘failed completely whenever it was expected to deal with political problems’; it stood in opposition to the political, for politics ‘means conflict’ (cited in Strong 2012: 114). It is in this context that Weber resorted to poetic images in his *Politics as a Vocation* when warning that ‘what lies before us is not the “summer’s

front” but, initially at least, a polar night of icy darkness’ (Weber 2004: 93). Hence, if we are serious about our commitment to democratic politics, we should cherish the fact that we cannot accurately predict the outcome of this or that election or referendum. As Strong (2012: 115) writes, elaborating on Weber, ‘it is precisely the *nonrationality* of elections that makes them important as a counter to bureaucratic rationalization’. Arendt (2003: 4) too was concerned about ‘the threatening transformation of all government ... into bureaucracies, the rule of neither law nor men but of anonymous offices or computers whose entirely depersonalized domination may turn out to be a greater threat to freedom ... than the most outrageous arbitrariness of past tyrannies has ever been’.

What thinkers as different as Schmitt, Weber and Arendt had in common was their fear of the end of politics, which modern societies could engender through the rule of experts. Whether it is Arendt’s fascination for revolutions, Weber’s fear of the ‘iron cage’, or Schmitt’s scepticism towards an apolitical approach to law, these thinkers shared an appreciation of open-ended contestation in politics. Reflecting on the rise of totalitarianism in Germany from her US exile, Arendt identified some major deficiencies in German political culture, amongst which was the deeply rooted tendency to celebrate unpolitical thinking.<sup>9</sup> What Arendt advocated, and what Europe today needs, is thinking without a banister. Thinking without a banister requires us to conceptualize political challenges in an open-ended way, escaping the clutches of ideology. In her own time, Arendt continually surprised, and even alienated, her followers by adopting positions that defied easy classification. Her way of thinking about politics combined profound insights into two millennia of European philosophizing about man as *zoon politikon* with remarkable pragmatism. *Zoon politikon* is a political being always capable of starting anew. This is, in fact, what freedom is all about for Arendt, and the ultimate purpose of politics is nothing less than enabling freedom. It follows, then, that in free societies we need to be ready to be taken by surprise, for ‘the new always happens against the overwhelming odds of statistical laws and their probability, which for all practical, everyday purposes amounts to certainty’ (Arendt 1998: 178). There are no universal truths – politics is about dealing with contingency.

### The crisis of borderless Europe

In what follows, I will sketch three instances of the European Union being caught between technocracy and the politics of the exception: the eurozone crisis, the crisis of EU–Russia relations and the refugee crisis. What these three challenges also have in common is their emergence out of a quasi-ideological commitment – to be found particularly in Berlin – to a vision of European integration based on the ideal of a Europe in which national sovereignty no longer matters, and conflicts are defused, or non-existent.

### The Euro: German, or European?

The creation of the single European currency was fraught with contradictions from its inception. The euro’s architects were divided into two camps. On the one side

were the so-called ‘monetarists’, who conceived the euro ‘as a tool to challenge national sovereignty while waiting for some kind of political union’ (Dyson and Maes 2016: 193). The ‘economists’, by contrast, were convinced that both economic convergence and political unity must precede the creation of the single currency. The first approach was particularly popular in France, while the second found more adherents in Germany (Jones 2018; Tsoukalis 1977). The ‘monetarists’ prevailed, but the concerns of the ‘economists’ shaped the eurozone’s institutional architecture too – arguably combining the worst of both worlds. In fact, one of the most prominent opponents of the project was the then-president of the German Bundesbank, Karl-Otto Pöhl. Though he failed to prevent the euro’s creation, Pöhl succeeded in ensuring that the European Central Bank (ECB) largely emulated the governing principles of the Bundesbank. As stipulated in the Maastricht Treaty, the ECB was to prioritize price stability and remain at arm’s length from politics. The decision to base the ECB in Frankfurt further strengthened the continuity between the German and the European Central Bank. Ultimately, the single European currency was the result of a contest of ideas as much as the power struggle between France and Germany. Though there was little popular support in Germany for abandoning the beloved German mark,<sup>10</sup> the German chancellor, Helmut Kohl, willingly accepted French demands for the introduction of the euro, securing in exchange François Mitterrand’s support for German unity. Thus, a historic contingency – the fall of the Berlin Wall in November 1989 – enabled German unity and accelerated European integration. Yet, the historical irony is that the newly created European monetary order did not diminish, but rather enhanced Germany’s power in Europe (Marsh 2011).

The current crisis has intensified ‘the battle of ideas’ which preceded the euro’s creation, particularly between France and Germany. Both countries have continued ‘digging trenches around established intellectual and theoretical propositions’, making the French ‘even more French and Germans even more German’ (Brunnermeier et al. 2016: 7). Importantly, German advocacy of an apolitical and technocratic central bank was itself a political stance that reflected a particular political culture. Though such a preference was understandable ‘given the country’s experiences with two monetary devaluations’, it does not follow ‘that this kind of setup is an inevitable necessity that precedes all politics like a kind of mathematical imperative’ (Böckenförde 2017: 355). In fact, the irony is that at the height of the eurozone crisis, the German government behaved in ways that exposed it to charges of being concurrently too German and not German enough. Merkel and her finance minister, Wolfgang Schäuble, were criticized for their dogmatic adherence to (ordoliberal) rules, while at the same time – particularly by many German observers – they were seen as betraying those very same principles.<sup>11</sup> It is worth recalling that the AfD was initially focused on challenging Merkel’s mantra that there was ‘no alternative’ to her eurozone policies – a position that was at times as unpopular outside Germany as it was within it, albeit for very different reasons.

The German government’s eurocrisis policy was underpinned alternatively by the logic of technocratic rationality and the politics of emergency.<sup>12</sup> According to Jan-Werner Mueller (2018), technocracy was Merkel’s preferred way of governing, and all who disagreed with her solutions ‘effectively revealed themselves as irrational – and bad Europeans, as well as, by implication, bad Germans to boot,



because the definition of a good German is being enthusiastic about European integration’.

Time and again, the German government also supported exceptional measures. The ECB, for example, has formally maintained both its political independence and its focus on monetary stability. Yet, with the implicit backing of the German government, Draghi’s unconventional monetary policies greatly enhanced its power. Under his leadership, the ECB morphed into a decisive *political* actor that operates outside political control. An attempt to challenge this development by legal means failed when the CJEU in the so-called *Gauweiler* decision bowed to the supremacy ‘of the expertise of the ECB’ with respect to ‘the epistemic nature of monetary policy’ (Joerges 2018: 21). As Christian Joerges (2016: 299–300), a tireless critic of the ‘(mis-)treatment of law in Europe’s crisis’, noted, the Court’s decision condones ‘the conferral of de facto unlimited discretionary powers to the ECB’ (Joerges 2018: 21).

Similarly, a number of mechanisms and institutions created at the height of the crisis very much reflected the logic of emergency. All too often, they bypassed established EU procedures and key institutions, such as the European Parliament, leading to what was described as ‘post-democratic executive federalism’ (Habermas 2012), ‘a non-democratic expertocracy’ (Scharpf 2014: 3), or even ‘the Eurocrat’s dream’ (Nicolaidis and Watson 2016). Lacking political legitimacy, the deployed tools, such as ‘Memoranda of Understanding, Compliance reports, Macroeconomic imbalance procedures’ (Bogdandy 2017: 6) and the like are very much instruments of compulsion. Once again, the trend is not new, but its magnitude is. It gave rise to ‘emergency Europe’, in which ‘a sense of urgency ... is commonly used to excuse the pre-empting of debate and patient efforts to build public support. Necessity rather than consent is the organising principle’ (White 2015: 303).

The difficulties that a currency union that supranationalized monetary policy while keeping fiscal policies in the hands of member states would create were entirely predictable and, indeed, predicted. Once again, Ermst-Wolfgang Böckenförde’s (2017: 363) warning proved prescient: ‘banking on the market-economic approach as the vehicle and motor of Europe’s integration will not lead to greater unity, but to greater separation and a dead end’. This echoes Arendt’s concern for the primacy of the political. Again, what is curious about the response to the eurocrisis is how it has combined the logic of emergency politics with the logic of technocracy. The cumulative effect of these logics is worryingly undemocratic. Major policy changes (for example, the creation of the permanent bailout fund, or the expansion of the ECB’s mandate) are first justified by reference to exceptional circumstances, and then embedded via an insistence on the importance of following the rules (Scicluna and Auer 2019).

Thinking without a banister calls for ideas that would point towards ‘potential exits from the euro-rescuing trap’, even if this entails contemplating ‘the collapse of the monetary union’, which might ‘allow for the construction of better long-term solutions’ (Scharpf 2014: 15, 17). Following Fritz Scharpf, we need to discuss ‘the costs of [the eurozone’s] non-disintegration’ to enable thinking about genuine alternatives to the Europe that is. Even less radical proposals for eurozone reform can only succeed if conflicts of interests and perspectives are acknowledged, and

a *political* decision is taken in favour of one or another often-times incompatible strategies. ‘Compromise is not an option’, Erik Jones (2018: 75) writes. ‘The only option is choice.’

***EU-Russia relations: the limits of Europe’s consensual politics on its periphery***

In relation to Ukraine and Russia, the EU as a whole, not just Germany, acted initially without sufficient awareness of its power.<sup>13</sup> This apolitical approach backfired, triggering bloody conflict and unwittingly encouraging Russia’s neo-imperial ambitions. Here the logic of technocracy was followed by emergency politics that amounted to too little too late. The EU was powerful enough to trigger another revolution in Ukraine, but impotent when it came to protecting Ukraine’s territorial integrity vis-à-vis Russia. The confrontation between the EU’s neo-medieval empire, which prides itself on having ‘blurred boundaries’ (Zielonka 2006), and a revisionist Russia, which muscularly asserts its sovereignty claims, occurred to the detriment of the Ukrainian people, whose ambitions to ‘return to Europe’ proved elusive.

Observers of the EU’s half-hearted attempt to bring Ukraine within its orbit have bemoaned its failure to engage fully with the political and geopolitical dimensions of this project. Critical geographers have argued that ‘the EU’s approach remains predominantly unilateral and technocratic, effectively promoting EU “politics” (a technocracy of governance) rather than engaging with “the political” as an opportunity to legitimate its course’ (Korosteleva et al. 2017: 239, 227; cf. Browning 2018). In a similar vein, Kataryna Wolczuk (2016: 61), described the European Neighbourhood Policy (ENP) as ‘a technocratic exercise which provided a “bureaucratic answer” to the question as to where the geopolitical and cultural boundaries of Europe lie’. The Eastern Partnership, which augmented the ENP in 2009, avoided the issue of EU membership, instead offering a number of post-Soviet states, including Ukraine, the prospect of an Association Agreement. What was on offer was not quite enough for Ukraine but it was too much for Russia; a confused and indeterminate policy, the result of which was ‘ineffectiveness and overreach’ (McFarlane and Menon 2014: 100). Fashioning itself as ‘a post-modern security actor’, the EU sought to attain ‘mutually beneficial’ outcomes (Youngs 2017: 216, 17), rather than pursuing its interests at the expense of other states.

But what if there are no ‘mutually beneficial’ outcomes, or none that are perceived as such? Schmitt’s dictum about politics leading to conflict is relevant here. The EU’s *modus operandi* of seeking ‘peace through conversation’ (Jones 2005) emboldened Putin’s Russia to take over Crimea. The EU’s non-traditional polity found in Russia not a partner for peace (as the ENP envisaged) but an actor willing to engage in non-traditional war. Ukraine’s conundrum was ‘that the EU does not care about Ukraine’s European choice while Russia cares too much’ (Wolczuk 2016: 69). Putin’s Russia demonstrated with brutal efficiency that enmity cannot be eradicated from politics. As Schmitt cautioned:

It would be a mistake to believe that a nation could eliminate the distinction of friend and enemy by declaring its friendship for the entire world or by voluntarily disarming itself. The world will not thereby become depoliticized, and

will not be transplanted into a condition of pure morality, pure justice, or pure economics. If a people is afraid of the trials and risks implied by existing in the sphere of politics, then another people will appear which will assume these trials by protecting it against foreign enemies and thereby taking over political rule. (Schmitt 2007: 51–52)

Europe has not (yet) voluntarily disarmed itself, but it came close to it in its dealings with Russia in early 2014, when Angela Merkel, alongside a number of Western leaders, publicly declared that there could be no military solution to the crisis in Ukraine (Youngs 2017: 88). Rather than defusing the conflict, the friendly gesture was seen as a sign of weakness, encouraging the Russian president to continue his own intervention. Europe has not yet given up on the ‘trials and risks implied by existing in the sphere of politics’ either, but it came close to de facto abandoning eastern Ukraine, leaving it to Russia to decide ‘who the enemy is by virtue of the eternal relation of protection and obedience’ (Schmitt 2007: 51–52).

The EU ‘sleepwalked into the crisis’ (Kuzio 2017: 116) by underestimating both its own power of attraction and Russia’s belligerence. To be sure, led by Germany, the EU eventually responded to Russia’s aggression via the imposition of sanctions. Concurrently, Germany and France have made numerous attempts at ‘peace through conversation’, culminating in the two Minsk Agreements in September 2014 and February 2015, which may well have defused the conflict somewhat, but at the expense of solidifying Russian gains. The so-called Normandy format (Germany, France, Russia and Ukraine) unwittingly privileges Russia, as Germany and France are not credible actors in the conflict, while Ukraine is a poor match for Russia’s military capabilities. Just as the initial inaction of the EU enabled Russia’s hybrid war in eastern Ukraine and the military take-over of Crimea, the subsequent lack of resolve on the EU’s part proved conducive to Russia’s ‘hybrid annexation’ (Kuzio 2017: 114) of the Donbas region (the so-called Donetsk and Luhansk People’s Republics). As of early 2019 the protracted and exceedingly bloody civil war in Syria overshadowed the on-going conflict in Ukraine, and there too it was Russia that was unafraid ‘of the trials and risks implied by existing in the sphere of politics’ (Schmitt 2007: 51), actively supporting Bashar al-Assad in his brutal attempt to crush anti-regime forces. Cynically, Putin sought to exploit his influence in Syria by indirectly threatening Germany with another wave of refugees unless it contributes to Syria’s reconstruction (Frankenberger 2018). The refugee crisis, discussed in the following section, has made both Germany and the EU vulnerable to pressure from both Russia and Turkey.

To think without a banister about the EU as an international actor is to acknowledge its geopolitical aspirations (Auer 2015; Browning 2018). Such thinking would have conceived of the EU as (also) a conventional power that has its own interests and values distinct from, and at times in conflict with, those of Russia. Such an approach would require both more courage and more modesty. It would consider the EU’s ability to project power, both soft and hard, and its willingness to do so before embarking on attempts to blur boundaries in the neighbourhood. The Russian perception that the West was ‘encircling Russia’ through NATO, EU enlargement and the Eastern Partnership was misguided, but for European political

leaders to overlook that perception was careless and proved exceedingly costly, particularly for Ukrainians. The Minsk Agreements, pursued outside the established EU governance structures, also proved ineffectual, at best leading to a ‘managed defeat’ (Youngs 2017: 142).

***The EU’s refugee crisis: an ‘all too normal state of exception in Germany’***

While the EU’s carelessness towards Russia proved especially damaging for Ukraine, its haphazard refugee policies have undermined the European project as such. They have exacerbated existing divisions both between and within a number of EU member states, pitching the countries of Central Europe against West Europeans; they have tested the viability of the EU’s institutional architecture and they have fanned populist rebellions throughout Europe. However irrational some of the anxieties of the British electorate might have been, the refugee crisis was also a major contributing factor to Brexit (Caporaso 2018: 1348; Nugent 2018: 59).

The crisis was a long time in the making. It culminated in the summer of 2015 when tens of thousands of refugees, many of them from Syria, found themselves stranded in Budapest. Hungarian authorities felt overwhelmed. The preferred destination for most refugees was Germany, yet the actions of the German government were erratic and contradictory. While its official position remained unchanged – that refugees were to seek asylum in Hungary, or indeed countries they transited before reaching Hungary – the director of Germany’s Federal Agency for Migration and Refugees (BAMF) tweeted on 25 August that the Dublin Rules no longer applied to Syrians. Not surprisingly, the refugees were unwilling to undergo registration in Hungary and, instead, tried to make their way to Germany. Having berated the Hungarian government for its inhumane treatment of refugees and for its policy of rebuilding borders, the German government appeared to have no option but to welcome them.

This gesture – intended as an exceptional response to a humanitarian catastrophe – marked a radical turn in Germany’s approach to refugees and asylum seekers. It is a policy turn that still divides both Germany and Europe. What emerged was an ‘all too normal state of exception’ (Lohse 2015), with local communities across Germany struggling to accommodate thousands of new arrivals daily.

The initial enthusiasm of many Germans, reinforced by Chancellor Merkel’s slogan of ‘*wir schaffen es*’ (‘yes, we can manage this’), was as admirable as it was short-lived. Merkel eventually reversed her position, but in a way that opened her to charges of hypocrisy (Mounk 2018). During the 2017 election campaign, she sought to assure voters that the events of the summer of 2015 were never to be repeated, all the while maintaining that her government’s actions then were the only right ones, that is ‘*alternativlos*’ (Alexander 2018: 277). To reduce the pressure on Germany, Merkel advanced a two-pronged strategy with a strong European dimension. Firstly, the talk of ‘*Willkommenskultur*’ (‘a culture of welcoming newcomers’) gave way to an emphasis on the importance of border protection (albeit primarily the EU’s external borders) and the forced removal of migrants who did not attain refugee status. The influx of refugees was dramatically reduced by a controversial agreement that the German government negotiated with Turkey

almost unilaterally (Zaun 2018: 56), as well as the closing of ‘the Balkan route’ coordinated by the Austrian government (though the latter policy was actually opposed by the German government). Secondly, newcomers were to be redistributed across the EU according to a formula that would take into account each state’s ability to receive them. Though the expectations on the countries of Central and Eastern Europe were rather minimal, their determined opposition to the resettlement of refugees is threatening to tear Europe apart.

Europe as a political project has suffered. To be sure, the Hungarian prime minister, Viktor Orbán, used the refugee crisis as an opportunity to posture as a defender of (ethnically defined) Hungarians, advancing a version of democracy that is difficult to reconcile with European values (Mudde 2016: 25). But the German government has to take some blame too. As a number of critics pointed out, the decision to open Germany’s borders marked a significant departure from the existing EU rules. Moreover, the government acted in haste, without adequate consultations with the German Bundestag, the EU Council, or indeed the government’s own coalition partner, the Christian Social Union (CSU). A few weeks later, this hastily made emergency measure was given EU-wide policy implications. In an unusual move, the Council of the European Union in its decision on 14 September 2015 resorted to qualified majority voting to adopt a plan to relocate 120,000 refugees against the vehement opposition of Slovakia, Hungary, Romania and the Czech Republic.

Two years later, even the president of the European Council, Donald Tusk, conceded that the redistribution policies were ‘divisive and ineffective’ (Rankin 2017). Once again, a technical solution had been sought for a number of highly political questions: who is to determine the boundaries of a political community, how, and why? What is the appropriate response to the mass influx of refugees that Europe faces owing to political upheavals in the Middle East and North Africa?

Only ordered societies can provide the security that refugees seek. Through the very act of crossing borders, refugees validate their importance. They are voting with their feet in favour of a traditional political order based around popular sovereignty. In a truly cosmopolitan world without borders, any talk about human rights would become meaningless because there would be no viable states left to protect them. Drawing on Arendt, Margaret Canovan (1999: 148) argued that, ‘without bounded nations or quasi-national republics, no one would enjoy human rights. This is so because powerful political structures able to mobilize the consent of their citizens are necessary not only to guarantee rights inside their own borders, but also to try to protect human rights across the world.’

Stable and viable political communities are bounded. This basic insight informed Arendt’s scepticism towards the very notion of universal human rights. Similarly, any commitment that a particular political community makes to the ideal of global justice can never be absolute: it is limited by its capacity (and willingness) to help. In fact, echoing Arendt and Canovan, a number of recent studies have compellingly argued both from ethical (Miller 2016; Nida-Rümelin 2017) and from practical perspectives (Collier 2014) that it is far from obvious that (complete) openness to migration is the best way for the West to discharge its moral obligations towards the less fortunate regions of the world, whether they be affected by civil war, extreme poverty or misgovernment.

Ironically, the German chancellor appealed to just such arguments in July 2015 in a televised discussion, when she explained to a Palestinian refugee girl why she might have to be repatriated to a country she hardly knew. ‘When I see you here in front of me, you are incredibly likeable,’ Merkel said, ‘but if we were to tell all refugees “you can all come, and you can all come also from Africa, and you can all come.” This, we cannot manage’ (Auer 2017: 45). Merkel’s argument was widely perceived as heartless, triggering a backlash. In fact, to argue along similar lines after September 2015 was to challenge the *wir-schaffen-es* consensus.<sup>14</sup> To reinforce her new position, Merkel stressed that there was no upper limit on the right for asylum in the German constitution. This is an incomplete interpretation of the German Basic Law. Article 16a (§1), which ensures asylum to all ‘those who are politically persecuted’, is limited in (§2) to those who did not travel through ‘other EU countries, or safe third countries’. As very few refugees would comply with this requirement, almost none has a constitutional right to asylum (Palmer 2017: 37). At any rate, the arguments and counter-arguments are primarily political, not legal. Similarly, EU-level disputes were primarily about the appropriate *political* mode in which decisions about refugee policies were to be taken.

As noted above, the German government defended its actions as a response necessitated by a sudden humanitarian catastrophe. In response to Hungarian and Slovak complaints to the CJEU against the Council decision on the relocation plan, the court accepted this argumentation by invoking ‘the unprecedented emergency situation’ in its judgment.<sup>15</sup> Remarkable is the CJEU’s expansionist interpretation of ‘sudden’. Against the charges made by the Slovak Republic that the refugee crisis unfolded over many years and should therefore not be characterized as a sudden emergency, the court held that ‘an inflow of nationals of third countries on such a scale as to be unforeseeable may be classified as “sudden” for the purposes of Article 78(3) TFEU, even though it takes place in the context of a migration crisis spanning a number of years’ (Judgment ECLI:EU:C:2017:631). As Jonathan White (2015: 585) observed in relation to the EU’s handling of the eurozone crisis, ‘emergency rule will tend to blend in with normal rule, to the detriment of the political order’s legitimate authority’. Just as the panoply of enforcement mechanisms deployed against Greece, Ireland, Portugal, Spain and Cyprus throughout the eurozone crisis were a poor substitute for democratic politics, designing new ways to punish dissenters on refugee policy will prove both unpopular and ineffective. These developments reinforce the popular resentment against TINA politics – “TINA” being short for “There is no alternative” – which in turn fuels the rise of populism (Mudde 2016: 28). Through such steps, Bogdandy (2017) argues, the EU is being transformed from Hallstein’s original vision of the *Europäische Rechtsgemeinschaft* into a *Zwangsgemeinschaft* (community under duress). What is worse, the architects of this change – particularly in Berlin and Brussels – seem oblivious to the transformation.

### Concluding remarks

At the height of the refugee crisis when Merkel was criticized for taking ‘selfies’ with recently arrived Syrian refugees, she retorted, ‘if I have to start apologizing for showing a bit of humanity in an emergency, then this is no longer my country’

(Bollman 2015). The sentiment was as noble as the political action it represented was reckless. The German chancellor underestimated her own power, discounting the consequences of her gesture. The symbolic act significantly increased the pull-factor for migrants, encouraging them on their perilous journey across the Mediterranean. It marked an important contribution to the suspension of an existing EU legal framework that dealt with refugees, alienating Germany's European partners. This was an example of a hegemon in denial.

Time and again, Germany's emergence as 'Europe's pivotal power' (Allers 2016: 1167) has not been accompanied by sufficient awareness of its responsibility. To echo the late Hans-Peter Schwarz's study (1985) from the closing years of the Cold War, the 'tamed Germans' tend to oscillate between *Machtbesessenheit* – obsessing over power – and *Machtvergessenheit* – being oblivious to their own power. Both predicaments create specific problems. While the former marks an excess of *the political*, particularly of the Schmittian friend-versus-enemy kind, the latter relies on technocratic means that might prove no less damaging to European unity. Yet, this article is not just about Germany and its tenacious leader. Merkel's governing style, I have argued, reflects and reinforces certain pathologies in German political culture. These in turn have exacerbated the EU's democratic legitimacy problems. The EU proved deficient in governing the eurozone, finding an adequate response to the refugee crisis, and developing credible relationships with its Eastern neighbourhood.

More than a decade ago, Peter Mair referred to the growing opposition to the European project as 'a sleeping giant'. 'The wider process of depoliticization to which Europe contributes' was not an accident of integration history, he wrote, but the result of choice – the giant was 'not only sleeping, but ha[d] been deliberately sedated' (Mair 2007: 13, 14). This strategy has failed and democracy at both national and European levels has suffered as a result. The giant is very much awake now, even in Germany. If populism is a disease, to paraphrase Wade Jacoby (2017: 349), then the lesson from Germany is that a 'surplus of consensus' is a risky cure.

What the EU polity needs – in fact, what any democratic polity needs – is the audacity to think beyond its established dogmas. Ironically, as EU scholars continue to celebrate Europe's novel political experiment, it is bold and innovative to build on more traditional approaches to politics, reclaiming terms such as geopolitics, especially when dealing with the EU's neighbourhood; and national sovereignty, particularly when tackling the refugee and eurozone crises. When more and more EU citizens feel that their national political leaders collude with EU elites to evade democratic control, challenging the EU head-on might be the only recourse to strengthen democracy. As Kalypso Nicolaïdis cautioned:

The elites cannot forever drift in their lifeboat in the belief that reckoning is simply part of the false consciousness that has beset the hoi polloi, the people who fail to acknowledge that technocrats are here to deliver 'public goods' which, precisely because these are 'public', cannot be left to the public's whims. It is their missionary zeal that is on trial, which has made the European project not only safe for but also safe from democracy. (Nicolaïdis 2017: 43)

What is on trial too is the ‘missionary zeal’ of a great deal of EU scholarship, reflecting uncritically the EU’s ‘messianic’ elements (Weiler 2011). Thinking without a banister requires us to question Germany’s and the EU’s ideological commitment to a Europe without borders. Following Scharpf (2014: 1), we must be able to question the benefits of European unity, if they threaten the ‘achievements of democratic self-government that have been realized in European nation states’. To revive democracy in Europe *the political* needs to be rediscovered at both the national *and* the European level.

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## Notes

- 1 The danger is that ‘stability in the present is purchased at the expense of a lack of voice, which may result in greater instability in the future’ (Jones and Matthijs 2017: 203).
- 2 It is worth noting that the very term *Gemeinschaft* has strong positive connotations in German not present to the same extent in English (Bogdandy 2017: 9).
- 3 Similarly, drawing on the late Peter Mair, Bickerton (2018: 279) is concerned about the EU’s loss of ‘balance between the popular and constitutional pillars of democracy’, resulting in ‘the victory of law over politics’ (cf. Grimm 2016).
- 4 That the German relationship to power remains ‘unusually complicated’ (Maull 2018: 461), despite its partial normalization, is indicated by the myriad descriptors attached to it by scholars. These range from ‘autistic’ to ‘reflective’, ‘shaping’, ‘civilian’, ‘geo-economic’ and ‘semi-hegemonic’. Citing Edward Luttwak, Maull (2018: 468) also cautions that not only Germans but Europeans too ‘live in a post-heroic age’. This, indeed, proved to be the case in the EU’s dealings with Russia over Ukraine, as I discuss below.
- 5 This is not to overstate the importance of Habermas in Germany. Yet, it is striking that one of the first gestures of a candidate for the leadership of Germany’s ruling party, the CDU, Friedrich Merz, was to pen an open letter, alongside Habermas (Eichel et al. 2018), that invokes Immanuel Kant’s *On Eternal Peace* and calls for a new start for Europe. Advocating ‘a common European army’, ‘European unemployment insurance’ and strengthening ‘the European institutions, especially the European Parliament’, the letter praises ‘a Europe without borders’ as ‘a leap of civilization for which the whole world envies us’. For my critique of Habermas’s Europe, see Auer (2010).
- 6 Even scholars who have observed a recent shift in German foreign policy towards more willingness to assert power, acknowledge that the German political establishment remains reticent when it comes to the need to articulate national interests (e.g. Hellman 2015: 483–484).
- 7 Incidentally, not by Habermas (2015: 19), who attributes the crisis to the ‘asymmetric effects of the politically unregulated interdependencies between the national economies of the EU member states’.
- 8 For a more nuanced discussion, see, for example, Bulmer and Paterson (2010).
- 9 Along the lines of Thomas Mann’s seminal ‘Observations of an Unpolitical Man’ (see Vollrath 1995: 52).
- 10 ‘Sie war eine sehr schöne Währung’ [she was a beautiful currency], wrote the *Frankfurter Allgemeine Zeitung* as a farewell to the German mark in December 2001: not just trustworthy and strong, but beautiful (Dieckmann 2001).



- 11 Wade Jacoby astutely analysed one of the ‘puzzles behind the German consensus’. Despite their shared commitment to ordoliberalism, ‘German elites remain deeply divided on the proper course in the face of the Eurocrisis’ (Jacoby 2014: 75). He concludes: ‘The bitterest denunciations of German Euro rescue policy have generally come from disappointed ordoliberals who cannot quite believe what fellow ordoliberals have done. German ordoliberals, used to fighting Keynesian infidels, have been preoccupied instead with accusing one another of heresy’ (Jacoby 2014: 81).
- 12 For better or worse, Germany successfully framed the discussion about the causes and proposed solutions (Kriesi 2016: 44).
- 13 The EU ‘wants to be a force of normative attraction for its neighbours while at the same time denying that it thereby projects power’ (Middelaar 2016: 499).
- 14 The Green mayor of Tübingen, Boris Palmer, caused controversy arguing that, no, ‘We cannot help everyone’ (Palmer 2017).
- 15 See Judgment ECLI:EU:C:2017:631, 6 September 2017, Slovakia v Council, available at: <http://curia.europa.eu/juris/celex.jsf?celex=62015CJ0643&dlang1=en&type=TEXT&anceur=>.

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