

The State of the Union and sense of realism: the ‘dual’ level’ of democracy in the Union

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Now is official: as stated by the Commission President Juncker, the European Union is in crisis; and not a light one, but so depressing to be called “an existential crisis”!

It starts like this his 2016 speech “On the State of the Union”, held on September 14 in front of the European Parliament. He comes to that conclusion, on the premise of an appeal to be “very honest in our diagnosis”, following a robust list of “Never before ... have I seen such **little common ground between our Member States**... have I heard **so many leaders speak only of their domestic problems**, with **Europe mentioned only in passing**, if at all ... have I seen **representatives of the EU institutions setting very different priorities**, sometimes **in direct opposition to national governments and national Parliaments** ... have I seen **national governments so weakened by the forces of populism** and paralysed by the risk of defeat in the next elections ... have I seen so much **fragmentation, and so little commonality in our Union**”.

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An excessive dramatization or a realistic representation of the State of the Union?

Certainly not a move to please only the “honourable House” (as he properly addresses to it), while blaming the divisions between national governments as major responsible of such a depressing state of things. But to get a better understanding of what is the gist of the speech, one has to go a little farther in reading its text, at the point where the President of the Commission, with the eyes more of a detached witness rather than a main character deeply involved on the European political and institutional stage, observes that (in contrast with the United States) “our State of the Union moment... **shows very visibly the incomplete nature of our Union**”. Whereby a supposedly president of the EU government, so to say, has to speak twice and before two very different and even competing bodies: the **European Parliament** and the **European Council** which, of course, is not at all (like the US Senate) an Upper house but a true governing body itself.

Therefore with “**sense of realism and with great honesty**” President Juncker, by implying that he is simply in between like a ‘**neutral observer**’ rather than a political leader elected to that office with a majority vote in the Parliament, ends up by candidly admitting: “I have to take into account **both levels of democracy** of our Union, which are **both equally important**”.

What does it mean, ‘realistically’ and ‘honestly’ speaking, to have two ‘levels’ of democracy, i.e., of government of the Union? Not only, of course, from an insider’s point of view, but also from the point of view of EU citizens that the President of the Commission, by the way, is (or should feel) to represent (not least in consideration of the fact that the heads of state or government have their own chairman representing them as President of the European Council).

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Realistic as it is the state of things described in Juncker’s words just quoted before, let us then try to make some comment on it from this other point of view; the point of view of **another and different ‘sense of realism’**. The one which refers to what is **written in the Union Treaty** in terms that should be taken seriously; as words having the **force of law** and however as **principled words** committed **to shape institutional structures and functions** as well as **people’s civic conscience**.

In fact, from this point of view what strikes most is **the contradiction of an assumed ‘double’ accountability** of the President of the Commission **toward two ‘masters’ instead of one**, and precisely **the only one who directly represents the citizens of the Union**, namely

the **European Parliament from which is elected and can be dismissed** (by dissolving the Commission as a whole following a vote of no-confidence).

To this regard, having in mind the principle stated by the Treaty according to which “**The functioning of the Union shall be founded on representative democracy**” (TEU, Article 10(1)), one may wonder about the correctness of the assumption that the Union shall have to be founded instead on a **dual level of democracy** each corresponding to a different body in representation, respectively, of the Union's constituency (Parliament) and the single member state constituencies as such (European Council).

But so be it. We all know and may understand the ‘prudential’ nature of President Juncker's assumption. Reality of things often prevails unfortunately on the formality of principles. But we know also that is not always the case that what is real is rational; reminding, by the way, of an authoritative statement saying that “Europe is about rational thinking” (A. Merkel, “Speech at the opening ceremony of the 61st academic year of the College of Europe”, Bruges, 2 November 2010). Especially if the resulting effects and feasible consequences of a state of things such as the one lamented above is leading eventually to a “Union that unravels in disunity” (again in Juncker's words).

Indeed, starting with the measures adopted under the urgency of the debt crisis and with a financial and economic crisis still looming on the Union's future, in addition to further main concerns (such as the migrant and refugee crisis, and the security issues in the face of terrorist attacks), the European institutions and policies are confronted more and more with disagreements and an increasing distrust between member states.

In this scenario, it has become clear that the EU as such is losing de facto its ‘sovereignty’ over member states and that the most relevant decisions are (directly or indirectly) taken, although ‘in the name’ of the Union, by national constellations of power, with the political strength and means to impose them at European level. In other words, the de facto concentration of decisional power in the European Council has become part of the problem, instead of its solution, concerning the institutional framework of relations between the Union and its member states and the division (distribution) of powers (competences). Precisely because of what President Juncker rightly highlights, when he talks about disagreement between member states, nationalistic closures of “so many leaders” speaking “only of their domestic problems”, being “paralysed by the risk of defeat in the next elections”; “fragmentation, and so little commonality”.

All of this is undermining the Union at the highest level of its relations with member states and between member states themselves, whilst at grass root level, as monitored by Eurobarometer polls, “**around two thirds of Europeans feel they are citizens of the EU and majorities of respondents do so in 26 Member States**” (“Public opinion in the European Union”, Standard Eurobarometer 85 - Spring 2016).

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Thus we come to another point of view that is worth of being mentioned and tested in terms of “sense of realism”.

How much and for how long it could be ‘realistic’ to think that 28 (formally, for the time being, yet ‘informally’ 27 remained) **national governments** divided by growing mutual distrust, lack of solidarity, differing interests, contrasting attitudes toward the idea itself of Union (ever closer or not) and in general of its future as a polity, will be able to stand and lead the way forward as **one level of government** in correspondence with **one level of democracy** (from one Union constituency in the whole) acting, in a **multi-level** system of governance, for the **common interest of EU citizens**?

In other words, how much and for how long it could be ‘realistic’ to think that, given any number of member states, even in the case of “an ever closer Union” between a core number of member states, but continuing to be grouped together into an ‘association of sovereign states’, the ordinary gathering of their heads of state or government convened twice every six months or else in extraordinary meetings, sometimes held ‘informally’, to take decisions on consensus (i.e., by way of negotiations and accords often taken outside of the Council room, in one or another of the national capitals), can be ‘honestly’ seen as **equivalent of one single government** committed to work and act daily being **accountable to one single level of Union democracy** founded on **representativeness of Union citizens**?

According to another authoritative statement, it has been observed that “**intergovernmental approach is only second best**. It's better than nothing. But in the long term, **second best is not good enough for Europe**” (W. Schäuble, “The State of Europe - What governance is needed in the European Union?”, Speech at the Hertie School of Governance, Berlin, 27 May 2014).

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We thus arrive to a final point where 'sense of realism' applied to the present State of the Union does not make sense.

Not only because too much realism, as it happened already, with the **European Council** acting as **de facto 'emergency government'** (and continuously ready to act each time is needed by whatever circumstances), can bring about **decisional practices** and **specific decisions** in the form of intergovernmental instruments adopted outside the framework of the EU (such as the European Stability Mechanism, the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, currently known as "Fiscal Compact", and more recently the deal with Turkey on migration), **whose full conformity to Union legality appears to be somewhat doubtful.**

Indeed, taking into account the '**principle of conferral**' as stated in the Treaty, whereby "Each institution shall act within the limits of the powers conferred on it" (TEU, Article 13(2)), in combination with the Treaty statement that the European Council "shall define the general political directions and priorities thereof. It shall not exercise legislative functions" (TEU, Article 15(1)), the **dual level of democracy**, clearly based on the recognition of a **de facto decision-making power to European Council** (which notoriously is not on par with the Parliament, as it is the Union Council, in their joint capacity of co-legislators), true as it is realistic, **opens the way to uncertainties as to whether it also realistically 'legal' or not.**

To this regard mention can be made of the position taken some years ago by the trans-party Spinelli Group in the Parliament, in a motion for a resolution insisting on "**curbing the interference of the European Council in the legislative process** as it goes **against the letter and spirit** of the Treaties" (EP 2014/2249, n. 15). More recently echoed in the words of the co-chairs of the Group (E. Brok and J. Leinen), stating that "The European Council should not fall back into **pure intergovernmentalism** and **side-line the European Commission** and the **European Parliament** in solving Europe's challenges and addressing the future set-up of the European Union" (at <http://www.spinelligroup.eu>). This criticism of the role of the European Council, which "despite the prohibition in Article 15(1) TEU ... has undertaken various legislative initiatives", has been reinforced in a long and detailed motion for a European Parliament resolution "On possible evolutions of and adjustments to the current institutional set-up of the European Union" (presented before the Committee on Constitutional Affairs (2014/2248(INI), at the initiative of G. Verhofstadt), carrying out the proposal of abolishing "Article 15(1) and integrating the European Council into a Council of States that could engage legitimately in the law-making process and provide direction and coherence to the other specialised Council configurations".

But also and above all because the **point at issue**, in terms of a realistic understanding of the present State of the Union, is precisely that one about the **mismatch between the decision-making process** and the **decision-making power** at European level, which severely undermines the **credibility** of the **Commission** and the **Parliament** as **institutional agencies of (representative) democracy at the Union level** and consequently the **democratic credibility of the decision-making process** at this same level.

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This state of affairs can be interpreted starting with a different diagnosis. No-longer one focused on the **democratic deficit**, which becomes even paradoxical in a reality characterised by a two level system of democracy for the Union government (not mentioning the participation of national parliaments to the decision-making process and participatory democracy devices evoked by the Union treaty). But one focused on an apparent **sovereignty deficit** at the Union level. Apparent because what this deficit more realistically reveals is a kind of '**disguised sovereignty**' with the mask of the Union on, behind which is concealed a **compound of national and/or particular interests** under the influence of **few (very few) member state governments.**

Jacques Delors used to say that Europe advances "with its face masked" (*le visage masqué*) to indicate that Europe, in deference to national sovereignty of their member states, preferred to conceal its own 'political' face, especially when important decisions were to be taken. Nowadays are member states, instead, whose leaders sit in the European Council deciding on important matters, to put on the mask of the Union when taking measures capable of affecting citizens living conditions.

In either case what is damaged and becomes less credible is the idea of a **transparent Union sovereignty traceable back to its citizens and the exercise of which**, as stated in the Treaty, **shall be founded on representative democracy.**

In other words, hidden behind the consensus façade of the European Council, **Union sovereignty continues to be centered on nation-states** and nation-states asymmetric relations of power; in a sort of 'spread of leadership', so to speak, not only political one, of course.

Hence the difficulty to balance through democratic mechanisms and procedures the relationship of the Union with its member states, resulting in an unbalance between member states only nominally equal in their negotiating capacity.

Along this direction it becomes even doubtful whether, in the present state of things, an ever closer Union will be the solution or will empower further a 'hidden sovereign' under the mask of the Union.

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A **political Union** based on a system of representative democracy effectively working can help rebalancing, in a true spirit of cooperation and solidarity, **inter-states relations** at European level, in order to create a Union '**ever close**' to its citizens.

At the condition however of changing and strengthening what has to be changed and strengthen in the institutional architecture of the Union.

Just to pick up some ideas which have been already circulated, the following ones may be outlined.

The **next Commission President will have to become also the President of the European Council** (something that is allowed by the existing treaties), so as to avoid hopefully the institutional misunderstanding about a double accountability, but much more **to reinstate the Commission in the role of chief executive authority** (government) of the Union.

The **next European Parliament shall have the right to initiate legislation and the exclusive right to elect the Commission**, with the aim of strengthening the decision-making process in terms of a true representative democracy, centered around the Parliament and the Council representing respectively the citizens and the states, for a full activation of a dialectic between different policy programs at the EU level, also through a more qualified and active participation by National Parliaments, thus ensuring that all interests are taken into account in view of the achievement of a balanced common European interest.

In the context, it goes without saying, of a Treaty reform that must come to terms with an 'existential-institutional' crisis realistically threatening the future of the Union.