

The Future of the European Union – EU as a Non-Statist Federation

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This paper reflects on the past and present of the European Union to sketch the scenarios for the future. It is thus taking up a task which has been extremely topical in the recent months, but especially since the European Commission has published its White paper on the Five scenarios on the future of the Union. Taking the White paper as its point of departure, the paper will insist that we have to distinguish between two important questions on the future of Europe. These are, however, typically mixed up and approached interchangeably, both to the detriment of theory as well as practices of the European Union. The first question is: what can be possibly done with the European Union, given its present shape and the existing socio-political circumstances both on the national and on the supranational level? The second, and intellectually far more interesting, question asks what the European Union conceptually needs and requires to tackle its present crises efficiently in order to ensure its viability in a longer run. As the openly normative character of the second question can, depending on the persuasiveness of its answer, importantly influence the sociological determinants of the first question, the paper will adopt an explicitly normative approach. It will thus argue that the European Union should launch a new constitutional process in order to explicitly establish itself as a non-statist federation.

I. What went wrong?

The European Union has been a hugely successful project. It has reached all the objectives that it was invested with at the time of its creation. These were three: perpetual peace, economic prosperity and geo-strategically defeating the Soviet Communism by acting as a beacon for the values of political liberalism. Today, however, the EU finds itself in an existential crisis. How has the latter come about? What has happened? To a certain extent, the EU has been a victim

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of its own success. With the end of the Cold War, that has symbolically finished not only with the fall of the Berlin Wall, but with the Big Bang enlargement to the Central and Eastern Europe, the perpetual peace, resting on the values of liberal democracy and the rule of law, grounded in a relative, but growing economic prosperity at the beginning of the 21st century, turned the Union into a cyclist who lost the motivation for pedalling. As a result, and thanks to unfavourable regional and global economic, political and security circumstances, which found the Union completely unprepared for, the EU is today in a situation in which it is entirely legitimate to ask: what to do with the Union: re-make it or break it?

It has not always been so. Perhaps, especially with the benefit of a hindsight, the historical moment, which was not seized, was the Treaty Establishing the Constitution for Europe. Then the EU could have explicitly and decisively opted for a new quality, for a federal structure with which it would be, today, much better equipped for addressing the contemporary challenges that were at the time still unforeseeable, perhaps even unimaginable. However, the timing for a qualitative leap (if the Constitutional Treaty had provided one in the first place, which is questionable) was unfortunate. In 2005 the times were too good for constitution-making. The enlargement was a success. The Euro was a strong currency. The economic growth was high, in some member states it was sky-rocketing. There was optimism everywhere, among individuals and on the stock markets.

Good times are, however, no good for constitution-making. As we know, modern constitutionalism is about discontinuity.¹ It is about a rupture with the past. As an onwards looking discourse, modern constitutionalism is about bringing progress, about overcoming the inglorious past and present, which are to be replaced by a better order of things - a new polity.² There is thus no need to pursue discontinuity with times of prosperity. This was a lesson learned in 2005.

However, the European Union has never been in a poorer shape than today. The parallels with the Weimar republic are no longer just an intellectual fancy,³ they have almost become a reality. The contemporary European Union is beset with crises. The economic crisis has been ravaging since 2009, paradoxically from the very year in which the Reform Treaty entered into force.

¹ JAMES TULLY, *STRANGE MULTIPLICITY - CONSTITUTIONALISM IN AN AGE OF DIVERSITY*, (CUP, 1995), at 64.

² On the relationship between constitutionalism and the idea of progress *see* ULRICH K. PREUSS, *CONSTITUTIONAL REVOLUTION, THE LINK BETWEEN CONSTITUTIONALISM AND PROGRESS*, (Humanities Press, New Jersey, 1995), at 33-37; DONALD LUTZ, *PRINCIPLES OF CONSTITUTIONAL DESIGN*, (CUP, 2006), at 23; and also Tully, *supra* note 2, at 67.

³ David Abraham, *The Collapse of the Weimar Republic* (Princeton University Press, 1981).

The Treaty was expected to bring calm and tranquillity for the years, even decades to come. The economic crisis, which even after so many years is far from resolved, has left one member state *de facto* bankrupt, a few of them are in an economic purgatory, others have dressed up as economically viable states while essentially they are walking on an economic tightrope. The economic situation continues to be marked by fragility. The Union is running a risk that a new global economic downturn could make the crisis even worse in the future.

The economic crisis has also been translated into a political crisis. We have witnessed an unprecedented language of the EU's core and the periphery.⁴ A hegemon was identified and it was together with the unaccountable Brussels and Frankfurt Eurocracy alleged to be imposing unacceptable, and above all democratically illegitimate, demands on the periphery.⁵ The market-rationality has been eroding the welfare state.⁶ The traditional political parties of the political centre have been, as a result, losing against the radicals of the right and left political spectrum. The centre no longer holds in Greece, where an ultra-leftist populist government is in power, and neither does it in Hungary, where a right populist government of Victor Orban has been officially creating an "illiberal democracy", departing from the "overly-idealistic rule of law" and choosing to follow the examples of Russia, Turkey and China as a role model polity for the EU of the 21st century.⁷ Furthermore, the Hungarian model of governance, also due to the EU's lukewarm response, has soon found its imitators. In particular Poland has closely followed suit, but so have other Central and Eastern European countries in their own specific, less orthodox ways.⁸

As a result, the liberal project of the rule of law and democracy is under attack and in demise in several EU member states. The worst situation is precisely in Central and Eastern Europe where liberalism has historically been absent and has not planted roots.⁹ Therefore, in countries

⁴ Damjan Kukovec, Law and the Periphery, European Law Journal, Vol. 21, No. 3, 2005, p. 406-428.

⁵ William E. Paterson, The Reluctant Hegemon? Germany Moves Centre Stage in the European Union, Journal of Common Market Studies, Vol. 49., No. 1, 2011.

⁶ Nusios, Overbeek, Tsolakis (eds.), Globalisation and European Integration (Routledge, 2012), at 80.

⁷ Viktor Orban speech, July 26, 2014 <http://budapestbeacon.com/public-policy/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadjurdo-of-26-july-2014/10592>; Zakaria, F (1997) 'The Rise of Illiberal Democracy' Foreign Affairs 76(6), pp. 22-43; Müller, J-W (2016) 'The Problem With "Illiberal Democracy"' <https://www.project-syndicate.org/commentary/the-problem-with-illiberal-democracy-by-jan-werner-mueller-2016-01?barrier=true>.

⁸ Marczewski, P (2016) 'Poland's Turn to the Right: On the Limits of the "Liberal Consensus"' Eurozine.com; Koncewicz, T (2016) 'Farewell to the Polish Constitutional Court' VerBlog, 2016/7/09, <http://verfassungsblog.de/farewell-to-the-polish-constitutional-court/>; Bugarič, B (2015) 'A Crisis of Constitutional Democracy in Post-Communist Europe: "Lands-in-between" Democracy and Authoritarianism', ICON 13, pp. 219-245.

⁹ Matej Avbelj, The Sociology of (Slovenian) Constitutional Democracy, forthcoming 2017.

like Slovenia, there has only been a democratic façade.¹⁰ In crisis, the façade has been cracking and the real face is becoming visible to the world.¹¹ Poland is a paradigmatic example of that, following the lead of the Hungarian illiberal regime that has been turned into a role-model. However, the old member states are not immune to this trend either. There are strong radical right-wing political parties in France, Sweden, The Netherlands and elsewhere, which are all waiting for their historical opportunity to get into power.

The latest and unprecedented humanitarian crisis appears to have helped boost their support. A million of immigrants and refugees have already entered the EU. A few more millions are stationed in Turkey where a fragile EU-Turkey agreement, which is increasingly dependent on Mr. Erdogan's good will, has been holding them back from continuing their journey to Europe along the Balkan route. The EU member states have been both unwilling and unable to secure their external borders. Many of them have also openly and persistently rebelled against the equitable distribution of asylum seekers,¹² which would relieve the overburdened southern member states under the unfair and unsustainable Dublin regime. The inter-European solidarity has thus failed on various levels, including the most humane one.¹³

The security crisis has been relied upon as a justification for rejecting asylum seekers, the majority of which have been Muslims. The unprecedented terrorist attacks in France, Belgium, Germany and Sweden, carried out by the supporters of the Islamic State, have been used to draw an equation between terrorism and Islam. This has led to a kind of clash of civilizations that has been, on the one end, driven by the supporters of a radical Islam, while it has been, on the other end, also politically abused by the populist political parties to build up their political agenda and support. The European Union, which has long been synonymous with tolerance and pluralism, has thus been turned into a veritable battleground, not just one of ideas, but of arms. To this day neither the member states nor the Union have found a meaningful response to it and the (perception of) security crisis has been consequently deepening.

¹⁰ Avbelj M (2017) How to Reform the Rule of Law in Slovenia. In Adam (ed), Slovenia: Social, Economic and Environmental Issues. Nova Science Publishers, pp. 71-84.

¹¹ Bugarič B and Kuhelj A (2015) Slovenia in Crisis: A Tale of Unfinished Democratization in East-Central Europe, Communist and Post-Communist Studies, 48 (2015) 274.

¹² Eszter Zalan, Hungary andn Slovakia Challenge Quotas at the EU Top Court, <https://euobserver.com/migration/137857>

¹³ For a critical overview, see, Agustin Jose Menendez, 'The Refugee Crisis: Between Human Tragedy and Symptom of the Structural Crisis of European Integration' European Law Journal Vol. 2, Issue 4, 2016, 388-416.

The European Union has thus lived through a decade of constant crises. By couching this development in the language of neo-functionalism,¹⁴ it could be argued that one crisis has generated a spill-over effect, which has led to another crisis. The constitutional crisis of 2005 generated a political crisis. Before this could have been resolved, and in its midst, the financial crisis broke out. This was largely imported from the USA, but it has soon been domesticated in the EU in its fertile material conditions as an endogenous economic crisis. The attempts at the latter's resolution have led to a new political crisis. This has in several member states given birth to a new authoritarian and populist political class, which has soon provoked a crisis of the rule of law and democracy.¹⁵ Ultimately, and not entirely unaffected by the chain of crises just described, the majority of British citizens voted in favour of Britain's departure from the European Union.¹⁶ For the first time in its history the process of European integration is thus not about enlargement, rather it faces an actual shrinking of its membership, as well as, potentially, a disintegration, if Brexit is to attract new followers.

II. The EU in Existential Crisis: (Re-)make It or Break It?

If anything, the above description of the present state of the European Union has demonstrated that the latter is going through a difficult period. Times have been bad for the EU. In fact they have not been just bad, the overall situation has become increasingly unsustainable. Every single building brick of the Union: its fundamental values, the political stability, mutual trust and commitment to the integration, the economic foundations and last, but certainly not least, security, is undermined, under strain or even missing. This faces us with a difficult, but unavoidable question: what to do with the European Union, not only to break out of its vicious circle of crisis, but to ensure its viability in the longer run?

It is submitted that this question can be approached from two essentially different perspectives: the sociological and the normative one. If approached from the sociological perspective, the question asks what can be possibly and plausibly done with the European Union, given its

¹⁴ BEN ROSAMOND, THEORIES OF EUROPEAN INTEGRATION, European Union Series 2000, at 51-52; de Burca Grainne, Rethinking Law in Neo-functionalist Theory, Journal of European Public Policy, Vol. 12, No. 2, 2005.

¹⁵ For an overview of the crisis and potential solutions see Jakab, Kochenov (eds), The Enforcement of EU Law and Values (OUP, 2017).

¹⁶ See a special Brexit supplement by German Law Journal Vol. 17, 2016, <http://www.germanlawjournal.com/brexit-supplement/>

present shape and the existing socio-political circumstances both on the national and on the supranational level. The normative approach, on the other hand, queries what the European Union, irrespectively of the factual limitations that it might face, conceptually needs and requires to tackle its present crises efficiently to ensure its long-term viability. The latter question is much more intellectually interesting than the former one. The answer to the sociological question is namely essentially in the hands of (high) politics. It hinges on the appropriate balance of interests, national and supranational, on the political willingness and the individual leaders' capacity to further an agenda which transcends their national or even personal political interests.¹⁷ The scholarly work can do little, perhaps even nothing, to bring these sociological conditions about. For, as the experience shows, they tend to happen (or not) just by themselves.

As Jean Monnet has taught us, human beings, politicians included, only take action and are willing to change their long-existing practices, even if they have been objectively harmful, typically only under duress, when the circumstances have become unsustainable and the change turns out to be absolutely necessary.¹⁸ Once such a moment of necessity arrives, the pre-existing factual limitations either disappear or they cease to matter. What has seemed impossible just a while ago, can suddenly become possible or even required. The EU is approaching this moment. When it gets there, it will need a compelling normative and conceptual framework to be put into practice by the powers that be. The purpose of this paper is to offer one. But before we do so, let us look at the proposals that have already been in circulation.

The responses to the question of what to do with the European Union can be broken down into three groups. The first consists of the answers that locate the solution to the crises of the European Union in the preservation of the *status quo*. The second group of proposals suggest that the EU should return to the *status quo-ante*, eg its competences should be in that or another way repatriated to the member states. This might eventually lead to a much slimmer Union or even to its breaking apart. Finally, the third group of proposals rejects both of the preceding alternatives and insists that the European Union should be substantially remade. The next section reviews each of the three alternatives in turn.

¹⁷ Vaclav Havel, Address in acceptance of an Honorary Degree from Oxford University Oxford, http://www.vaclavhavel.cz/showtrans.php?cat=projevy&val=122_aj_projevy.html&typ=HTML

¹⁸ Jean Monnet, *Memoirs* (Doubleday & Company, 1978).

II.1. The Unsustainability of the Status Quo

In the run-up to the EU written constitution, Joseph Weiler wrote a chapter, entitled in defence of the *status quo*¹⁹ Of course, his purpose was not to pursue a conservative or even a reactionary agenda for the European Union. To the contrary, standing for the avant-garde in the EU legal studies, Weiler's appeal was aimed at preserving the uniqueness of the European legal and political form that might have been lost in case the EU was endowed with an old-fashioned statist constitution. However, today Weiler would certainly think twice before dedicating any of his writings to the support of *status quo* in the European Union. For the contemporary *status quo* in the EU is indefensible because it is practically unsustainable.

The EU as a hybrid entity, mixing the elements of an international organization and a sui-generis constitutional polity, fails to work and will continue failing in the future due to its half-made structure. As a hybrid entity, it has simultaneously too few and too many powers. It apparently lacks competences to tackle efficiently its economic, legal, political, security and external geo-strategic challenges. However, the present scope of EU competences is big enough to deprive the member states of their capacity to fight the same challenges individually. The EU thus faces a double handicap: the supranational level is handicapped because it has received too few competences, whereas the national level is handicapped since it has transferred too many of them. Neither side can thus act when it is really necessary, which leads to a decrease in the output legitimacy. Furthermore, the described division of competences also often leads to the avoidance of responsibility for the inaction and for blaming each other for the absence of positive outcomes and/or for producing the negative ones.

This competence gap mainly results from a democratic and political unsustainability of the hybrid, half-made European Union. The latter is particularly visible in a growing gap between the locus of political power and the source of its democratic legitimation. Over the last sixty years of integration more and more competences, literally in all the fields of social life, including in those that have traditionally been considered as essential and exclusive to the functioning of the state, have been exercised by the supranational institutions. On the other hand, the political life, the democratic self-awareness and the vibrant public sphere have largely remained confined to the national level. While power has thus migrated to the supranational

¹⁹ Weiler J.H.H., In Defence of the Status Quo: Europe's Constitutional Sonderweg, in Weiler, Wind eds., European Constitutionalism Beyond the State (CUP, 2003).

level, its democratic control stays bound to the national level. The popular democratic self-imagination has not caught up with the political power reality. The majority of citizens continue to understand and practice democracy as if the latter was still exercised exclusively in a self-contained nation state. In so doing, they participate in a democratic illusion, in a national democracy whose actual content has been much slimmed down and whose representatives no longer take the decisions for which they are, however, still held responsible in the popular imagination.

This mismatch between the political power and its democratic legitimation is a source of a number of problems. Most importantly, the insufficient social embeddedness of the supranational democracy hinders a legitimate and efficient exercise of the existing supranational competences and effectively prevents the transfer of new competences to the Union, irrespectively how much they are needed for its successful functioning. Furthermore, as any other illusion, the national democratic illusion of which the citizens of the member states partake is destined to break too. This typically happens at the most inappropriate time, in the time of crisis. The crisis tends to heighten the popular awareness of how the system really works and this, combined with the inevitable search for a scapegoat, provokes a rebellion against the “Brussels bureaucracy” which has, allegedly, usurped the powers that ought to belong to the state and its people. In short, the gap between the supranational power and national democracy obstructs the present functioning of the European Union and blocks its capacity to address the existing and new challenges in the future.

One of such challenges is certainly the economy. A half-made European house has turned out as economically unviable. The single market, as the economic heart of the Union, is not just about free trade in the four economic factors of production, but it is also a source of social, redistributive and political effects, which go way beyond the exclusively economic nature of the single market and call for its democratic underpinnings. These are, however, missing. Furthermore, a truly functioning single market, requires a monetary union, a single currency to avoid the distortion of competition. As it has turned out, in the absence of a fiscal union there can be no meaningful monetary union. But, at the same time, there can be no fiscal union without a prerequisite democratic underpinning typical of a political union. In short, the economic integration goes hand in hand with a political integration – or not. In the absence of one, the other cannot emerge or function either.

A half-made EU house is also incapable of ensuring security, both internally as well as externally. This has been proven by the recent migration crisis, which has, as already described

above, resulted in the collapse of the Schengen system. The individual member states simply lack the capacity of responding to the waves of migrations as faced recently. However, they have simultaneously been unwilling to transfer sufficient competences or to take joint decisions on the supranational level, which would enable the latter to develop its own supranational security apparatus, meaningful forces for border control, a coast guard as well as the European army. Instead, walls and barbed-wires were erected on the internal borders of the European Union, splitting the EU from the inside. Under duress, however, even the most reticent member states, which have always been against “more Europe”, have called for a single security and/or defence Union.²⁰ In so doing, they are guilty of a huge paradox. By calling for a European security and defence Union they are, in fact, arguing in favour of the most Europe, while being simultaneously against more Europe. They are, apparently, oblivious of the fact that the European Union, if it is to turn also into a single security and defence Union, requires a robust supranational political community in whose democratic decision-making processes the security and defence issues need to be nested. Again, such a supranational political community is notably absent.

II.2. The Illusionary Viability of the Status Quo-Ante

As the European integration has been suffering from the described crises and has been, for the reasons presented above, unable to promptly and efficiently address the problems faced by all or several member states, the European Union itself has gradually become identified as part of the problem, rather than a solution. The solutions for the loss of national competences, for a democratic deficit, for the malfunctioning economy as well as for the growing security crisis have started to be sought not in pooling more sovereignty, as has traditionally been the case, but in claiming the latter back from the Union. The integration should have been rolled back, rather than deepened and strengthened. The sentiment has been growing that what really is needed to improve the overall conditions is strengthening of the nation state. Since the member states of the European Union, as we have seen above, have transferred too many competences to the supranational level, they have deprived themselves of the instruments for a successful

²⁰ Reuters, Hungarian PM Orban calls for joint European army, <http://www.reuters.com/article/us-europe-hungary-defence-idUSKCN11116J>

governance. The competences should thus be repatriated and the political power should travel back into the hands of national institutions.

In so doing, the gap between the exercise of actual powers and their democratic legitimation would be gradually closed and the perpetual dilemma associated with a European democratic deficit would be soon off the table. The people of the member states and their national parliaments would be in charge again. The national democracies would be refilled with content and what is now a democratic illusion, it would become a reality once more. The need for, ultimately unsuccessful, social engineering destined to generate a supranational democracy and supranational public sphere would become redundant. And so would the attempts at creating a European identity on the top or even in place of the national one. Instead, the latter should be boosted again. What is more, by way of re-domestication of a democratic political life, the conditions for ensuring the economic prosperity would be recreated.

With the re-nationalization of politics, the EU political union would be, of course, ruled out. Without the political union, there can be no fiscal union and in its absence the monetary union, as the crisis has demonstrated, cannot function either. The single currency should thus be abandoned. This would permit the economically weaker member states to regain their competitiveness. It would free them from the economic yoke of the northern member states, in particular from the German hegemon, that has been producing undemocratic and above all socially unequitable results. The member states should again focus primarily on creating favourable conditions for the flourishing of their own national economies. A whole range of protectionist measures, if need be, should be thus adopted. In particular the domestic work force should be protected from the foreign competition, which requires limiting or even halting the free movement of workers and services. Eventually even the single market should be scaled back, reducing it merely to a free trade area. Last but not least, cutting down on the economic migration would also benefit the security interests. This would go hand in hand with the reinstatement of border controls, which and only which could ensure a proper control of migrations. In so doing, the dysfunctional Schengen regime, which now poses a threat to the national security, would be eventually abandoned. The states would thus again seize a full control over their own security.

The just presented arguments in favour of a *status quo-ante*, which favour the conditions that existed prior to the establishment of the European Union, are part of a broader anti-EU integration narrative. This finds its supporters across the public sphere, but it is especially

popular by the radical right and left wing political parties in a number of member states.²¹ However, this narrative is by no means limited to the fringes of the political spectrum. As the Brexit example shows, the anti-EU narrative can, under the appropriate socio-political conditions, be supported by the majority of citizens and can, as a result, become part of the political mainstream. In such a case, and in particular in the context of negotiating the details of the future EU – British relationship, it is the political mainstream that can get radicalized too and the national(ist) cause strengthened further.

However, the strength of the *status quo-ante* narrative is not a measure of its viability in practice. The implementation of the Brexit decision of the British voters in the next few years will make this plainly visible. The normative expectations of those who would like to re-vindicate the nation state will hit against the wall of the blunt empirical reality. The way back to a self-contained and self-sufficient nation state is namely empirically blocked and thus objectively impossible.

An idealized nation state, which is pursued by the advocates of the *status quo-ante* narrative, might have never even existed in history. It certainly does not exist today and even if it did, it would not be viable. An isolated nation state was clearly unviable already at the beginning of the 20th century, but especially after the WWII. After all this was also the main reason for which the European integration was launched in the first place.²² To rescue the European nation states²³ whose political and economic isolationism provoked mutual hostility that eventually resulted in the loss of millions of lives amid an overall destruction. The Schuman declaration, which provides the normative leitmotif for the European integration, sought to make an explicit break with this practice and to pave the way for a genuine co-operation between the member states. These were to draw their resources for the attainment of their singular benefits as well as for the benefit of the common whole, resting on the normative foundations of actual practice-driven solidarity.²⁴

If it was clear to the founding fathers of European integration already in the 1950s that a self-contained nation state is unable to survive let alone prosper, the same conclusion is even more relevant today. In the globalized world of the 21st century, the states no longer occupy either an

²¹ In particular, Le Pen in France, de Wilders in The Netherlands, Farage in the UK, Orban in Hungary, AfD in Germany etc.

²² Monnet, supra note 18.

²³ Alan Milward, *The European Rescue of the Nation State* (Routledge, 1999).

²⁴ Schuman Declaration, https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en »Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity.«

exclusive or a central position in ruling the world, but compete with a variety of public, hybrid and private transnational non-statist actors.²⁵ These, and among them especially the financial markets and transnational corporations, can act almost entirely independently from the states, while simultaneously, indeed decisively, affecting their functioning.²⁶ As again the financial crisis has demonstrated, not only the member states appeared helpless in the hands of global rating agencies, but even the European Union, the biggest trading block in the world, was for a long time unable to convince the global financial markets that it can economically save its member states and thus ensure its own economic viability.²⁷ As I have argued in more detail elsewhere, in the absence of the access to funding, which was dependent on the global financial markets willingness to lend, the states could have remained completely sovereign and absolutely democratic, but this kind of sovereignty and democracy – absent of a veritable self-determination in practice - could amount to nothing more and nothing less than a dead letter. As we have known for a long time, the state is sovereign to the extent it can actually exercise its sovereignty in practice, if need be, and usually, in co-operation with other states.²⁸ The same is true of democracy.

This fact demonstrates that the normative expectations of the supporters of the unravelling of the integration are simply empirically unfounded. The interests of the nation state in the 21st globalized century can be only protected in broader associations of states, where these pool their resources to meet the challenges that exceed their individual capacities of addressing them efficiently. Most of the present crises of the European Union have been caused not because there was too much Europe Union, but since “there was not enough union in the Union.”²⁹ To insist that a state can ensure its economic welfare through protectionist policies belies decades of research and practical evidence that protectionism can only work in a shorter run, but is always economically fatal in a mid- and certainly longer run.³⁰ Stipulating that the re-adoption of the national currencies can strengthen the national economies by increasing their competitiveness through currency manipulation can again work only in a shorter run.

²⁵ For an overview, see, Matej Avbelj, *Transnational Law between Modernity and Post-modernity*, *Transnational Legal Theory*, Vol. 7, No. 3, 2016.

²⁶ Halliday T C, Shaffer G (eds), *Transnational Legal Orders* (CUP 2015).

²⁷ See, for example, Matej Avbelj, *EU under Transnational Law* (Hart, forthcoming 2018), Ch. 5.

²⁸ Case of the S.S. "Wimbledon", *Britain et al. v. Germany*, (1923) PCIJ Series A01.

²⁹ Jan Claude Juncker, *State of the Union Address 2016: Towards a better Europe - a Europe that protects, empowers and defends*, http://europa.eu/rapid/press-release_SPEECH-16-3043_en.htm.

³⁰ Doulgas A. Irwin, *Free Trade Under Fire* (Princeton University Press, 2015), 77 ff.

Competitiveness based on currency manipulation is merely artificial. It is a sign of weakness of a state and is hence unsustainable in a global competitive environment.

Globalization has, similarly, shrunken distances and compressed time. The role of a territory, of physical borders have changed.³¹ With the increased mobility of population, facilitated not just by the modern and increasingly affordable technologies, but also caused by huge demographic and wealth disequilibrium in the world, migrations are a fact. They cannot be stopped. They can only be controlled. However, this control can no longer be exercised efficiently by single member states individually. They simply lack, as the recent EU migration crisis has demonstrated, technical resources and personnel to address the problem in all of its dimensions.

Moreover, a great majority of EU member states are due to negative demographic trends in need of economic migrations, encompassing skilled and less-skilled workers, to ensure the viability of their economies, and especially the sustainability of their health and social protection systems. The single market and the single currency, based on the sound monetary and therefore also fiscal and political union, that the promoters of *the status quo-ante* narrative (sometimes bitterly) oppose, turn out to be indispensable for the survival of the nation states in Europe. The same conclusion applies to security. This can be only achieved by creating a veritable and operational common European area of freedom, security and justice, by drawing national and supranational resources together to fight the rising terrorist and other security threats. The retreat behind the national confines with an aim of ensuring security when those posing security threats are in no lack of mobility, undermines security instead of strengthening it.

On the basis of the above discussion, it can be concluded that the promoters of scenario, which should result in the unmaking of the European Union, are thus prescribing a remedy that will not only break the EU apart, but it will, in so doing and explicitly contrary to their intentions, ultimately lead to a gradual, but definite decline of the European nation states too. If this is couched in the language of proportionality, it can be concluded that the promoters of the *status quo-ante* narrative have chosen the wrong means for the achievement of their ends, which are, on the presently available empirical premises, anyhow unattainable.

³¹ Sassen S, 'Neither Global Nor National: Novel Assemblages of Territory, Authority and Rights' (2008) 1(1-2) *Ethics & Global Politics*.

II.3. Re-making the European Union

If the present *status quo* in the European Union is unsustainable and if the unmaking of the integration is not just a normatively incoherent project, but one that is doomed in practice at least in the longer run, then the only meaningful alternative left is to remake the European Union. The reform of the European Union could, of course, take many forms. To avoid reinventing the wheel, we shall, in what follows, engage with the proposals for a brighter future of the European Union that the European Commission has recently outlined in its White Paper.³² As is well known, the Commission has put forth five different scenarios, tagged as: Scenario 1: Carrying on; Scenario 2: Nothing but the Single Market; Scenario 3: Those Who Want More Do More; Scenario 4: Doing Less More Efficiently and Scenario 5: Doing Much More Together.³³ However, it will be argued, that if we, as suggested in the introduction, centre on the normative rather than a sociological question, that is on what the EU really requires to resolve its crises successfully, the Commission has, essentially, put forward not more than one normatively compelling scenario for the future of the European Union.³⁴

The first scenario: “Carrying on” is so much practically improbable that it must have not been really thought of seriously by the Commission. As it has been explained at great length above, the existing *status quo*, which the carrying on scenario boils down to, is clearly unsustainable. A hybrid European Union, caught between an international integration and a *sui generis* entity, where the member states rule when they so please, but otherwise put the blame on the dysfunctional EU institutions, simply does not work in practice. In the last decade it has generated numerous crises, the exit of one of the EU key member states being just a tip of an iceberg. The EU simply does not have a privilege of carrying on. It must move on decisively.

However, the EU cannot be moving on by essentially travelling backward. This is what the scenario two is all about. To scale the Union back to the single market is like suggesting to make progress by way of a regression. The single market ought to have been achieved already in 1993.³⁵ Perhaps it was in terms of the free movement of goods, but with regard to the other fundamental economic freedoms, especially those involving human factor (free movement of workers and services) much work still needs to be done. So, even today the single market is not really completed, but even when it was, it could not function as a veritable single market in the

³² European Commission, White Paper on the Future of Europe, https://ec.europa.eu/commission/white-paper-future-europe-reflections-and-scenarios-eu27_en

³³ Ibid.

³⁴ This draws on Matej Avbelj, Seks, golf in Evropska zveza, Pravna praksa, 9.3. 2017.

³⁵ According to the Single European Act.

absence of the monetary and fiscal union. As it has already been stressed above, a veritable single market, free of obstacles to trade and unfair distortions of competition, requires a single currency. The latter, as practice has shown, cannot function properly in the absence of the fiscal union. This is also needed to internalize the redistributive effects of the single market. The latter is namely not just about trade, it is also about creating economic trade-offs and negative externalities between the different member states, that a just economic development needs to compensate for on a fiscal basis, grounded in the respective national and supranational democracy. In other words, to opt for “nothing but a single market” as the future of the EU, also requires a monetary, a fiscal as well as a political union.

If that is the case, then it becomes obvious that the fourth scenario “*doing less more efficiently*” is not viable either. If the empirical reality requires the EU to do more, it simply cannot meet this challenge by doing less in practice, no matter how efficiently. Moreover, the fourth scenario is based on the above refuted assumption that the member states could achieve more if the EU was stripped of some of its powers that would be consequently repatriated back to the national level. In fact, the opposite is true: the EU is needed to complement, indeed rescue its member states, because none of them can address the comprehensive challenges spurred by globalization on its own. To counter the emasculation of the nation state, it is necessary to strengthen the European Union, rather than re-creating the new-old global empires of the late 19th century. In this context, the appeal to Global Britain springs to mind,³⁶ just to repeat our insistence that the Brexit decision of the British people has been a historical mistake.³⁷

Finally, the remaining two scenarios: the scenario number three and five are indistinguishable and thus make a single one. Those “*Who Want More Do More*” is an old wine in new bottles, better known as the multi-speed Europe.³⁸ It is question-begging if something which exists already today, can be proclaimed as the scenario for the future. Probably not, unless something important is added to the multi-speed Europe as it has been practiced so far. Multi-speed Europe of today is part of the EU unsustainable *status quo* in particular in the fields of the monetary union and in the area of freedom, security and justice. It has not worked well enough, because

³⁶ Theresa May, Global Britain Brexit Speech, <http://www.independent.co.uk/news/uk/home-news/full-text-theresa-may-brexite-speech-global-britain-eu-european-union-latest-a7531361.html>.

³⁷ Matej Avbelj, Brexit: An End to the End of History, German Law Journal, Brexit Supplement, Vol. 17 (2016), p. 1-6.

³⁸ HELEN WALLACE & WILLIAM WALLACE, FLYING TOGETHER IN A LARGER AND MORE DIVERSE EUROPEAN UNION 27 (1995); Alexander C-G. Stubb, A Categorization of Differentiated Integration, 34 J. COMMON MKT. STUDS. 283, 283 (1996).

it has always been considered exceptional, as something that ought to be kept at its minimum.³⁹ To make the scenario four a workable one, the multi-speed Europe would need to be turned from the exception into a rule. At that very stage, scenario four would become scenario five.

This scenario, timidly labelled as “*Doing Much More Together*”, is in fact a federal scenario. The scenario in which the willing and the ready member states would deepen the core of the integration, while the other member states would participate in the more outward concentric circles subject to their capacity and desires, would mean the creation of a European federation. Of course, it is here that the problems start. The f-word has not only long been politically discredited, almost banned from the EU vocabulary, federalism itself has been conceptually distorted and misunderstood.⁴⁰ In what follows, this paper will, taking into account the political and conceptual difficulties associated with federalism, nevertheless argue in favour of a European federation. However, this shall not be a federal state – the United States of Europe – but the European Union as a non-statist federation.

III. The EU as a Union – a Non-Statist Federation

If the member states are insufficient in and of themselves to tackle the contemporary challenges, and if, equally, the supranational EU of Brussels cannot act alone, without the member states, what is obviously needed is a constitutional form, a system of government, a legal and political entity that preserves both: the member states, the supranational union – by connecting them into a common whole so that the two: the national and the supranational levels reinforce each other for the attainment of what are, and have essentially always been, common objectives. Such a constitutional form is provided by the union (der Bund) as a non-statist federation.⁴¹ The concept of a union, however, is a barely known element of a federal thought. The latter has travelled “*a long journey through time in quest of a meaning*,”⁴² which has left federalism conceptually impoverished.

³⁹ Matej Avbelj, *Differentiated Integration: Farewell to the EU-27?*, *German Law Journal*, Vol. 14, No. 1, 191-212.

⁴⁰ R. Schütze, *From Dual to Cooperative Federalism* (Oxford: Oxford University Press, 2009).

⁴¹ Matej Avbelj, *Theory of European Union*, *European Law Review*, Vol. 36, No. 6, 2011, p. 818-836.

⁴² S. R. Davis, *The Federal Principle: A Journey through Time in Quest of a Meaning* (Berkeley: University of California Press, 1978) referred to in R. Schütze, *From Dual to Cooperative Federalism* (Oxford: Oxford University Press, 2009), p 14, who provides a very good overview of the development of a federal idea.

Before the outbreak of the American Civil War,⁴³ federalism had been understood and practiced as an inclusive theory of state-building, which embraced a whole range of possible relationships between the core and the periphery within the common framework of the federal whole.⁴⁴ Under the influence of the American, but later also German state-building,⁴⁵ the meaning of federalism has been reduced down to a binary distinction between a federation, denoting a federal constitutional state, and a confederacy, standing for a loose alliance of sovereign states under international law. Thereafter, the relationships between sovereign states have largely been constrained to two alternatives only.⁴⁶ As a result, the concept of a union – a non-statist federation, which occupies the space between the two extremes of a federal continuum, and its underlying theory have slipped into oblivion. In what follows, both the concept of a union and its underlying theory will be reclaimed.⁴⁷

Drawing on the authors as different as Kant⁴⁸ and Schmitt⁴⁹ we will focus on six basic features of the union: (1) the founding of the union; (2) its constitutional structure; (3) the modalities of its internal and external functioning; (4) the preconditions for its viability; (5) its objectives and (6) the overall legal and political character. Starting off with the founding, the union is created on the basis of a free agreement by the participating states,⁵⁰ which has a special legal status. It is neither a treaty, nor a constitution. It rather combines the features of both, standing for a constitutional treaty.⁵¹ The latter originates from the constitution-making authority of the participating states, but once adopted, it becomes a constitutional charter of a thereby created

⁴³ See, L.C. Baker, *The Extra-National State: American Confederate Federalism and the European Union*, *Columbia Journal of European Law* 2, 173-240.

⁴⁴ D. Elazar, *Federalism and Political Integration* (New York: Turtledove, 1979), p. 3.

⁴⁵ M. Diamond, "The Federalist on Federalism: 'Neither a National nor a Federal Constitution, But a Composition of Both'", (1977) 6 *Yale Law Journal*, p. 1273-1275; A. Amar, "Of Sovereignty and Federalism", (1987) 96 *Yale Law Journal*, p. 1449; A. Nicolson, *A Sketch of the German Constitution and the Events in Germany from 1815 to 1871* (Longmans, Green and Co., 1875).

⁴⁶ Of course, there have always existed strong academic voices which have opposed this binary reduction of federalism. See, in particular, C.J. Friedrich, "Federal Constitutional Theory and Emergent Proposals", in *Federalism: Mature and Emergent*, (New York: Doubleday, 1955), p. 510.

⁴⁷ The following draws heavily on Matej Avbelj, *Theory of European Union*, *European Law Review*, Vol. 36, No. 6, pp. 818-836.

⁴⁸ I. Kant, *Perpetual Peace* (London: George Allen & Unwin LTD, 1917).

⁴⁹ C. Schmitt, *Verfassungslehre*, 9th ed (Berlin: Duncker&Humblot, 1993).

⁵⁰ In that way the union differs from an Empire, which is in principle a non-voluntary association of (conquered) states. See, O. Beaud, "Fédéralisme et souveraineté. Notes pour une théorie constitutionnelle de la Fédération", (1998) 114 *R.D.P.* (1998), p. 100.

⁵¹ See Schmitt, cited above, p. 368, speaks of "ein Vertrag besonderer Art: ein Verfassungsvertrag". In the EU context, however, it was Eric Stein who first used the concept of Treaty Constitution to describe the then Community founding acts. See E. Stein, "Toward Supremacy of Treaty Constitution by Judicial Fiat: on the Margin of the Costa Case", (1964) 63 *Michigan Law Review*, p. 491.

supranational level, which also affects the constitutional orders of the participating states⁵² and of a union as a whole.

The union's constitutional structure is pluralist. It is distinctly composed of three constitutive elements: the member states, the supranational level – also the union *stricto sensu* – and the common whole – the union *lato sensu*.⁵³ It is this three-layered structure that makes a union markedly different from federal and confederal regimes.⁵⁴ The latter two are both eventually monist constitutional forms. A federation is a two-layered structure, as the common whole is exhausted by the federal level, which is supreme over the federated level of the member states. Ultimately, in a federation there is just one, eg federal legal (and political) order, which includes the relatively dependent legal orders of the federated states. In a confederacy, on the other hand, there is no common whole, but only separate states with their autonomous legal orders bound by a loose treaty regime, which is not recognized an autonomous, independent legal status. A federal state thus represents monism under constitutional law, whereas a confederacy stands for monism under international law.

In contrast, a union exists as a pluralist legal and political entity. It is composed of, and it continuously presupposes the co-existence of sovereign member states and of an equally autonomous supranational level. This means that the member states, by way of their entry into a union, do not waive their sovereignty⁵⁵ neither in legal nor in political terms. Instead they keep it within all those spheres of competences that have not been transferred on a newly created supranational level. This is, however, also sovereign, precisely within the scope of the competences conferred upon it. It follows from the pluralist internal structure of a union that it features a plurality of autonomous legal orders, a plurality of socio-political spaces (polities)

⁵² Schmitt, cited above n. 49, p. 368.

⁵³ See, Schönberger Christoph, Die Europäische Union als Bund, Zugleich ein Beitrag zur Verabschiedung des Staatenbund-Bundesstaat-Schemas, Archiv des öffentlichen Rechts, Vol. 129, 2004; p. 87, also Beaud, cited above fn. 50, p. 108.

⁵⁴ See, Schmitt, cited above fn. 49, p. 371. A problem in Schmitt's definition of the union is that he appears to be identifying the union – as a common legal and political whole – with a supranational level (*Bundesebene*). This inconsistency is removed by Schönberger, who distinguishes between the supranational level and the union that stands for a legal and political common whole composed of two different entities: the member states and the supranational level. See, also Beaud, cited above fn. 50, p. 141, who out of the same concerns for clarity insists on the identical tripartite definition of a Federation, consisting of *Federation*, standing for the common whole, *federation*, meaning the federal level, and of the federal constituent entities – the states. We espouse this tripartite definition as well.

⁵⁵ Whereby sovereignty is, following Walker, understood as a plausible claim to the ultimate legal and political authority. See, N. Walker, "Late Sovereignty in the European Union", *Sovereignty in Transition* (Oxford: Hart, 2003), p. 18.

and therefore a plurality of sovereigns.⁵⁶ In contrast to the federal or confederal monistic solutions with a single locus of sovereignty, either on a federal level or a national level, in a union both levels are sovereign and must be so preserved. As stressed by one commentator, the question of sovereignty is the ultimate question of the very existence of the individual member states and of the union as a whole.⁵⁷ Under normal conditions it should not arise, but this does not render it irrelevant.⁵⁸ It is quintessential for any union that the question of sovereignty remains open and unresolved as long as a union should exist.⁵⁹ For once the question of sovereignty was decided either in favour of the participating states or in favour of the supranational level, a union would dissolve.⁶⁰

Inside the particular pluralist common whole of a union, the member states and the supranational level thus retain or, respectively, acquire their legal and political autonomy, but they do not exist in mutual isolation. There is dense network of relations between them, which are conducted in a heterarchical rather than in a hierarchical manner. In contrast to a federal state, whose internal structure is marked by the supremacy of a federal level and the subordination of federated states, inside a union the rapport between the national and the supranational level is relational and coordinative. This is, perhaps, best reflected in case of conflict between the national and supranational law. While in a federal state it is in fact federal law that invalidates the conflicting municipal law, in a union the supranational law only takes precedence in application before the municipal law of the participating states.⁶¹

⁵⁶ Matej Avbelj, *Theorizing Sovereignty and European Integration*, *Ratio Juris*, Vol. 27, No. 3., 2014, at 344-363.

⁵⁷ See, Schmitt, cited above fn. 49, p. 371: "*Beide Arten politischer Existenz müssen nebeneinander bestehen bleiben, solange ein Bund vorhanden bleiben soll. Weder darf die Gesamtexistenz des Bundes die Einzelexistenz der Mitgliedstaaten, noch darf diese Existenz der Mitgliedstaaten jene des Bundes aufheben. Weder sind die Mitgliedstaaten einfach subordiniert, Untergebene des Bundes, noch ist der Bund ihnen subordiniert und untergeben. Der Bund besteht nur in dieser existentiellen Verbindung und diesem Gleichgewicht.*"

⁵⁸ This is, in particular, the position of Beaud, cited above fn. 50, p. 89: "*La federation ne peut être définie par la notion de souveraineté.*" The same conclusion might also be inferred from Schönberger, cited above fn. 12, p. 109, who argues that with the help of the concept of sovereignty the essence of the union cannot be captured, even though both levels: supranational and the member states describe themselves like that. "*Aber diese Souveränitätsformeln können den Bund in seiner Eigenart gerade nicht erfassen.*"

⁵⁹ See, Schmitt, cited above fn. 49, p. 373: "*Es gehört aber zum Wesen des Bundes, dass die Frage der Souveränität zwischen Bund und Gliedstaaten immer offen bleibt, solange der Bund als solcher neben dem Gliedstaaten als solchen existiert.*"

⁶⁰ *Ibid.*, p. 373.

⁶¹ See, Schmitt, cited above fn. 49, p. 381: "*Bundesrecht dem Landesrecht vorgeht. Sehen wir davon ab, dass das Deutsche Reich heute kein Bund mehr ist und Art. 13 im Zusammenhang der Weimarer Verfassung durch Abs. 2 seine besondere Bedeutung erhält, so besagt die Bestimmung des Art. 13 RV. Abs. 1 'Reichsrecht bricht Landesrecht' etwas bundesstaatsrechtlich Selbstverständliches.*"

In the more concrete terms of the union's internal and external functioning, a union requires a significant change in the legal and political status of the member states.⁶² As it follows from the classics of the theory of a union,⁶³ a membership in the union usually requires a change in the participating states' constitutions.⁶⁴ They must allow a supranational legal and political intervention and oversight over their territories.⁶⁵ Simultaneously they must waive a right to self-help against the other member states and must submit all their conflicts to a peaceful resolution on the basis of the judicial mechanisms provided for in the founding act of a union. The member states thus lose their internal *ius belli*, whereas externally they can keep it alongside with a union that must have its own capacity to wage war too.⁶⁶ Finally, while each member state is free to enter a union, they can neither renounce it individually nor at will.⁶⁷ The union, on the other hand, has a duty to defend an independent political existence of all the participating states against the external as well as the internal destabilizing forces.⁶⁸

This is closely related to the main objective of a union: a perpetual peace.⁶⁹ Following Kant, this should be achieved by way of preserving sovereignty of the participating states, as a guarantee against the emergence of cultural and social uniformity,⁷⁰ which would deprive the citizens of an independent national community of their substantive ethical freedom.⁷¹ Simultaneously, the supranational level, its autonomous functioning, must be respected and preserved too, and its relationship with the national level must be conducted in a way that secures the viability of the union as a whole. The objectives of the union are thus three: establishing a lasting peace within a viable unionist common whole; securing the autonomous and functional supranational level; and preserving the distinctiveness of the participating states as a means of protecting the freedom of an individual as part of her communitarian self.

⁶² Ibid., p. 366.

⁶³ Ibid., p. 363, Schmitt's ambitious approach of devising a whole 'science' of the *Bund* is apparent from the very title of the 29th section of his *Verfassungslehre* that reads in German: "*Grundbegriffe einer Verfassungslehre des Bundes*."

⁶⁴ Ibid., p. 366.

⁶⁵ Ibid., p. 370.

⁶⁶ Ibid.

⁶⁷ Ibid., p. 367.

⁶⁸ Ibid., p. 368.

⁶⁹ Ibid., p. 369: "*Innerhalb des Bundes und zwischen Bundesmitgliedern darf kein Krieg mehr stattfinden*."

⁷⁰ J. Habermas, *The Divided West* (Cambridge: Polity, 2006), p. 128.

⁷¹ Ibid., p. 127

IV. NEW CONSTITUTIONAL PROCESS FOR THE EUROPEAN INTEGRATION

As I have argued in more detail elsewhere, the concept of a union and its underlying theory provide not just the most appealing normative account of European integration, but to a large extent also offer an accurate description and persuasive explanation of what the EU is and how it works already today.⁷² In other words, the EU is, in many ways, a non-statist federation already now. Several of its elements in fact make it even more federal than the federal states are. However, the EU is a federation through a back-door, done in the political and popular unawareness, even under pretence that what has been created is just an international organization. This is unacceptable. It is politically dishonest, illegitimate and hence also undemocratic. Therefore, the union as a non-statist federation, which is already today implicitly built in the functioning of the European Union, must be made explicit.

Making it explicit calls for an EU wide political and civil society mobilization, which would result in the re-modification of the present Treaty of Lisbon, endowing it with a constitutional status – not of the European Union as a common whole – but making the constitution of a supranational level.⁷³ The EU is thus in need of a new constitutional process. Despite our previous scepticism of constitutionalism beyond the state, which was informed by the uncritical and above all inflationary use of the constitutional language⁷⁴ as well as by the fact that the Treaty Constitution was refused in two member states, this paper now calls for a new constitutional process for the European Union. This is so since, as explained in the introduction, the constitution-making is for bad, rather than good times. As the times in the EU today are bad, this is good for launching a new constitutional process.

By starting a new constitutional process for the European Union, this paper lays hope in the hands of the most basic meaning of constitutionalism – that is of constitutionalism as a common search for a common good.⁷⁵ The citizens of the EU member states, who are simultaneously the citizens of the Union, and their national and supranational representatives, have to take a decision – after an inclusive democratic deliberation – how much they want to do and achieve together. If this commitment to the search for the common good is found lacking, it cannot be

⁷² Matej Avbelj, *Theory of European Union*, *European Law Review*, Vol. 36, No. 6, 2011, p. 818-836.

⁷³ Also Neil Walker, *Constitutional Pluralism Revisited*, *European Law Journal*, Vol. 22, No. 3, 2016.

⁷⁴ Matej Avbelj, *Questioning EU Constitutionalisms*, *German Law Journal*, Vol. 9, No. 1, 2008, pp. 1-26.

⁷⁵ Maria Cahill, *The Constitutional Success of Ratification Failure*, *GLJ*, Vol. 7, No. 11, 2006, pp. 947-966.

imposed and the EU cannot be made top down – even if the empirical reality, the challenges that it spurs, seems to be demanding just that.

The EU as a non-statist federation is thus dictated by the demands of empirical reality: the domestic, regional and global economic, security, political, demographic and other challenges. What needs to be done, what is required from the Union to respond effectively to the challenges it faces, is thus relatively straightforward. Whether this can, in fact, be delivered is part of the sociological question, referred to in the introduction, and which has been intentionally skipped by the paper. However, to dwell on it just a bit, it can be stated that there are reasons both for pessimism as well as optimism. The former mainly have to do with the high politics, both national and supranational. The institutional insiders and stake-holders have been fairly explicit about their great reluctance to open the present Treaties. The grounds for optimism, however, can be, on the other hand, found in the mass mobilization of, at least, intellectual movements across Europe. These, while speaking from very different ideological angles, are converging toward a strong EU, the EU as a non-statist federation.⁷⁶ We have not seen such popular mobilization for Europe for many years – if at all – perhaps during the Iraq war.

Simultaneously, the European question and the fate of the EU has never been so much present, so much debated in the national public spheres. This, once more, demonstrates that we are approaching the tipping point at which the EU will be either re-made according to the non-statist federalist scenario defended in this paper, or we will continue witnessing its on-going stagnation and perhaps even a final decline.

⁷⁶ See, The Ljubljana Initiative <http://verfassungsblog.de/the-ljubljana-initiative-for-re-launching-the-european-integration/>; <http://www.marchforeurope2017.eu/academic-community-launches-appeal-in-support-to-the-march-for-europe/>; The Rome Manifesto <https://www.united-europe.eu/uncategorized/the-rome-manifesto-proposals-by-the-next-generation/> etc.