In the Face of Crisis—
Input Legitimacy, Output Legitimacy and the Political Messianism of European Integration

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I   Prologue

Beauty is famously, or infamously, in the eyes of the beholder.

For some, Maastricht was finally the ushering forth of "real" European Integration. No longer merely the marketplace, but veritable economic and monetary union, the upgrading of the European Parliament (finally democracy!), human rights and the environment in the Treaty *expresis verbis* with the expectation of more than mere words to come, and European citizenship, no less. Even the old-fashioned "Community" was upgraded to First with a term redolent with gravitas: "Union."

For others Maastricht was a shill game, smoke and mirrors: A half-baked monetary union ("What will they do when the first asymmetric shock hits?" Marty Feldstein of Harvard warned at the time), an ever yawning democracy "deficit" with the power shift to the EU not matched by veritable accountability and citizen impact, a vacuous concept of citizenship, with no duties and empty rights and an abandonment of the original and humane concept of Community for the hackneyed Union, a term recently vacated by the Soviets.

Citizens, let us remind ourselves "were not amused." Maastricht was greeted by the typical indifference with which the elite driven European construct was habitually met. Those who took an interest—the Danes and the French in whose countries commendably citizens were

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This essay is part of an ongoing exploration of the political and legal "DNA" of European integration. A slightly modified version was given as the Keynote Speech at the Opening of the XXV 2012 FIDE Congress in Tallinn. It develops some ideas first explored in *The Political and Legal Culture of European Integration: An Exploratory Essay in* ICON, 9 INT'L J. CONST. L. 678, 678–94 (2011).

consulted—rejected it in one case, and barely passed it, with a wafer thin majority in the other.[1]

That, indeed, has always been the Achilles Heel of the European construct—the question whether the undoubtedly noble project enjoys popular legitimacy.

The structure of this essay is as follows. I will first outline the manner in which I plan to use the concept of legitimacy. Typically European legitimacy discourse employs two principal concepts: Input (process) legitimacy and Output (result) legitimacy. I will add a third, less explored, but in my view central legitimating feature of Europe—Political Messianism. I will explore, in turn, each of these forms of legitimacy in their European context, and in relation to each show why, in my view, they are exhausted, inoperable in the current circumstance. My conclusion is also simple enough. The crisis of Europe will require European solutions. But if these are to be successfully adopted, they will require an employment of legitimacy resources to be found with national communities, the Member States, in some ways a very European outcome.

II   On Two Genres and Three Types of Legitimacy

Legitimacy is a notoriously elusive term, over used and under specified. So the first thing I will do is to explain the sense in which I plan to use Legitimacy in this essay. Do not, please, argue with me and say: "That is not legitimacy! It means something else!"[2] It is how I plan to use it, and I hope to convince you that it is a useful way for articulating something terribly important about the present crisis and the current state of European integration.

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[1] The Brussels Mandarins like to wave (though not recently) Eurobarometer results as evidence of widespread support for Europe. But careful examination of the data seems to suggest that Europeans typically support that which Europe promises to do, not that which it actually does. *Cf.* Anand Menon & Martin A. Schain, Comparative Federalism: The European Union and the United States in Comparative Perspective 9–10 (2006).

[2] I found the following most useful, also as a demonstration of the breadth of the concept: Cathryn Johnson, Timothy J. Dowd & Cecilia L. Ridgeway, *Legitimacy as a Social Process*, 32 Ann. Rev. Soc. 53, 53–78 (Aug. 2006); Barry B. Levine, *Legitimacy and the Process by Which It Is Pursued* (Jens Beckert & Milan Zafirovski eds., 2005) (prepared for Encyclopedia of Economic Sociology); Wojciech Sadurski, *Constitutional Courts in Transition Processes: Legitimacy and Democratization* (Sydney Law Sch. Research Paper No. 11/53), http://ssrn.com/abstract=1919363; Fabienne Peter, *Political Legitimacy*, *in* Stanford Encyclopedia of Philosophy (Edward N. Zalta ed., 2010), http://plato.stanford.edu/archives/sum2010/entries/legitimacy/.

There are two basic genres—languages, vocabularies—of Legitimacy: Normative and Social. The vocabulary of normative legitimacy is moral, ethical and it is informed by political theory. It is an objective measure even though there will be obvious ideological differences as to what should be considered as legitimate governance. Social legitimacy is empirical, assessed or measured with the tools of social science. It is a subjective measure, reflecting social attitudes. It is not a measurement of popularity, but of a deeper form of acceptance of the political regime.

The two types of legitimacy often inform each other and may even conflate, but not necessarily so. A series of examples will clarify. By our liberal pluralist normative yardstick, German National Socialism of the 30s and 40s was a horrible aberration, with the negation of legitimate governance. Yet, socially and empirically, for most Germans almost until the defeat in 1945 it was not only popular but considered deeply legitimate leadership. By contrast, Weimar Democracy would pass our normative test of legitimate government, yet for a very large number of Germans it was not merely unpopular, but considered illegitimate leadership, a betrayal of Germany.

However, in less extreme situations we do expect some measure of conflation between the two. One hopes that if a regime is normatively legitimate, because, say, it practices constitutional democracy, it will enjoy widespread social legitimacy, and that the opposite will be true too: In a regime that fails the normative tests, one hopes that the social legitimacy will be low too. One can imagine complicated permutations of these parameters.

Legitimacy, normative or social, should not be conflated with legality. Forbidding blacks to sit in the front of the bus was perfectly legal, but would fail many a test of normative legitimacy, and with time lost its social legitimacy as well. There are illegal measures that are considered, normatively and/or socially as legitimate, and legal measures that are considered illegitimate.

For the purpose of this essay, it is worth exploring briefly the relationship between popularity and legitimacy. If I am a lifelong adherent of the Labor party in the UK, I might be appalled by the election of the Tories and abhor every single measure adopted by the Government of the Tory Prime Minister. But it would never enter my mind to consider such measures as "illegitimate." In fact, and this is critical for one of the principal propositions of this essay, the deeper the legitimacy resources of a

regime, the better able it is to adopt *unpopular* measures critical in the time of crisis where exactly such measures may be necessary.

There is something peculiar about the current crisis. Even if there are big differences between the Austerity and Immediate Growth camps[3], everyone knows that a solution has to be European, within a European framework. And yet, it has become self−evident, that crafting a European solution has become so difficult, that the Institutions and the Union decision making process do not seem to be engaging satisfactorily and effectively with the crisis, even when employing the intergovernmental methodology, and that it is governments, national leaders, of a small club, who seem to be calling the shots. The problem is European, but Europe as such is finding it difficult to craft the remedies.

I would like to argue that in the present circumstance, the legitimacy resources of the European Union—referring here mostly to social legitimacy—are depleted, and that is why the Union has had to turn to the Member States for salvation. Solutions will still have to be Europe wide, but they will not be ideated, designed and crafted using the classical "Community Method" but will be negotiated among and validated by the Member States. They will require the legitimacy resources of the Member States—in many countries close to depletion too—in order to gain valid acceptance in Europe.

Alan Milward famously and convincingly wrote in the *European Rescue of the Member State*.[4] The pendulum has swung and in the present crisis it will be the Nation State rescue of the European Union.

Moving from the genres of legitimacy to a typology I would like to suggest the three most important types or forms of legitimacy, which have been central to the discussion of European integration. The most ubiquitous have been various variations on the theme of input and output legitimacy.[5]

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[3] Monhamed El-Erian, *Beyond the False Grwoth vs Austerity Debate*, FINCIAL TIMES (June 24, 2010, 11:29 PM), http://www.ft.com/cms/s/0/2f50ef78-7fcb-11df-91b4-00144feabdc0.html.

[4] ALAN MILWARD, THE EUROPEAN RESCUE OF THE NATION-STATE (Routledge, 2nd ed. 2000).

[5] *See generally* M. Boedeltje & J. Cornips, *Input and Output Legitimacy in Interactive Governance* (Oct. 2004); Karl-Oskar Lindgren & Thomas Persson, *Input and Output Legitimacy: Synergy or Trade-off? Empirical Evidence from an EU Survey*, 17 J. EUR. PUB. POL'Y., no. 4, 449 (2010).

Process (or input) Legitimacy—which in the current circumstance can be, with some simplification, be synonymized with democracy. It is easier put in the negative: To the extent that the European mode of governance departs from the habits and practices of democracy as understood in the Member States, its legitimacy, in this case both normative and social will be compromised.

Result (or output) Legitimacy—which, again simplifying somewhat, would be all modern versions of Bread and Circus. As long as the Union delivers "the goods" —prosperity, stability, security—it will enjoy a legitimacy that derives from a subtle combination of success *per se*, of success in realizing its objectives and of contentment with those results. There is no better way to legitimate a war than win it. This variant of legitimacy is part of the very ethos of the Commission.

Telos Legitimacy or Political Messianism whereby legitimacy is gained neither by process nor output but by promise, the promise of an attractive Promised Land. I will elaborate on this below.

I will now try and illustrate the collapse of all three forms of legitimacy in the current European circumstance.

III   Europe, the Current Circumstances

This is an interesting time to be reflecting on the European construct. Europe is at a nadir which one cannot remember for many decades and which, various brave or pompous or self-serving statements notwithstanding[6], the Treaty of Lisbon has not been able to redress. The surface manifestations of crisis are with us every day on the front pages: The Euro crisis[7] being the most current. Beneath this surface, at the structural level, lurk more profound and long-term signs of enduring challenge and

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[6] *See, e.g.*, Plenary session of the European Parliament, Strasbourg: Treaty of Lisbon (Feb. 20, 2008) (including various statements from the members of the European Parliament, Janez Lenarcic, President of the Council and Margot Wallström, Vice-President of the European Commission); *see also* European Parliament Resolution of 20 February 2008 on the Treaty of Lisbon, Feb. 20, 2008, 2009 O.J. (C 184) 25; Brussels European Council 14 Dec. 2007, Brussels, 14 Feb. 2008, 16616/1/07 REV 1 (including the EU declaration on globalization); European Commission, *Your Guide to the Lisbon Treaty*, http://ec.europa.eu/publications/booklets/others/84/en.pdf; José Manuel Durao Barroso, President of Eur. Comm'n, The European Union after the Lisbon Treaty, Address at the 4th Joint Parliamentary Meeting on the Future of Europe, Brussels (Dec. 4, 2007), *in* SPEECH/07/793 (Dec.7, 2007).
[7] D. Dinan, *Governance and Institutions: Implementing the Lisbon Treaty in the Shadow of the Euro Crisis*, 49 J. COMMON MKT. STUD., no. S1, 2011, at 103.

even dysfunction and malaise. Let us refract them through the lens of legitimacy.[8]

First, as regards process legitimacy, there is the persistent, chronic, troubling Democracy Deficit, which cannot be talked away. The manifestations of the so-called Democracy Deficit are persistent and no endless repetition of the powers of the European Parliament will remove them. In essence it is the inability of the Union to develop structures and processes that adequately replicate or, "translate,"[9] at the Union level even the imperfect habits of governmental control, parliamentary accountability and administrative responsibility that are practiced with different modalities in the various Member States. Make no mistake: It is perfectly understood that the Union is not a State, but it is in the business of governance and has taken over extensive areas previously in the hands of the Member States. In some critical areas, such as the interface of the Union with the international trading system, the competences of the Union are exclusive. In others they are dominant. Democracy is not about States. Democracy is about the exercise of public power—and the Union exercises a huge amount of public power. We live by the credo that any exercise of public power has to be legitimated democratically and it is exactly here that process legitimacy fails.

In essence, the two primordial features of any functioning democracy are missing—the grand principles of accountability and representation.[10]

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[8] The literature is rich. Here is a partial sample of some truly helpful studies: THE LEGITIMACY OF THE EUROPEAN UNION AFTER ENLARGEMENT (Jacques Thomassen ed., 2009); JACQUES THOMASSEN & HERMANN SCHMITT, *Introduction: Political Legitimacy and Representation in the European Union*, *in* POLITICAL REPRESENTATION AND LEGITIMACY IN THE EUROPEAN UNION 3–21 (1999); DAVID BEETHAM & CHRISTOPHER LORD, LEGITIMACY AND THE EUROPEAN UNION (1998); Max Haller, *Is the European Union Legitimate? To What Extent?* 60 INT'L SOC. SCI. J. no. 196, 2009, at 223; Andrew Moravcsik, *Reassessing Legitimacy in the European Union*, 40 J. COMMON MKT. STUD., 2002, at 603; Barbara Guastaferro & Manuela Moschella, *The EU, the IMF, and the Representative Turn: Addressing the Challenge of Legitimacy*, 18 SWISS POL. SCI. REV 199 (2012).

[9] Neil Walker, *Postnational Constitutionalism and the Problem of Translation*, *in* EUROPEAN CONSTITUTIONALISM BEYOND THE STATE 29 (J.H.H. Weiler & Marlene Wind eds., 2003).

[10] DEMOCRACY, ACCOUNTABILITY AND REPRESENTATION (Adam Przeworski, Susan C. Stokes & Bernard Manin eds., 1999); Philippe C. Schmitter & Terry L. Karl, *What Democracy Is… and Is Not*, 2 J. DEMOCR, no. 3, 67 (Summer 1991); Peter Mair, *Popular Democracy and the European Union Policy* (European Governance Papers No. C-05-03, 2005), http://www.connex-network.org/eurogov/pdf/epg-connex-C-05-03.pdf.

Regarding accountability,[11] even the basic condition of representative democracy that at election time the citizens "… can throw the scoundrels out,"[12] that is to replace the Government, does not operate in Europe.[13] The form of European governance,[14] governance without Government, is, and will remain for considerable time, perhaps forever such that there is no "Government" to throw out. Dismissing the Commission by Parliament (or approving the appointment of the Commission President) is not quite the same, not even remotely so.

Startlingly, but not surprisingly, political accountability of Europe is remarkably weak. There have been some spectacular political failures of European governance. The embarrassing Copenhagen climate fiasco[15]; the weak (at best) realization of the much-touted Lisbon Agenda (also known as Lisbon Strategy or Lisbon Process),[16] the very story of the defunct "Constitution,"[17] to mention but three. It is hard to point in these instances to any measure of political accountability, of someone paying a political price as would be the case in national politics. In fact it is difficult to point to a single instance of accountability for political failure as distinct from personal accountability for misconduct in the annals of European integration. This is not, decidedly not, a story of corruption or malfeasance.[18] My argument is that this failure is rooted in the very structure of European governance. It is not designed for political accountability. In similar vein, it is impossible to link in any meaningful way the results of elections to the European Parliament to the performance of the Political Groups within the preceding parliamentary session, in the way that is part of the mainstay of political accountability within

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[11] CAROL HARLOW, ACCOUNTABILITY IN THE EUROPEAN UNION (2003).

[12] IAN SHAPIRO, DEMOCRACY'S PLACE 96 (1996); J.H.H. Weiler, *To be a European Citizen: Eros and Civilization*, *in* THE CONSTITUTION OF EUROPE "DO THE NEW CLOTHES HAVE AN EMPEROR?" 329 (1999).

[13] Renaud Dehousse, *Constitutional Reform in the European Community: Are there Alternatives to the Majoritarian Avenue? in* THE CRISIS OF REPRESENTATION IN EUROPE, 118, 123 (Jack Hayward ed., 1995).

[14] Philip Allott, *European Governance and the Re-branding of Democracy*, 27 EUR. L. REV. no. 1, 60 (2002).

[15] *See* Resolution on the Outcome of the Copenhagen Conference on Climate Change (COP 15), EUR. PARL. DOC. P78TA(2010)0019 (Feb. 10, 2010) (especially points 5–6).

[16] Iain Begg, *Is There a Convincing Rationale for the Lisbon Strategy?*, 46 J. COMMON MKT. STU. no. 2, 427 (2008); Wim Kok et al., *Facing the Challenge—The Lisbon Strategy for Growth and Employment*, Report from the High Level Group (Nov. 2004).

[17] Ian Ward, *Bill and the Fall of the Constitutional Treaty*, 13 EUR. PUB. L. no. 3, 461 (2007); Editorial Comments, *What Should Replace the Constitutional Treaty?*, 44 COMMON MKT L. REV 561 (2007).

[18] *See also* Veith Mehde, *Responsibility and Accountability in the European Commission*, 40 COMMON MRK L. REV. 423 (2003).

the Member States.[19] Structurally, dissatisfaction with "Europe," when it exists, has no channel to affect, at the European level, the agents of European governance.

Likewise, at the most primitive level of democracy, there is simply no moment in the civic calendar of Europe where the citizen can influence directly the outcome of any policy choice facing the Community and Union in the way that citizens can when choosing between parties which offer sharply distinct programs at the national level. The political colour of the European Parliament only very weakly gets translated into the legislative and administrative output of the Union.[20]

The Political Deficit, to use the felicitous phrase of Renaud Dehousse[21] is at the core of the Democracy Deficit. The Commission, by its self-understanding linked to its very ontology, cannot be "partisan" in a right-left sense, neither can the Council, by virtue of the haphazard political nature of its composition. Democracy normally must have some meaningful mechanism for expression of voter preference predicated on choice among options, typically informed by stronger or weaker ideological orientation.[22] That is an indispensable component of politics. Democracy without Politics is an oxymoron.[23] And yet that is not only Europe, but it is a feature of Europe—the "non-partisan" nature of the Commission—which is celebrated. The stock phrase found in endless student text books and the like, that the Supranational Commission vindicates the European Interest, whereas the intergovernmental Council is a clearing house for Member State interest, is, at best, naïve. Does the

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[19] Julian Priestley, *European Political Parties: the Missing Link*, NOTRE EUROPE (Oct. 22, 2010), http://www.eng.notre-europe.eu/011-2247-European-political-parties-the-missing-link.html; Francisco Roa Bastos, *"Des partis politiques au niveau européen?" Etat des lieux à la veille des élections européennes de juin 2009* [*"Political Parties at European Level?" The Situation on the Eve of the European Elections in June 2009*], ETUDES ET RECHERCHES [STUDIES AND RESEARCH] 71 (2009); O. Audeoud, *Les partis politiques au niveau européen. Fédérations de partis nationaux* [*Political Parties at European Level, Federations of National Parties*] LES CAHIERS DU GERSE [THE GERSE PAPER] (Feb. 3, 1999).

[20] Vernon Bogdanor, *Legitimacy, Accountability and Democracy in the European Union*, A FEDERAL TRUST REPORT 7–8 (2007); Andreas Follesdal & Simon Hix, *Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik*, 44 J. COMMON MKT, STUD. no. 3, 533, 545 (2006).

[21] Dehousse, *supra* note 13, at 124; *see also* JEAN-MARC FERRY & PAUL THIBAUD, DISCUSSION SUR L'EUROPE (1992).

[22] Follesdal & Hix, *supra* note 20.

[23] *See* PIERRE MANENT, LA RAISON DES NATIONS, REFLEXIONS SUR LA DEMOCRATIE EN EUROPE [THE REASON OF NATIONS THOUGHTS ON DEMOCRACY IN EUROPE], 59 (2006).

"European Interest" not necessarily involve political and ideological choices? At times explicit, but always implicit?

Thus the two most primordial norms of democracy, the principle of accountability and the principle of representation are compromised in the very structure and process of the Union.

The second manifestation of the current European circumstance is evident in a continued slide in the legitimacy and mobilizing force of the European construct and its institutions. I pass over some of the uglier manifestations of European "solidarity" both at governmental and popular level as regards the Euro-crisis or the near abandonment of Italy to deal with the influx of migrants from North Africa as if this was an Italian problem and not a problem for Europe as a whole. I look instead at two deeper and longer-term trends. The first is the extraordinary decline in voter participation in elections for the European Parliament. In Europe as a whole the rate of participation is below 45 per cent, with several countries, notably in the East, with a rate below 30 per cent.[24] The correct comparison is, of course, with political elections to national parliaments where the numbers are considerably higher.[25] What is striking about these figures is that the decline coincides with a continuous shift in powers to the European Parliament, which today is a veritable co-legislator with the Council. The more powers the European Parliament, supposedly the *Vox Populi*, has gained, the greater popular indifference to it seems to have developed.[26] It is sobering but not surprising to note the absence of the European Parliament as a major player in the current crisis. But the Institutional crisis runs deeper. The Commission has excelled as a creative secretariat and implementer and monitor, but neither as the sources of ideas or veritable political leadership. It has been faithful and effective as His Master's Voice. But most striking has been the disappearing act of the Council. It is no longer the proud leader of Europe according to the Giscardian design, but an elaborate rubber stamp to the Union's two Presidents—Merkel and Sarkozy. It is a failure of institu-

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[24] *Post-Electoral Survey 2009 Report of the Directorate-General for Communication of the European Commission*, EUR. COMM'N, 22 (Nov. 2009), http://ec.europa.eu/public_opinion/archives/ebs/ebs_320_en.pdf.

[25] Anand Menon & John Peet, *Beyond the European Parliament: Rethinking the EU's Democratic Legitimacy*, in CENTER FOR EUROPEAN REFORM ESSAYS (2010); Paul Magnette, *European Governance and Civic Participation: Can the European Union be Politicised?* (Jean Monnet Working Paper No. 6/01, 2001).

[26] Jerzy Buzek, *State of the Union: Three Cheers for the Lisbon Treaty and Two Warnings for Political Parties*, 49 J. COMMON MKT STUD. no. S1, 7, 15 (2011); *see also* Joseph Weiler, *To Be a European Citizen: Eros and Civilization*, in THE CONSTITUTION OF EUROPE 'DO THE NEW CLOTHES HAVE AN EMPEROR?' AND OTHER ESSAYS ON EUROPEAN INTEGRATION 266 (1999).

tional legitimacy, of Parliament and Council, of Supranationalism and Intergovernmentalism. The resort to an extra-Union Treaty as a center-piece of the reconstruction, is but the poignant legal manifestation of this political reality.

The critique of the Democracy Deficit of the Union has itself been subjected to two types of critique itself. The first has simply contested the reality of the Democracy Deficit by essentially claiming that wrong criteria have been applied to the Union.[27] The lines of debate are well known.[28] For what it is worth, I have staked my position above. But I am more interested in the second type of critique, which implicitly is an invocation of Result or Output Legitimacy. Since the Union, not being a state, cannot replicate or adequately translate the habits and practices of national democratic governance, its legitimacy may be found elsewhere.[29]

In analyzing the legitimacy (and mobilizing force) of the European Union, in particular against the background of its persistent Democracy Deficit, political and social science has indeed long used the distinction between process legitimacy and outcome legitimacy (also known as input/output, process/result etc.).[30] The legitimacy of the Union more generally and the Commission more specifically, even if suffering from deficiencies in the state democratic sense, are said to rest on the results achieved—in the economic, social and, ultimately, political realms.[31] The idea hearkens back to the most classic functionalist and neo-functionalist theories.[32]

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[27] Joseph Weiler, *Does Europe Need a Constitution? Demos, Telos and the German Maastricht Decision*, 1 EUR. L.J. 219, 225 (1995).

[28] Paul Craig, *The Nature of the Community: Integration, Democracy, and Legitimacy*, *in* THE EVOLUTION OF EU LAW 25 (Paul Craig & G. de Búrca eds., 1999).

[29] Neil MacCormick, *Democracy, Subsidiarity, and Citizenship in the "European Commonwealth"*, 16 L. & PHIL. 331, 331–56 (1997).

[30] *See, e.g.*, CHARLES. R. BEITZ, POLITICAL EQUALITY: AN ESSAY IN DEMOCRATIC THEORY 31–96 (1990); ROBERT ALAN DAHL, DEMOCRACY AND ITS CRITICS 163 (1991); *see also* REGULATING EUROPE (GIANDOMENICO MAJONE ed., 1996); FRITZ WILHELM SCHARPF, GOVERNING IN EUROPE: EFFECTIVE AND DEMOCRATIC? 7 (1999).

[31] Kevin Featherstone, *Jean Monnet and the Democratic Deficit in the European Union*, 32 J. COMMON MKT STUD. no. 2, 149, 150 (1994).

[32] *Id.* at 155; Charles Pentland, *Political Theories of European Integration: Between Science and Ideology*, *in* THE EUROPEAN COMMUNITIES IN ACTION 545, 550 (Lasok & Soldatos eds., 1981); BEN ROSAMOND, THEORIES OF EUROPEAN INTEGRATION 20 (2000); *see generally* DAVID MITRANY, A WORKING PEACE SYSTEM (1966); ERNEST B. HAAS, THE UNITING OF EUROPE (1958); Ernest B. Haas, *Turbulent Fields and the Theory of Regional Integration*, 30 INT'L ORG. no. 2, 173 (1976); LEON N. LINDBERG, THE POLITICAL DYNAMICS OF EUROPEAN ECONOMIC INTEGRATION (1963); REGIONAL INTEGRATION: THEORY AND RESEARCH (LINDBERG & SCHEINGOLD eds., 1971).

I do not want to take issue with the implied normativity of this position—a latter day *Panem et circenses* approach to democracy, which at some level at least could be considered quite troubling. It is with its empirical reality that I want to take some issue. I do not think that outcome legitimacy explains all or perhaps even most of the mobilizing force of the European construct, but whatever role it played it is dependent on the Panem. Rightly or wrongly, the economic woes of Europe, which are manifest in the Euro crisis, are attributed to the European construct. Therefore, when there suddenly is no bread, and certainly no cake, we are treated to a different kind of circus whereby the citizens' growing indifference is turning to hostility and the ability of Europe to act as a political mobilizing force seems not only spent, but even reversed. The worst way to legitimate a war is to lose it, and Europe is suddenly seen not as an icon of success but as an emblem of austerity, thus in terms of its promise of prosperity, failure. If success breeds legitimacy, failure, even if wrongly allocated, leads to the opposite.

Thus, not surprisingly there is a seemingly contagious spread of "Anti-Europeanism" in national politics.[33] What was once in the province of fringe parties on the far right and left has inched its way to more central political forces. The "Question of Europe" as a central issue in political discourse was for long regarded as an 'English disease.' There is a growing contagion in Member States in North and South, East and West, where political capital is to be made among non-fringe parties by anti-European advocacy.[34] The spill-over effect of this phenomenon is the shift of mainstream parties in this direction as a way of countering the gains at their flanks. If we are surprised by this it is only because we seem to have air brushed out of our historical consciousness the rejection of the so-called European Constitution, an understandable amnesia since it represented a defeat of the collective political class in Europe by the *vox populi*,[35] albeit not speaking through, but instead giving a slap in the face to, the European Institutions.[36]

IV   Europe as Political "Messianism"

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[33] CÉCILE. LECONTE, UNDERSTANDING EUROSCEPTICISM (2010).

[34] EUROSCEPTICISM: PARTY POLITICS, NATIONAL IDENTITY AND EUROPEAN INTEGRATION 13 (Harmsen & Spiering eds., 2005); ALEKS. SZCZERBIAK & PAUL A. TAGGART, OPPOSING EUROPE? (Vol. I & II, 2008).

[35] NEIL FLIGSTEIN, EUROCLASH: THE EU, EUROPEAN IDENTITY, AND THE FUTURE OF EUROPE (2008).

[36] *See, e.g*., Joseph Weiler, U.R. Haltern & F.C. Mayer, *European Democracy and Its Critique*, *in* THE CRISIS OF REPRESENTATION IN EUROPE 4 (Hayward ed., 1995).

At some level the same could have been said ten and even twenty years ago.[37] The Democracy Deficit is not new—it is enduring. How did Europe legitimate itself before it scored its great successes of the first decades?

As I hinted above, at the conceptual level there is a third type of legitimation which, in my view, played for a long time a much larger role than is currently acknowledged. In fact, in my view, it has been decisive to the legitimacy of Europe and to the positive response of both the political class and citizens at large. I will also argue that it is a key to a crucial element in the Union's political culture. It is a legitimacy rooted in the "*politically messianic*."

In political 'messianism', the justification for action and its mobilizing force, derive not from process, as in classical democracy, or from result and success, but from the ideal pursued, the destiny to be achieved, the 'Promised Land' waiting at the end of the road. Indeed, in messianic visions the end always trumps the means.

Mark Mazower, in his brilliant and original history and historiography of 20th-century Europe,[38] insightfully shows how the Europe of monarchs and emperors that entered World War I was often rooted in a political messianic narrative in various states (in Germany, and Italy, and Russia and even Britain and France). It then oscillated after the War towards new democratic orders, to process legitimacy, which then oscillated back into new forms of political messianism in fascism and communism. As the tale is usually told, after World War II, Europe of the West was said to oscillate back to democracy and process legitimacy. It is here that I want to point to an interesting quirk, not often noted.

On the one hand, the Western states, which were later to become the Member States of the European Union, became resolutely democratic, their patriotism rooted in their new constitutional values, narratives of glory abandoned and even ridiculed, and messianic notions of the state

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[37] *See, e.g.*, Commission White Paper on European Governance, COM (2001) 428 final (July 25, 2001); Vernon Bogdanor & Woodcock, *The European Community and Sovereignty*, 44 PARLIAM. AFF. 481, 492 (1991) ("The shortcomings of the Community lie in the feelings of remoteness and lack of influence and involvement on the part of many of its citizens"); Dieter Grimm, *Does Europe Need a Constitution?*, 1 EUR. L.J. no. 3, 282, 291 (1995); Christopher Hill, *European Foreign Policy: Power Bloc, Civilian Power—or Flop? in* THE EVOLUTION OF AN INTERNATIONAL ACTOR—WESTERN EUROPE'S NEW ASSERTIVENESS 35 (Rummel ed., 1990).

[38] MARK MAZOWER, DARK CONTINENT—EUROPE'S TWENTIETH CENTURY (1998).

losing all appeal. Famously, former empires, once defended with repression and blood, were now abandoned with zeal.[39]

And yet, their common venture, European integration, was in my reading a political messianic venture *par excellence,* the messianic becoming a central feature of its original and enduring political culture. The mobilizing force and principal legitimating feature was the vision offered, the dream dreamt, the promise of a better future. It is this feature that explains not only the persistent mobilizing force (especially among elites and youth) but also key structural and institutional choices made. It will also give more depth to explanations of the current circumstance of Europe.

Since, unlike the Democracy Deficit, which has been discussed and debated *ad nauseam* and *ad tedium*, Political Messianism is a feature of European legitimacy, which has received less attention, I think it may be justified if I pay to it some more attention.

V   The Schuman Declaration as a Manifesto of Political Messianism

The Schuman declaration is somewhat akin to Europe's "Declaration of Independence" in its combination of vision and blueprint. Notably, much of its text found its way into the preamble of the Treaty of Paris, the substance of which was informed by its ideas. It is interesting to re-read the declaration through the conceptual prism of political messianism. The hallmarks are easily detected as we would expect in its constitutive, magisterial document. It is manifest in what is in the Declaration and, no less importantly, in what is not therein. *Nota bene*: European integration is nothing like its European messianic predecessors – that of monarchies and empire and later fascism and communism. It is liberal and noble, but politically messianic it is nonetheless.

The messianic feature is notable in both its rhetoric and substance. Note, first, the language used—ceremonial and "sermonial" with plenty of pathos (and bathos).

> *World peace cannot be safeguarded without the making of creative efforts proportionate to the dangers which threaten it….*

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[39] Justine Lacroix, *For A European Constitutional Patriotism*, 50 POL. STUD. no. 5, 944, 949 (2002).

> *The contribution which an organised and living Europe can bring to civilization is indispensable …*
>
> *…a first step in the federation of Europe [which] will change the destinies of those regions which have long been devoted to the manufacture of munitions of war…*
>
> *[A]ny war between France and Germany becomes not merely unthinkable, but materially impossible.*
>
> *This production will be offered to the world as a whole without distinction or exception…*
>
> *[I]t may be the leaven from which may grow a wider and deeper community between countries long opposed to one another by sanguinary divisions.*

It is grand, inspiring, Churchillian one might even say with a tad of irony. Some old habits, such as the White Man's Burden and the missionary tradition, die hard:

> *With increased resources Europe will be able to pursue the achievement of one of its essential tasks, namely, the development of the African continent.*

But it is not just the rhetoric. The substance itself is messianic: A compelling vision which has animated now at least three generations of European idealists where the 'ever closer union among the people of Europe', with peace and prosperity an icing on the cake, constituting the beckoning promised land.[40]

It is worth exploring further the mobilizing force of this new plan for Europe. At the level of the surface language it is its straightforward pragmatic objective of consolidating peace and reconstructing European prosperity, but there is much more within the deep structure of the plan.

Peace, at all times an attractive desideratum, would have had its appeal in purely utilitarian terms. Yet, it is readily apparent that in the historical context in which the Schumann Plan was put forward the notion of peace as an ideal probes a far deeper stratum than simple Swords

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[40] Franco Piodi, *From the Schuman Declaration to the Birth of the ECSC: the Role of Jean Monnet* (May 2010), http://www.europarl.europa.eu/pdf/cardoc/24663-5531_EN-CARDOC_JOURNALS_No6-complet_low_res.pdf; Thomas Hoerber, *The Nature of the Beast: the Past and Future Purpose of European Integration*, 1 L'EUROPE EN FORMATION 17 (2006); Joseph Weiler, *To be a European Citizen: Eros and Civilization*, *in* THE CONSTITUTION OF EUROPE 'DO THE NEW CLOTHES HAVE AN EMPEROR?' AND OTHER ESSAYS ON EUROPEAN INTEGRATION 8 (1999) (*Introduction: We Will Do, and Hearken*).

into Ploughshares, Sitting under ones' Vines and Fig Trees, Lambs and Wolves—the classic Biblical metaphor for peace. The dilemma posed was an acute example of the alleged tension between Grace and Justice which has taxed philosophers and theologians through the ages—from William of Ockham (pre-modern), Friedrich Nietzsche (modernist) and the repugnant but profound Martin Heidegger (post-modern).

These were, after all, the early 50s with the horrors of War still fresh in the mind and, in particular, the memory of the unspeakable savagery of German occupation. It would take many years for the hatred in countries such as the Netherlands, Denmark or France to subside fully. The idea, then, in 1950, of a Community of Equals as providing the structural underpinning for long-term peace among yesterday's enemies, represented more than the wise counsel of experienced statesmen.

It was, first, a "peace of the brave" requiring courage and audacity. At a deeper level it managed to tap into the two civilizational pillars of Europe: The Enlightenment and the heritage of the French Revolution and the European Christian tradition.[41]

Liberty was already achieved with the defeat of Nazi Germany – and Germans (like their Austrian brethren-in-crime) embraced with zeal the notion that they, too, were liberated from National Socialism. But here was a project, encapsulated in the Schuman Declaration, which added to the transnational level both Equality and Fraternity. The Post WWI Versailles version of Peace was to take yesterday's enemy, diminish him and keep his neck firmly under one's heel, with, of course, disastrous results. Here, instead was a vision in which yesteryear's enemy was regarded as an equal—Germany was to be treated as a full and equal partner in the venture—and engaged in a fraternal inter-dependent lock that, indeed, the thought of resolving future disputes would become unthinkable.[42] This was, in fact, the project of the enlightenment taken to

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[41] *See, e.g.*, Jürgen Habermas & Jacques Derrida, *February 15, or What Binds Europeans Together: A Plea for a Common Foreign Policy, Beginning in the Core of Europe*, *in* OLD EUROPE, NEW EUROPE, CORE EUROPE: TRANSATLANTIC RELATIONS AFTER THE IRAQ WAR 5, 10–12 (D. Levy ed., 2005); ALAIN FINKIELKRAUT, LA DÉFAITE DE LA PENSÉE [THE DEFEAT OF THOUGHT] (1987); JOSEPH WEILER, L'EUROPE CHRÉTIENNE: UNE EXCURSION [THE CHRISTIAN EUROPE: AN EXCURSION] (2007); JEAN-MARC FERRY, LA RÉPUBLIQUE CRÉPUSCULAIRE: COMPRENDRE LE PROJET EUROPEEN IN SENSU COSMOPOLITICO [THE TWILIGHT REPUBLIC: UNDERSTANDING THE EUROPEAN PROJECT IN SENSU COSMOPOLITAN] (2010); ROBERT SCHUMAN, POUR L'EUROPE [FOR EUROPE] 55 (1986).

[42] Angeles Munoz, *L'Engagement Européen de Robert Schuman* [*The Robert Schuman European Commitment*], *in* ROBERT SCHUMAN ET LES PERES DE L'EUROPE:

the international level as the Kant himself had dreamt. To embrace the Schuman Plan was to tap into one of the most powerful idealistic seams in Europe's civilizational mines.

The Schuman Plan was also a call for forgiveness, a challenge to overcome an understandable hatred. In that particular historical context the Schumannian notion of Peace resonated with, was evocative of, the distinct teaching, imagery and values of the Christian call for forgiving one's enemies, for Love, for Grace—values so recently consecrated in their wholesale breach. The Schuman plan was in this sense, evocative of both Confession and Expiation, and redolent with the Christian belief in the power of repentance and renewal and the ultimate goodness of humankind. This evocation is not particularly astonishing given the personal backgrounds of the Founding Fathers—Adenauer, De Gaspari, Schumann, Monnet himself—all seriously committed Catholics.[43]

The mobilizing force, especially among elites, the Political Classes who felt more directly responsible for the calamities of which Europe was just exiting, is not surprising given the remarkable subterranean appeal to the two most potent visions of the idyllic "Kingdom"—the humanist and religious combined in one project.[44] This also explains how,

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CULTURES POLITIQUES ET ANNEES DE FORMATION [ROBERT SCHUMAN AND FATHERS OF EUROPE: POLITICAL CULTURE AND YEARS OF TRAINING] 39, 44 (Schirmann ed., 2008).

[43] Fimister, *Integral Humanism and the Re-unification of Europe*, *in* ROBERT SCHUMAN ET LES PERES DE L'EUROPE: CULTURES POLITIQUES ET ANNEES DE FORMATION [ROBERT SCHUMAN AND FATHERS OF EUROPE: POLITICAL CULTURE AND YEARS OF TRAINING] 25 (Schirmann ed., 2008) ("Schuman was an ardent Roman Catholic, and his views about the desirability of political unity in Western Europe owed much to the idea that it was above all the continent's Christian heritage which gave consistence and meaning to the identity of European civilization. And the Europe he knew and loved best was the Carolingian Europe that accorded with his religious faith and his experience of French and German cultures"); Mauleon Sutton, *Chapter 1: Before the Schuman Plan*, *in* FRANCE AND THE CONSTRUCTION OF EUROPE, 1944–2007: THE GEOPOLITICAL IMPERATIVE 34 (2007); Alcide De Gasperi, Address at the Consultative Assembly of the Council of Europe in Strasbourg (Sept. 1952) ("It is with deep faith in our cause that I speak to you, and I am confident that through the will of our free peoples, with your support and with God's help, a new era for Europe will soon begin").

[44] One should add that the transnational reach of the Schuman plan served, as one would expect, a powerful internal interest the discussion of which even today meets with resistance. The challenge of "fraternity" and the need for forgiveness, love and grace was even more pressing internally than internationally. For each one of the original Member States was seriously compromised internally. In post war Germany, to put it bluntly, neither State nor society could function if all those complicit in National Socialism were to be excluded. In the other five, though ostensibly and in a real sense victim of German aggression, important social forces became complicit and were morally compromised. This was obviously true of Fascist Italy and Vichy France. But even the little Luxembourg contributed one of the most criminally notorious units to the German army and Belgium distinguished itself as the country with the highest number

for the most part, both Right and Left, conservative and progressive, could embrace the project.

It is the messianic model that explains (in part) why for so long the Union could operate without a veritable commitment to the principles it demanded of its aspiring members—democracy and human rights. Aspirant states had to become members of the European Convention of Human Rights, but the Union itself did not. They had to prove their democratic credentials, but the Union itself did not—two anomalies that hardly raised eyebrows.

Note however, that its messianic features are reflected not only in the flowery rhetoric. In its original and unedited version, the declaration is quite elaborate in operational detail, but you will find neither the word democracy nor human rights, a thunderous silence. It's a "Lets-Just-Do-It" type of programme animated by great idealism (and a goodly measure of good old state interest, as a whole generation of historians such as Alan Milward[45] and Charles Maier[46] among others have demonstrated).

The European double helix has from its inception been Commission and Council: an international (supposedly) a-political transnational administration/executive (the Commission) collaborating not, as we habitually say, with the Member States (Council) but with the governments, the executive branch of the Member States, which for years and years had a forum that escaped in day-to-day matters the scrutiny of any parliament, European or national. Democracy is simply not part of the original vision of European integration.[47]

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of indigenous volunteers to the occupying German forces. The betrayal of Anna Frank and her family by their good Dutch neighbors was not an exception but emblematic of Dutch society and government who tidily handed over their entire Jewish citizenry for deportation and death. All these societies had a serious interest in "moving on" and putting that compromised past behind them. If one were to forgive and embrace the external enemy, to turn one's back to the past and put one's faith in a better future, how much more so, how much easier, to do the same within one's own nation, society even family.

[45] ALAN MILWARD, THE EUROPEAN RESCUE OF THE MEMBER STATE (Routledge, 2nd ed. 2000).

[46] *See generally* THE MARSHALL PLAN AND GERMANY: WEST GERMAN DEVELOPMENT WITHIN THE FRAMEWORK OF THE EUROPEAN RECOVERY PROGRAM (Maier & Bischof eds., 1991).

[47] Kevin Featherstone, *Jean Monnet and the Democratic Deficit in the European Union*, 32 J. COMMON MKT STUD. no. 2, 149, 150 (1994); *see generally* Jacques Delors, *Independent* (July 1993).

This observation is hardly shocking or even radical. Is it altogether fanciful to tell the narrative of Europe as one in which 'doers and believers' (notably the most original of its institutions, the Commission, coupled with an empowered executive branch of the Member States in the guise of the Council and COREPER), an elitist (if well-paid) vanguard, were the self-appointed leaders from whom grudgingly, over decades, power had to be arrested by the European Parliament? And even the European Parliament has been a strange *vox populi*. For hasn't it been, for most of its life, a champion of European integration, so that to the extent that, inevitably, when the Union and European integration inspired fear and caution among citizens, (only natural in such a radical transformation of European politics) the European Parliament did not feel the place citizens would go to express those fears and concerns?

The political messianic was offered not only for the sake of conceptual clarification but also as an explanation of the formidable past success of European integration in mobilizing support. They produced a culture of praxis, achievement, ever-expanding agendas. Given the noble dimensions of European integration one ought to see and acknowledge their virtuous facets.

But that is only part of the story. They also explain some of the story of decline in European legitimacy and mobilizing pull, which is so obvious in the current circumstance. *Part of the very phenomenology of political messianism is that it always collapses as a mechanism for mobilization and legitimation.* It obviously collapses when the messianic project fails, when the revolution does not come. Interestingly, and more germane to the narrative of European Integration, even when successful it sows its seeds of collapse. At one level the collapse is an inevitable part of the very phenomenology of messianic project. Reality is always more complicated, challenging, banal and ultimately less satisfying than the dream which preceded it. The result is not only absence of mobilization and legitimation, but actual rancor.

The original Promised Land, Canaan, was a very different proposition, challenging and hostile, to the dream which preceded it. Independent India, or Kenya, or even the USA were very different to the dreams which preceded them and their like. Individually this is the story of many a courtship and love affair. The honeymoon is always better than the reality of marriage. Just as paradise becomes such, only when lost, the land itself, always falls short of the promise. It is part of the ontology of the messianic.

The emblematic manifestation of this in the context of European integration is the difference between the 868 inspiring words of the Schumann dream and the 154,183 very real words of the (defunct) European Constitution now reinvented in the Treaty of Lisbon.

In the case of Europe, there are additional contingent factors, which the collapse of the messianic narrative as a mobilizing and legitimizing factor. At one level Europe is a victim of its own success. The passage of time coupled with the consolidation of peace, the internalization of the alternative inter-state discourse which Europe presented, has been so successful that to new generations of Europeans, both the pragmatic and idealist appeal of the Schuman vision seem simply incomprehensible. The reality against which their appeal was so powerful—the age hold enmity between France and Germany and all that—is no longer a living memory, a live civilizational wire, a wonderful state of affairs in some considerable measure also owed to the European constructs.

At another level, much has changed in societal mores. Europe in large part has become a post-Christian society. The profound commitment to the individual and his or her rights, relentlessly (and in many respects laudably) placing the individual in the center of political attention, has contributed to the emergence of the self-centered individuals. Social mobilization in Europe is at strongest when the direct interest of the individual are at stake and at their weakest when it requires tending to the needs of the other, as the recent Euro crisis, immigrant crisis and other such instances will readily attest. So part of the explanation of the loss of mobilizing force of the Schuman Vision is in the fact that what it offers either seems irrelevant or does not appeal to the very different idealistic sensibility of contemporary European society.

The result is that if political messianism is not rapidly anchored in the legitimation that comes from popular ownership, it rapidly becomes alienating and, like the Golem, turns on its creators.

Democracy was not part of the original DNA of European Integration. It still feels like a foreign implant. With the collapse of its original political messianism, the alienation we are now witnessing is only to be expected. And thus, when failure hits as in the Euro crisis, when the Panem is gone, all sources of legitimacy suddenly, simultaneously collapse.

This collapse comes at an inopportune moment, at the very moment when Europe of the Union would need all its legitimacy resources. The

problems are European and the solution has to be at the European level. But for that solution to be perceived as legitimate, for the next phase in European integration not to be driven by resentful fear, the architects will not be able to rely, sadly, on the decisional process of the Union itself. They will have to dip heavily into the political structure and decisional process of the Member States. It will be national parliaments, national judiciaries, national media and national governments who will have to lend their legitimacy to a solution which inevitably will involve yet a higher degree of integration. It will be an entirely European phenomenon that at what will have to be a decisive moment in the evolution of the European construct, the importance, even primacy of the national communities as the deepest source of legitimacy of the integration project will be affirmed yet again.

危难面前——欧洲共同体的输入正当性，
输出正当性与政治弥赛亚主义

（美）约瑟夫 韦勒[*]

I 序言

俗话说，情人眼里出西施。

对一些人来说，马斯特里赫特（Maastricht）协议推动了"真正的"欧洲一体化。它不再仅仅是市场的联合，而是真正的经济与货币的联盟，欧洲议会的升级（终于实现了民主！），协议中对人权和环境的表述（expresis verbis）带有对实际行动的期待，当然还有欧洲公民身份。连那过去古板的"共同体"字眼都被升级为具有庄严韵味的"联盟"。

对另一些人而言，马斯特里赫特协议则只是一个愚人游戏，布满了烟雾弹和镜花水月：一个半生不熟的货币联盟（"当第一次不对称冲击来袭时他们能做什么呢？"哈佛的马丁·费尔德斯坦（Marty Feldstein）当时就如此警告过），不断扩大的民主"赤字"——把权力转移至欧盟，却没有相应的问责制度和公民影响力，无意义的公民身份既没有义务也没有权利，还抛弃了原有的人性化概念"社区"，选择了陈腐的"联盟"，一个刚刚被苏联腾出来的概念。

公民们，让我们再提醒自己一下，欧洲一体化并不是一个笑话。迎接马斯特里赫特协议的，是由精英驱动的欧洲建构所常见的、典型的漠不关心。而那些感兴趣的人——丹麦人和法国人，他们的国家就

此事与其值得称颂的公民进行了协商——一个拒绝了它，而另一个仅以微薄的优势勉强通过了它。[1]

这始终是欧洲建构的阿克琉斯之踵（Achilles Heel）——即这个无疑非常高尚的事业到底是否享有大众正当性。

本文的结构如下：首先，我将概述我准备如何使用正当性这个概念。通常关于欧洲正当性的论述会提到两个核心概念：输入（过程）正当性和输出（结果）正当性。我将加入第三种，较少被讨论的但在我看来却对欧洲正当性至关重要的特点——政治弥赛亚主义。我将逐一探讨，欧洲的大背景下这些正当性的表现形式，并解释为何依我看这些表现形式已经被穷尽，无法在当前的环境下得到运用。我的结论也很简单：欧洲的危机需要用欧洲的方法来解决。然而如果要成功采取这些方法，就要运用在民族国家，即欧盟成员国中才能找到的正当性资源，在某些方面来讲，这是一个非常欧洲化的结果。

II 两种派系、三种类型的正当性

正当性以其莫测的含义而著名，它被过度地使用且又不够具体。所以，首先我将阐明本文中我所赋予正当性的含义。请不要急着与我争论："不，那不是正当性！正当性意味着其他东西。"[2] 这是我所计划的用法，我希望能让大家相信，这种定义对于清楚地阐述当前危机和欧洲一体化现状有着至关重要的作用。

目前大致有两种正当性的派系，用语或词汇：规范化正当性和社会化正当性。规范化正当性的用语是伦理道德，来自于政治理论。它是一个客观的评判标准，尽管对于何谓正当治理仍会有明显的意识形态上的分歧。社会化的正当性是来自经验的，通过社会科学的工具进行评估和考量。它是主观的评判标准，反映社会的态度。它不是对民意，而是对更深层次的政权接受度的考量。

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[1] The Brussels Mandarins like to wave (though not recently) Eurobarometer results as evidence of widespread support for Europe. But careful examination of the data seems to suggest that Europeans typically support that which Europe promises to do, not that which it actually does. *Cf.* ANAND MENON & MARTIN A. SCHAIN, COMPARATIVE FEDERALISM: THE EUROPEAN UNION AND THE UNITED STATES IN COMPARATIVE PERSPECTIVE 9–10 (2006).

[2] I found the following most useful, also as a demonstration of the breadth of the concept: Cathryn Johnson, Timothy J. Dowd & Cecilia L. Ridgeway, *Legitimacy as a Social Process*, 32 ANN. REV. SOC. 53, 53–78 (Aug. 2006); Barry B. Levine, *Legitimacy and the Process by Which It Is Pursued* (Jens Beckert & Milan Zafirovski eds., 2005) (prepared for Encyclopedia of Economic Sociology); Wojciech Sadurski, *Constitutional Courts in Transition Processes: Legitimacy and Democratization* (Sydney Law Sch. Research Paper No. 11/53), http://ssrn.com/abstract=1919363; Fabienne Peter, *Political Legitimacy*, *in* STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2010), http://plato.stanford.edu/archives/sum2010/entries/legitimacy/.

　　这两种派系的正当性往往互为佐证甚至可以合并，但并不必然如此。有一系列的例子可以澄清这一点。以自由主义多元化的规范性标准来看，上个世纪三四十年代时的德国国家社会主义是一种可怕的变异，否定了正当性治理。然而，从社会学角度和经验上来说，直到1945 年战败之前，对大部分德国人而言，该统治不仅广受拥护且被视为极具正当性的领导。与此相反，魏玛民主（Weimar Democracy）符合各种正当性政府的评判标准，但对很多德国人而言，它不仅仅不受欢迎，且不具有正当性的领导，是对德国的背叛。

　　当然，在此种极端以外的情况下，我们确实期待这两种正当性在某些方面合二为一。人们期待，如果一个政权由于依宪政民主治理而具有规范化的正当性，它就应当享有广泛的社会正当性。反之亦然：一个不符合规范化正当性标准的政权，应当享有同样低微的社会正当性。当然，这些参数也可能通过不同排列形成更加复杂情况。

　　正当性，不论是从规范标准或是社会标准，都不应与合法性混同。譬如禁止黑人坐在公交车的前方座位曾一度是合法的，但却不符合很多规范化的正当性标准，并且随着时间的推移也失去了其社会化的正当性。有一些违法的手段，不论是从规范标准去判断或是从社会标准评判都被视为是正当的，而一些合法的手段则被视为是不正当的。

　　从本文主旨出发，有必要在此简要地探讨一下民意与正当性的关系。如果我终身都是英国工党的追随者，我也许会被王党保守派的当政所惊骇并且痛恨保王派首相所发布任何一项命令，但是我却从来都不会认为这些命令本身是"不正当的"。事实上，对于本文的一个核心论述非常重要的一点是，一个政权的正当性资源越深入，它也就越能采取那些在危机中至关重要却*不得民心*的措施，而这些措施往往又是不可或缺的。

　　当前的危机有一点特别之处。尽管在财政紧缩和刺激增长两阵营中存在非常大的分歧，[3]每个人都知道我们必须在一个欧洲的框架内、采用一个欧洲式的解决方法。然而，不言自明的是，创造出一个欧洲式的解决方法变得非常困难，机构和联盟的决议过程无法有效且令人满意地解决这个危机，甚至连政府间的方案都无法奏效，真正做决策的只是一小部分的政府，国家首脑。问题是欧洲的问题，但如今的欧洲却无力补救。

　　我想提出的是，在这种情况下，欧盟的正当性资源，这里主要是指社会化的正当性，已经千疮百孔了，这就是为何联盟不得不向成员国寻求救赎。解决方案仍然需要是一个覆盖全欧的方案，但却不会用

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[3] Monhamed El-Erian, *Beyond the False Grwoth vs Austerity Debate*, FINCIAL TIMES (June 24, 2010, 11:29 PM), http://www.ft.com/cms/s/0/2f50ef78-7fcb-11df-91b4-00144feabdc0.html.

传统的"社区方案"来设想、设计与创造，而是将通过成员国之间的谈判和确认生效。这将需要动用成员国的正当性资源—有些国家的正当性资源也已趋向穷尽—才能在欧洲取得有效的认同。

艾伦 米尔沃德（Alan Milward）在《成员国的欧洲式拯救》中令人信服的名言是，[4]风水轮流转，在当前的危急中，轮到成员国来拯救欧盟了。

从正当性的派系谈到类型，我想提出三种最重要的正当性类型，它们都对欧洲一体化至关重要。影响最广泛的就是对输入正当性和输出正当性这一主题的种种延伸、变化地讨论。[5]

过程（或输入）正当性——在现有情况下，简单地说，可与民主同一而论。从反面来说就是，欧洲式治理在一定程度上偏离了其成员国所一贯理解的民主的习惯和习俗，而这也在同等程度上损害了其正当性——既包括规范化也包括社会化的正当性。

结果（或输出）正当性——同样，简单地说，就是现代版的"面包与马戏团"。只要联盟能提供"商品"——繁荣、稳定、安全——它就能享受成功本身（per se）、成功地实现其目标、以及对其结果的满意的微妙结合而衍化出的正当性。战胜是将一场战争正当化的最佳理由。这种衍化出的正当性正是联盟使命精神的一部分。

在终极正当性（Telos Legitimacy）或政治弥撒亚主义（Political Messianism）中，正当性既不是通过过程也不是通过结果取得的，而是通过承诺，一个令人心向往之的领土的承诺。我接下来会详细阐述。

现在，我要试着解释这三种正当性在如今的欧洲情景下的崩塌。

III 欧洲现状

此时是一个反省欧洲共同体的有趣时机。欧洲正处于几十年来都不曾经历的低谷，不论人们说了多少豪言壮语，尝试了多少自救的努力，[6]里斯本公约（Treaty of Lisbon）都没能挽救这种颓势。危机最浅

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[4] ALAN MILWARD, THE EUROPEAN RESCUE OF THE NATION-STATE (Routledge, 2nd ed. 2000).

[5] *See generally* M. Boedeltje & J. Cornips, *Input and Output Legitimacy in Interactive Governance* (Oct. 2004); Karl-Oskar Lindgren & Thomas Persson, *Input and Output Legitimacy: Synergy or Trade-off? Empirical Evidence from an EU Survey*, 17 J. EUR. PUB. POL'Y., no. 4, 449 (2010).

[6] *See, e.g.*, Plenary session of the European Parliament, Strasbourg: Treaty of Lisbon (Feb. 20, 2008) (including various statements from the members of the European Parliament, Janez Lenarcic, President of the Council and Margot Wallström, Vice-President of the European Commission); *see also* European Parliament Resolution

层的表现每天都在新闻头版上摊开在我们面前：欧元危机[7]正是最近的一个。表象之下，在其结构层面，却蛰伏着深刻的、长期的，预示着持久的挑战，甚至失灵和萎靡的迹象。就让我们通过正当性这个透视镜来审视他们。[8]

首先，就过程正义来说，三言两语无法解决那执着而持久的，慢性发展的，令人困扰的民主赤字（Democracy Deficit）。所谓的民主赤字的表现持久不退，就是那无数次的欧盟议会的权力重申也无法驱除它。本质上，它是联盟无力在联盟层面发展出能充分复制或"转化"[9]各成员国以不同模式实行的，哪怕并不完美的关于政府控制、议会问责和行政责任的结构和流程的体现。别误会：很显然联盟不是一个国家，但它确实在进行治理并在很多领域接管了曾属于成员国的职能。在一些重要领域，比如联盟与国际贸易系统的交接，欧盟行使着排他的权能。而在其他一些领域，它则占据主导地位。民主与国家无关。民主的要义是公权力的行使——联盟行使着大量的公权力。我们赖以维生的信条是任何公权力的行使都必须以民主的方式正当化，而这正是过程正当性的失败之处。

本质上，任何起作用的民主所具有的最原始的两个特点是缺失的——伟大的问责原则和代表原则。[10]

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of 20 February 2008 on the Treaty of Lisbon, Feb. 20, 2008, 2009 O.J. (C 184) 25; Brussels European Council 14 Dec. 2007, Brussels, 14 Feb. 2008, 16616/1/07 REV 1 (including the EU declaration on globalization); European Commission, *Your Guide to the Lisbon Treaty*, http://ec.europa.eu/publications/booklets/others/84/en.pdf; Jos é Manuel Durao Barroso, President of Eur. Comm'n, The European Union after the Lisbon Treaty, Address at the 4th Joint Parliamentary Meeting on the Future of Europe, Brussels (Dec. 4, 2007), *in* SPEECH/07/793 (Dec.7, 2007).

[7] D. Dinan, *Governance and Institutions: Implementing the Lisbon Treaty in the Shadow of the Euro Crisis*, 49 J. COMMON MKT. STUD., no. S1, 2011, at 103.

[8] The literature is rich. Here is a partial sample of some truly helpful studies: THE LEGITIMACY OF THE EUROPEAN UNION AFTER ENLARGEMENT (Jacques Thomassen ed., 2009); JACQUES THOMASSEN & HERMANN SCHMITT, *Introduction: Political Legitimacy and Representation in the European Union*, *in* POLITICAL REPRESENTATION AND LEGITIMACY IN THE EUROPEAN UNION 3–21 (1999); DAVID BEETHAM & CHRISTOPHER LORD, LEGITIMACY AND THE EUROPEAN UNION (1998); Max Haller, *Is the European Union Legitimate? To What Extent?* 60 INT'L SOC. SCI. J. no. 196, 2009, at 223; Andrew Moravcsik, *Reassessing Legitimacy in the European Union*, 40 J. COMMON MKT. STUD., 2002, at 603; Barbara Guastaferro & Manuela Moschella, *The EU, the IMF, and the Representative Turn: Addressing the Challenge of Legitimacy*, 18 SWISS POL. SCI. REV 199 (2012).

[9] Neil Walker, *Postnational Constitutionalism and the Problem of Translation*, *in* EUROPEAN CONSTITUTIONALISM BEYOND THE STATE 29 (J.H.H. Weiler & Marlene Wind eds., 2003).

[10] DEMOCRACY, ACCOUNTABILITY AND REPRESENTATION (Adam Przeworski, Susan C. Stokes & Bernard Manin eds., 1999); Philippe C. Schmitter & Terry L. Karl, *What Democracy Is… and Is Not*, 2 J. DEMOCR, no. 3, 67 (Summer 1991); Peter Mair, *Popular Democracy and the European Union Policy* (European Governance Papers No. C-05-03, 2005), http://www.connex-network.org/eurogov/pdf/epg-connex-C-05-03.pdf.

就问责原则[11]来说，即便是代议民主最基本的条件，即在选举时公民"可以将恶棍推下台"[12]——即推翻政府的权利——都无法在欧洲实施。[13]欧洲的无政府治理的治理模式[14]，现在、将来很长一段时间、有可能永远都是如此，以至于没有可以让人推翻的"政府"。令议会解散欧盟委员会（或通提案指定一位委员会主席）都与问责远不相同。

令人咋舌却不意外的是政治问责原则在欧洲非常薄弱。欧洲的治理中曾有一些严重的政治败局。尴尬的哥本哈根气候会议上的惨败；[15]曾被交口称赞的里斯本议程的（也称里斯本战略或里斯本进程）差强人意（说的好听些）的实现，[16]还有过时的"宪法"的故事，[17]这些仅是诸多惨败中的三个。——很难在这些事件中找到任何政治问责原则的体现，没有人像在国内政坛中那样付出政治代价。事实上，在欧洲一体化的史册里，连一个区别于个人对不当行为负责的对政治失败负责的例子都找不出来。这不是，绝不是，因为腐败或其他非法行为。[18]我认为，这种失败根植于欧洲治理结构。这种治理结构根本不是为政治问责原则而设的。同样，想要把欧洲议会选举结果与前任议会中政治团体的表现联系起来，正如在成员国问责制度的中所体现的那样，也是徒劳的。[19]在结构上，当"欧洲"存在时，对它的不满无法通过任何途径可以在欧洲层面上影响其所承担的治理功能。

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[11] CAROL HARLOW, ACCOUNTABILITY IN THE EUROPEAN UNION (2003).

[12] IAN SHAPIRO, DEMOCRACY'S PLACE 96 (1996); J.H.H. Weiler, *To be a European Citizen: Eros and Civilization*, *in* THE CONSTITUTION OF EUROPE "DO THE NEW CLOTHES HAVE AN EMPEROR?" 329 (1999).

[13] Renaud Dehousse, *Constitutional Reform in the European Community: Are there Alternatives to the Majoritarian Avenue? in* THE CRISIS OF REPRESENTATION IN EUROPE, 118, 123 (Jack Hayward ed., 1995).

[14] Philip Allott, *European Governance and the Re-branding of Democracy*, 27 EUR. L. REV. no. 1, 60 (2002).

[15] *See* Resolution on the Outcome of the Copenhagen Conference on Climate Change (COP 15), EUR. PARL. DOC. P78TA(2010)0019 (Feb. 10, 2010) (especially points 5–6).

[16] Iain Begg, *Is There a Convincing Rationale for the Lisbon Strategy?*, 46 J. COMMON MKT. STU. no. 2, 427 (2008); Wim Kok et al., *Facing the Challenge—The Lisbon Strategy for Growth and Employment*, Report from the High Level Group (Nov. 2004).

[17] Ian Ward, *Bill and the Fall of the Constitutional Treaty*, 13 EUR. PUB. L. no. 3, 461 (2007); Editorial Comments, *What Should Replace the Constitutional Treaty?*, 44 COMMON MKT L. REV 561 (2007).

[18] *See also* Veith Mehde, *Responsibility and Accountability in the European Commission*, 40 COMMON MRK L. REV. 423 (2003).

[19] Julian Priestley, *European Political Parties: the Missing Link*, NOTRE EUROPE (Oct. 22, 2010), http://www.eng.notre-europe.eu/011-2247-European-political-parties-the-missing-link.html; Francisco Roa Bastos, *"Des partis politiques au niveau européen?" Etat des lieux à la veille des élections européennes de juin 2009* [*"Political Parties at European Level?" The Situation on the Eve of the European Elections in June 2009*], ETUDES ET RECHERCHES [STUDIES AND RESEARCH] 71 (2009); O. Audeoud, *Les partis politiques au niveau européen. Fédérations de partis nationaux* [*Political Parties*

同样的，民主的最基础层面，公民们在国内层面上面对众多党派所提供的多元的政策有着政治选择权，但在欧洲联盟社区中，没有任何一种渠道能让公民们直接左右欧盟的政治选择。欧洲议会的政治色彩仅能微乎其微的转化到联盟的立法和行政结果中。[20]

用雷诺·德乌斯（Renaud Dehousse）[21]的妙语来说，政治赤字（Political Deficit）是民主赤字的核心。根据这一本体论形成的自我认知，欧盟委员会和理事会都不是一个左翼或右派的政党，因为其政治组成杂乱无章。民主通常都能有效的体现选民选择的机制，他们在多种选项中作出选择往往来自于或强或弱的理念目标。[22]这在政治中不可或缺。没有政治的民主本身就是一个矛盾的命题。[23]然而这不仅是欧洲的表现，而恰是欧洲的特点——欧盟委员会被广为称颂的"无党派"本质。学生课本里那些老套的说法，如超国家委员会（Supranational Commission），是欧洲利益的维护者，而政府间的委员会则是成员国利益的清道夫——最好可称为天真。难道"欧洲利益"不包括政治和理念上有时明示通常默示的选择吗？

因此，民主最重要的两个原则，问责原则和代表原则，都在联盟本身的结构和流程中受到了危及。

当前欧洲情况的第二个表现是欧洲建构及其机构中持续下滑的正当性和驱动力。欧元危机，对意大利涌入大量北非移民问题的置之不理，仿佛那只是意大利的问题与欧洲无关，对于欧洲政府和民众层面这些"团结一心"的丑陋表现我不想多谈。我要谈的是两个更深层也更长远的趋势。首先，是选民对欧洲议会的选举参与显著降低。欧洲整体的参加率低于 45%，尤其是有些在东部的国家的参加率低于30%。[24]正确的对比对象当然是国家议会的政治选举，其参与率明显更高。[25]这些数据的引人注意之处在于，这种下滑与权力向欧洲议会

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at European Level, Federations of National Parties] LES CAHIERS DU GERSE [THE GERSE PAPER] (Feb. 3, 1999).

[20] Vernon Bogdanor, *Legitimacy, Accountability and Democracy in the European Union*, A FEDERAL TRUST REPORT 7–8 (2007); Andreas Follesdal & Simon Hix, *Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik*, 44 J. COMMON MKT, STUD. no. 3, 533, 545 (2006).

[21] Dehousse, *supra* note 13, at 124; *see also* JEAN-MARC FERRY & PAUL THIBAUD, DISCUSSION SUR L'EUROPE (1992).

[22] Follesdal & Hix, *supra* note 20.

[23] *See* PIERRE MANENT, LA RAISON DES NATIONS, REFLEXIONS SUR LA DEMOCRATIE EN EUROPE [THE REASON OF NATIONS THOUGHTS ON DEMOCRACY IN EUROPE], 59 (2006).

[24] *Post-Electoral Survey 2009 Report of the Directorate-General for Communication of the European Commission*, EUR. COMM'N, 22 (Nov. 2009), http://ec.europa.eu/public_opinion/archives/ebs/ebs_320_en.pdf.

[25] Anand Menon & John Peet, *Beyond the European Parliament: Rethinking the EU's Democratic Legitimacy*, *in* CENTER FOR EUROPEAN REFORM ESSAYS (2010); Paul

的持续转移同时发生，而欧洲议会如今正是理事会事实上的共同立法者。欧洲议会，所谓的民意代表（*Vox Populi*），其所获得的权力越大，民众似乎越漠视它。[26]令人深思却又不意外的是，欧洲议会作为一个主要成员在当前危机中的缺席。而机构化层面的危机影响还更深。委员会是优秀的有创意的秘书、执行者及监督者，但却既不是理念的源泉也不是政治的领导者。它忠实而高效的执行着他的主人（His Master）的指令。但最发人深省的是消失了的欧盟理事会的行为。它不再是吉斯卡尔一派（Giscardian）所打造的欧洲骄傲的领导者，而是欧盟两位主席，默克尔和萨科齐，手中的橡皮印章。这是机构化正当性的失败，是议会和理事会的失败，是超国家主义（Supranationalism）和政府间主义（Intergovernmentalism）的失败。求助于欧盟之外的公约来作为重建的核心不过是这种政治现实的心酸表现而已。

对于联盟的民主赤字的批判本身又会受到两种批判。第一种只是质疑民主赤字的现状，认为用于评价联盟的标准是错误的。[27]这一系列争论众所周知。[28]就这种争论前面我已明示了我的立场。但我更感兴趣的是第二种批判，它实际上暗示着对结果或输出正当性的祈求。既然联盟不是一个国家，也不能复制或充分地转化国内政府的惯例和实践，它的正当性或许能从别处探索。[29]

在分析欧盟的正当性（及驱动力）时，尤其是针对其持久的民主赤字的背景时，政治及社会科学确实长久以来都在使用过程正当性和结果正当性（也称为输入/输出，过程/结果）的区分。[30]总的联盟和具体到委员会的正当性，尽管受到缺少国内民主的困扰，仍取决于其

Magnette, *European Governance and Civic Participation: Can the European Union be Politicised?* (Jean Monnet Working Paper No. 6/01, 2001).

[26] Jerzy Buzek, *State of the Union: Three Cheers for the Lisbon Treaty and Two Warnings for Political Parties*, 49 J. COMMON MKT STUD. no. S1, 7, 15 (2011); *see also* Joseph Weiler, *To Be a European Citizen: Eros and Civilization*, *in* THE CONSTITUTION OF EUROPE 'DO THE NEW CLOTHES HAVE AN EMPEROR?' AND OTHER ESSAYS ON EUROPEAN INTEGRATION 266 (1999).

[27] Joseph Weiler, *Does Europe Need a Constitution? Demos, Telos and the German Maastricht Decision*, 1 EUR. L.J. 219, 225 (1995).

[28] Paul Craig, *The Nature of the Community: Integration, Democracy, and Legitimacy*, *in* THE EVOLUTION OF EU LAW 25 (Paul Craig & G. de Búrca eds., 1999).

[29] Neil MacCormick, *Democracy, Subsidiarity, and Citizenship in the "European Commonwealth"*, 16 L. & PHIL. 331, 331–56 (1997).

[30] *See, e.g.*, CHARLES. R. BEITZ, POLITICAL EQUALITY: AN ESSAY IN DEMOCRATIC THEORY 31–96 (1990); ROBERT ALAN DAHL, DEMOCRACY AND ITS CRITICS 163 (1991); *see also* REGULATING EUROPE (GIANDOMENICO MAJONE ed., 1996); FRITZ WILHELM SCHARPF, GOVERNING IN EUROPE: EFFECTIVE AND DEMOCRATIC? 7 (1999).

所取得的成果——在经济、社会、以及最终政治领域。[31]这种观点回归到了最经典的功能主义和新功能主义。[32]

我不想挑战这个立场所隐含的规范性——一个后期的"面包与马戏团"（Panem et circenses）的民主方式，这个方式在某些层面至少很麻烦。我想挑战的是其经验主义事实。我不认为结果正当性能解释所有的或大部分欧洲建构的驱动力，但是，不管它的角色是什么它都依赖于"面包"（Panem）。对错与否，表现为欧元危机的欧洲的经济灾难来自于欧洲建构。因此，当突然面包没有了，当然蛋糕也没有了的时候，我们得到了另一种"马戏团"的对待，于是公民渐长的漠视转为了敌视，欧洲作为政治驱动力的能力不仅消失，甚至逆转。正当化一场战争的最差方式就是输掉它，而欧洲忽然间不再被视为成功的楷模，而成为了紧缩的象征，也就是对其所承诺的繁荣追逐的失败。如果成功孕育正当性，那么失败，即使错误地归责，则指向其反面。

因此，毫不意外的，一股似乎具有传染性的"反欧洲主义"在各国政坛蔓延。[33]曾经属于极左和极右派边缘政党的理念逐渐地向中央政治力量挺进。"欧洲问题"作为政治对话的一个核心问题，长久以来被认为是"英国式疾病"，蔓延于东南西北的各成员国，在这些国家，非边缘党派都将反欧洲的主张作为其政治资本。[34]这种现象的连锁反应就是主流政党也向这个方向发展，以对抗左右翼政党因此得来的收益。如果我们对这种现象感到讶异，只不过是因为我们似乎已经忘记我们历史上对所谓的欧洲宪法（European Constitution）的抗拒意识了，这是一种可理解的健忘，因为它本身就代表着舆论民意[35]对欧洲集体政治阶级的战胜，纵然没有明言，却在面上打了欧盟机构一个耳光。[36]

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[31] Kevin Featherstone, *Jean Monnet and the Democratic Deficit in the European Union*, 32 J. COMMON MKT STUD. no. 2, 149, 150 (1994).

[32] *Id*. at 155; Charles Pentland, *Political Theories of European Integration: Between Science and Ideology*, *in* THE EUROPEAN COMMUNITIES IN ACTION 545, 550 (Lasok & Soldatos eds., 1981); BEN ROSAMOND, THEORIES OF EUROPEAN INTEGRATION 20 (2000); *see generally* DAVID MITRANY, A WORKING PEACE SYSTEM (1966); ERNEST B. HAAS, THE UNITING OF EUROPE (1958); Ernest B. Haas, *Turbulent Fields and the Theory of Regional Integration*, 30 INT'L ORG. no. 2, 173 (1976); LEON N. LINDBERG, THE POLITICAL DYNAMICS OF EUROPEAN ECONOMIC INTEGRATION (1963); REGIONAL INTEGRATION: THEORY AND RESEARCH (LINDBERG & SCHEINGOLD eds., 1971).

[33] CÉCILE. LECONTE, UNDERSTANDING EUROSCEPTICISM (2010).

[34] EUROSCEPTICISM: PARTY POLITICS, NATIONAL IDENTITY AND EUROPEAN INTEGRATION 13 (Harmsen & Spiering eds., 2005); ALEKS. SZCZERBIAK & PAUL A. TAGGART, OPPOSING EUROPE? (Vol. I & II, 2008).

[35] NEIL FLIGSTEIN, EUROCLASH: THE EU, EUROPEAN IDENTITY, AND THE FUTURE OF EUROPE (2008).

[36] *See, e.g*., Joseph Weiler, U.R. Haltern & F.C. Mayer, *European Democracy and Its Critique*, *in* THE CRISIS OF REPRESENTATION IN EUROPE 4 (Hayward ed., 1995).

IV　　政治"弥赛亚主义"在欧洲

在某种程度上讲，同样的说法可以说在十年甚至是二十年前就已经提出过了。[37]这种"民主赤字"并非刚刚萌芽——它已经持续存在很久了。那么欧洲究竟如何在其取得前几十年的巨大成功之前，对自己做出正当性辩护呢？

正如我在上文中提示的一样，在概念层面上存在第三种正当化。这种正当化，在我看来，长期扮演着比现在人们所认知到的更重要的作用。事实上，我认为它对欧洲的正当性和取得政治阶层和广大公民的积极回应起着决定性的作用。我还认为它是构成欧盟政治文化的核心元素的关键。这是一种植根于"政治上的弥撒亚"的正当性。

在政治"弥赛亚"主义中，其行为正当性和驱动力并非像在古典民主制度那样来自于过程，也并非来自于结果和自身的成功，而是来源于其所追求的理想，要实现的命运，道路尽头的"应许之地"。的确，在弥赛亚的愿景中，目标永远比手段重要。

马克·马佐尔（Mark Mazower）在其精彩绝伦的对 20 世纪欧洲历史的记载和编纂中[38]极具有前瞻性地展示了由加入第一次世界大战的君主和帝王们组成的欧洲往往植根于各国关于政治救世主理念的传播，（如德国、意大利、俄国，甚至英国与法国）。 一战结束后，欧洲转而摇摆迈向新型的民主秩序与过程正当性，随后又动摇转回新形式的政治弥撒亚主义—法西斯主义与共产主义。正如人们常常讲的一样，在第二次世界大战之后，西欧据说振荡回至追求民主和过程正当性。我恰恰是要在这点上指出一个有趣的但人们常常忽略的转变。

一方面，之后成为欧盟成员国的西欧国家无比决绝地变得民主，他们的爱国主义植根于他们新的宪法价值观，关于那些被光荣地抛弃、甚至是取笑的、救世主的国家概念的宣传完全失去了吸引力。众所周知，那些一度用镇压和血腥来维护的帝国，现如今已被毫不犹豫地抛弃[39]。

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[37] *See, e.g.*, Commission White Paper on European Governance, COM (2001) 428 final (July 25, 2001); Vernon Bogdanor & Woodcock, *The European Community and Sovereignty*, 44 PARLIAM. AFF. 481, 492 (1991) ("The shortcomings of the Community lie in the feelings of remoteness and lack of influence and involvement on the part of many of its citizens"); Dieter Grimm, *Does Europe Need a Constitution?*, 1 EUR. L.J. no. 3, 282, 291 (1995); Christopher Hill, *European Foreign Policy: Power Bloc, Civilian Power—or Flop? in* THE EVOLUTION OF AN INTERNATIONAL ACTOR—WESTERN EUROPE'S NEW ASSERTIVENESS 35 (Rummel ed., 1990).

[38] MARK MAZOWER, DARK CONTINENT—EUROPE'S TWENTIETH CENTURY (1998).

[39] Justine Lacroix, *For A European Constitutional Patriotism*, 50 POL. STUD. no. 5, 944, 949 (2002).

然而，他们共同的追求，欧洲一体化，在我看来是最卓越的（par excellence）一次政治弥撒亚冒险，弥撒亚变成了其最初和持久的政治文化的核心特征。其动力和主要的正当性特征正体现在其所提供的愿景、所怀抱的梦想和所承诺的美好未来。正是这一特征，不仅解释了其长期坚挺的动力（尤其是在社会精英与青年人中），也解释了其关键的结构和体制选择。它还为现如今欧洲的情形提供了更深层次的解释。

由于政治弥撒亚主义，不像民主赤字那样反复被人讨论到令人生厌（ad nauseam）和无聊（ad tedium），是欧洲正当性的一个特征，且受到较少关注，我认为给予它更多关注是合理的。

V 舒曼宣言——政治弥赛亚主义的体现

舒曼宣言（The Schuman Declaration），结合其伟大愿景和宏伟蓝图来看，或多或少都有点类似于欧洲的"独立宣言"。值得注意的是，《巴黎条约》的序言中很多都援引了舒曼宣言的原文，而该条约的实质内容也正是基于这一宣言所带来的理念。通过政治弥赛亚主义这一概念棱镜来重新审视该宣言是非常有趣的。我们很容易就能如期在其宪政的、权威性质的文件中观察出其标志性特点。这些特点体现在写入宣言的内容，同样重要的是，也体现在没有写入宣言的内容中。请注意（*nota bene*）：欧洲一体化进程与其欧洲弥撒亚主义的前身——君主制和帝王制，以及之后的法西斯主义和共产主义均不能等同。它是自由的、高尚的，但尽管如此，它也是政治弥撒亚主义的。

弥撒亚主义的特征无论在其修辞还是实质内容上都非常明显。首先，注意其语言的使用——仪式性的和"说教的(sermonial)"，伴有些许悲怆(pathos)（和矫揉造作 bathos）。

> *"世界和平只有通过做出与威胁和平的危险相称的创造性的努力才得以守护……*
> *一个有组织且充满生机的欧洲可以对文明带来的贡献是不可或缺的……*
> *……欧洲邦联化的第一步将改变那些长期致力于为战争生产军需品的地区的命运……*
> *任何法国与德国之间的战争都变得不仅是不可想象，实际上也不可能再发生。*
> *[煤钢的联合]生产将被作为一个整体无差别或例外地提供给全世界。*

它可能会成为让那些长期流血对立的国家形成一个更广泛也更深入的共同体的发酵剂。"

这是一种宏伟的、鼓舞人心的、邱吉尔式的表达（也许有人会带些讽刺如是说）。一些旧习，如白人的负担（the White Man's Burden）和传教士的传统还难以消逝：

随着资源的不断增长，欧洲也将能够追求其最重要的任务之一，即非洲大陆的开发。

但是，并非只有华丽辞藻如此，其实质本身也充满救世主的色彩：一个至今至少鼓舞了三代欧洲理想主义者的迷人愿景，即"欧洲人民前所未有的紧密联盟"，和平与繁荣为其锦上添花，成为一片向我们招手的理想之国。[40]

这个新欧洲计划的动力值得进一步探索。 在语言层面上，其巩固和平和重建欧洲繁荣的目标简单而务实，但这一计划的深层结构还有更多的内容。

和平，在任何时代都是人们的迫切所愿，从纯功利主义的角度有其独特的吸引力。然而，显而易见的是，在舒曼计划被提出这一历史大背景下，和平作为一个理想，其概念触及了比圣经中对和平的经典比喻，如偃武修文、安居乐业和羊狼共处等还要更深层次的内涵。我们面临的两难境地正是所谓的宽容与正义（Grace and Justice）的冲突的一个绝好例证，哲学家与神学家对此冲突也已苦思冥想多年——从奥卡姆的威廉（William of Ockham）(前现代主义时期),弗里德里希·尼采（Friedrich Nietzsche）(现代主义时期)到恶名累累但却思想深邃的马丁 海德格尔（Martin Heidegger）(后现代主义时期)。

毕竟这些是 50 年代早期，人们仍然还沉浸在战争刚刚过去的恐惧之中，对德国侵占时那些无法形容的残忍与野蛮记忆尤为深刻。对于荷兰、丹麦或者法国这样的国家，仇恨彻底地消退将需要很多年。在 1950 年，建设平等主体共同体，为昨日的敌人长期和平共处提供结构基础的想法，并不单纯是经验丰富的政治家们的锦囊妙计。

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[40] Franco Piodi, *From the Schuman Declaration to the Birth of the ECSC: the Role of Jean Monnet* (May 2010), http://www.europarl.europa.eu/pdf/cardoc/24663-5531_EN-CARDOC_JOURNALS_No6-complet_low_res.pdf; Thomas Hoerber, *The Nature of the Beast: the Past and Future Purpose of European Integration*, 1 L'EUROPE EN FORMATION 17 (2006); Joseph Weiler, *To be a European Citizen: Eros and Civilization*, *in* THE CONSTITUTION OF EUROPE 'DO THE NEW CLOTHES HAVE AN EMPEROR?' AND OTHER ESSAYS ON EUROPEAN INTEGRATION 8 (1999) (*Introduction: We Will Do, and Hearken*).

首先，它是"勇敢者的和平"，需要勇气与胆量。更深层次上讲，它成功地触及了欧洲的两个文明之柱：启蒙运动以及法国大革命的遗产、和欧洲的基督教传统。[41]

人民已经通过打败德国纳粹获得了自由——以及那些认为自己被国家社会主义（纳粹主义）所解放的狂热德国人（和他们的奥地利共犯一样）。但这是一项体现于舒曼宣言中，在跨国层面增进平等与博爱的事业。一战后凡尔赛版本的和平是要俘获过去的敌人，削弱他，牢牢压迫让他抬不起头，当然，这种和平的结果是灾难性的。这里则不同，我们所追求的是将去年的敌人视为和我们平等的人——德国应被视为一个在事业上充分平等的伙伴——而且像兄弟般相互依存，以至于解决未来纠纷的想法甚至将变得不可想象。[42]这实际上就像康德（Kant）所梦想的一样，是启蒙主义在国际化层面上的发展。拥护舒曼计划正如在欧洲文明的丰富矿藏中挖掘到了最强大的理想主义矿层。

舒曼计划同时也呼吁宽恕，克服那无可厚非的仇恨所必须要面对的挑战。在那种特殊的历史背景下，舒曼式的和平理念与基督教所传播的，呼吁宽恕敌人、博爱与仁慈的独特教义、意象与价值产生共鸣，这些价值观念在最近因大规模的背叛而显得格外神圣。在这个意义上讲，舒曼计划唤起了忏悔（Confession）和赎罪(Expiation)，也与基督教对于悔改、重生以及人类最终良善的信仰遥相呼应。考虑到舒曼计划发起人的个人背景——阿登纳（Adenauer）、德·加斯帕里（De Gaspari）、舒曼（Schumann）和莫奈（Monnet）本人—他们都是极其虔诚的天主教徒，[43]这样的共鸣也就不足为奇了。

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[41] *See, e.g.*, Jürgen Habermas & Jacques Derrida, *February 15, or What Binds Europeans Together: A Plea for a Common Foreign Policy, Beginning in the Core of Europe*, in OLD EUROPE, NEW EUROPE, CORE EUROPE: TRANSATLANTIC RELATIONS AFTER THE IRAQ WAR 5, 10–12 (D. Levy ed., 2005); ALAIN FINKIELKRAUT, LA DÉFAITE DE LA PENSÉE [THE DEFEAT OF THOUGHT] (1987); JOSEPH WEILER, L'EUROPE CHRÉTIENNE: UNE EXCURSION [THE CHRISTIAN EUROPE: AN EXCURSION] (2007); JEAN-MARC FERRY, LA RÉPUBLIQUE CRÉPUSCULAIRE: COMPRENDRE LE PROJET EUROPEEN IN SENSU COSMOPOLITICO [THE TWILIGHT REPUBLIC: UNDERSTANDING THE EUROPEAN PROJECT IN SENSU COSMOPOLITAN] (2010); ROBERT SCHUMAN, POUR L'EUROPE [FOR EUROPE] 55 (1986).

[42] Angeles Munoz, *L'Engagement Européen de Robert Schuman* [*The Robert Schuman European Commitment*], in ROBERT SCHUMAN ET LES PERES DE L'EUROPE: CULTURES POLITIQUES ET ANNEES DE FORMATION [ROBERT SCHUMAN AND FATHERS OF EUROPE: POLITICAL CULTURE AND YEARS OF TRAINING] 39, 44 (Schirmann ed., 2008).

[43] Fimister, *Integral Humanism and the Re-unification of Europe*, in ROBERT SCHUMAN ET LES PERES DE L'EUROPE: CULTURES POLITIQUES ET ANNEES DE FORMATION [ROBERT SCHUMAN AND FATHERS OF EUROPE: POLITICAL CULTURE AND YEARS OF TRAINING] 25 (Schirmann ed., 2008) ("Schuman was an ardent Roman Catholic, and his views about the desirability of political unity in Western Europe owed much to the idea that it was above all the continent's Christian heritage which gave consistence and meaning to the identity of European civilization. And the Europe he

　　鉴于田园"王国"那两个最有力的愿景——人道主义和宗教在一项事业中相结合——所具有的强大的隐形吸引力，这一计划产生的驱动力，尤其在那些感觉自己应对欧洲刚刚走出的这场浩劫负起直接责任的政治阶层精英当中，就并不让人意外了。[44]这也解释了为何从左翼到右翼，无论保守还是激进，都会拥护这一事业。

　　弥赛亚范式也(部分地)解释了为何联盟能在其自身对于民主和人权原则——联盟要求候选成员国恪守这两个原则——未有一个切实的承诺的情况下运作如此长的时间。候选国家必须成为欧洲人权公约的成员国，但是欧盟本身却并未加入；那些国家不得不证明其实施民主的证据，但欧盟本身却没有——这两个异常现象并未引起人们的非议。

　　然而值得注意的是，其弥赛亚特征并非仅仅反映在华丽的辞藻中。在其原本未经润饰的版本中，宣言在具体操作层面上有着很细致的阐述，然而你在宣言却找不到民主或人权一词，这是一种雷鸣般的沉默。这是一种"放手做吧"类型的项目，因伟大的理想主义（以及被一整代历史学家如艾伦·米尔沃德（Alan Milward）[45]和查尔斯·梅耶

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knew and loved best was the Carolingian Europe that accorded with his religious faith and his experience of French and German cultures"); Mauleon Sutton, *Chapter 1: Before the Schuman Plan*, *in* FRANCE AND THE CONSTRUCTION OF EUROPE, 1944–2007: THE GEOPOLITICAL IMPERATIVE 34 (2007); Alcide De Gasperi, Address at the Consultative Assembly of the Council of Europe in Strasbourg (Sept. 1952) ("It is with deep faith in our cause that I speak to you, and I am confident that through the will of our free peoples, with your support and with God's help, a new era for Europe will soon begin").

[44] One should add that the transnational reach of the Schuman plan served, as one would expect, a powerful internal interest the discussion of which even today meets with resistance. The challenge of "fraternity" and the need for forgiveness, love and grace was even more pressing internally than internationally. For each one of the original Member States was seriously compromised internally. In post war Germany, to put it bluntly, neither State nor society could function if all those complicit in National Socialism were to be excluded. In the other five, though ostensibly and in a real sense victims of German aggression, important social forces became complicit and were morally compromised. This was obviously true of Fascist Italy and Vichy France. But even the little Luxembourg contributed one of the most criminally notorious units to the German army and Belgium distinguished itself as the country with the highest number of indigenous volunteers to the occupying German forces. The betrayal of Anna Frank and her family by their good Dutch neighbors was not an exception but emblematic of Dutch society and government who tidily handed over their entire Jewish citizenry for deportation and death. All these societies had a serious interest in "moving on" and putting that compromised past behind them. If one were to forgive and embrace the external enemy, to turn one's back to the past and put one's faith in a better future, how much more so, how much easier, to do the same within one's own nation, society even family.

[45] ALAN MILWARD, THE EUROPEAN RESCUE OF THE MEMBER STATE (Routledge, 2nd ed. 2000).

（Charles Maier）[46]等所阐述的，一种的对国家利益的仔细权衡）而充满生机。

从其创立之初，欧洲的双螺旋就由欧盟委员会和欧洲理事会所组成：一个国际（被认为是）非政治性的跨国行政/执行组织（委员会），并不像我们传统所讲的与成员国（理事会）合作，而是与成员国政府的行政部门进行合作，多年以来都拥有一个在处理日常事务中不受任何议会，无论是欧洲或是成员国，监督审查的平台。民主压根就不存在于欧洲一体化的原始蓝图中。[47]

这样一种见解毫不奇怪，也不激进。难道把欧洲的未来描绘成经过几十年后，"实践者与信仰者"（尤其是欧盟的最原始机构——委员会，以及一个在理事会和成员国常驻代表会议（COREPER）幌子下的实际赋有权力的成员国行政部门）、"精英先锋"（如果给予丰厚酬劳），这些自封的领导者的权力将不得不被欧洲议会掳走，还能称得上美好吗？甚至连欧洲议会都是一个奇特的民意所向。是否正是因为其在大部分存在的时间都以欧洲一体化的拥护者现身，以至于不可避免地，当欧盟和欧洲一体化在公民中激发了恐惧和谨慎（在这样一种激进的欧洲政治转型中这是自然而然的），欧洲议会并未感觉自己是公民可以去表达那些恐惧与担忧的地方？

提出政治弥赛亚主义不仅仅是为了观念上的澄清，更是为欧洲一体化如何在过去非常成功地募集了许多支持提供一种解释。它们打造了一种注重实践、成就和日程不断扩张的文化。考虑到欧洲一体化的宏伟规模，人们应当看到并承认它们美好的方面。

然而这只是故事的一部分。它们还可以解释一些关于欧洲正当性与驱动力衰颓的原因，这种衰颓在当今形势中是如此明显。政治弥赛亚主义特点之一就是它作为一种驱动和正当化机制的时候总是会崩塌。当弥赛亚事业失败之时，当许诺的变革没有来临，它明显地崩塌了。有趣的是，且与欧洲一体化的用语更相关的是，即便在成功的时候它也播下了崩塌的种子。在某一层面上讲，这种崩塌是弥赛亚事业本身不可避免的一个特征。现实总是更加复杂、充满挑战、更乏味且最终无法与之前人们对其所怀抱的梦想相媲美。结果不仅仅缺乏驱动力与合法化，还会催生真正的怨恨。

迦南（Canaan），这个原本的应许之地，是一个与此前的梦想完全不同且对其充满挑战和敌意的主张。宣布独立的印度、肯尼亚，甚

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[46] *See generally* THE MARSHALL PLAN AND GERMANY: WEST GERMAN DEVELOPMENT WITHIN THE FRAMEWORK OF THE EUROPEAN RECOVERY PROGRAM (Maier & Bischof eds., 1991).

[47] Kevin Featherstone, *Jean Monnet and the Democratic Deficit in the European Union*, 32 J. COMMON MKT STUD. no. 2, 149, 150 (1994); *see generally* Jacques Delors, *Independent* (July 1993).

至是美国都与其之前所追求的梦想和喜好截然不同。单独地讲，这就像是诸多求爱和恋爱的故事。蜜月总是比婚姻的现实更加美好。尽管天堂在遗失之后才会如此，乐土本身总是无法完成承诺。这也是弥赛亚主义本体论的一部分。

在欧洲一体化背景下，舒曼梦想中那868个激励人心的词语与（已失效却在如今的里斯本条约中重现的）欧洲宪法中那154,183个非常写实的词语的区别正是这一现象的象征性表现。

就欧洲来说，除了弥赛亚作为驱动力和正当性要素的崩塌，还有一些其他偶然的因素。在一个层面上，欧洲是其自身成功的牺牲品。时间的流逝加上愈发巩固的和平，欧洲所呈现的另一种国家之间的对话方式（discource）是如此的成功，以至于对于欧洲的新生代人来说，舒曼愿景所具有的实用主义和理想主义的吸引力都是无法另人理解。与这些吸引力相对立的现实是如此强大——那个法国德国之间剑拔弩张之类的时期已经一去不复返，取而代之的是一个充满生机的文明线，各方情势良好，都归功于欧洲本身的建构。

在另一个层面，很多社会风俗都已发生变化。欧洲在很大程度上成为了后基督教的社会。对个人及其权利的深刻认同，不屈不挠地（很多方面也是值得称颂地）将个人放在政治关注点的中心位置，这为自我为中心的个人主义的产生做出了很大的贡献。欧洲的社会驱动力在个人的直接利益受到威胁的时候最为强大，而在为他人需要而付出的时候最为脆弱，正如最近的欧元危机、移民危机和其他一些事件都是典型的例子。所以对于舒曼构想所失去的驱动力的部分解释在于它所能提供的要么看起来全然无关，要么全然无法感染当代欧洲社会那截然不同的理想主义的感性。

结果是，如果政治弥赛亚主义不能快速地取得来自于大众的正当性，它会很快地变得疏离，像傀儡（Golem）一样反抗它的创造者。

民主并不是欧洲一体化原始基因的一部分。它仍旧感觉像是一个外来的移植物。随着其最初的政治弥赛亚主义的崩塌，这种我们都有目共睹的渐行渐远是可以预见的。而且正因如此，当受到如欧元危机一样的失败的打击，当面包（the Panem）消失殆尽的的时候，所有正当性的源泉突然都同时崩塌。

这样的崩塌来的很不合时宜，恰好是在欧盟最最需要其正当性源泉的时候。问题是欧洲的，也不得不在欧洲层面解决。可惜，为了使其解决方案被认为是正当的，为了使欧洲一体化的下一个阶段不会被愤恨的恐惧所驱动，那些建构者很遗憾地不能依靠欧盟本身的决策过程来解决问题。他们不得不奋力浸入成员国的政治结构和决策过程中去。国家议会、国家司法机构、国家媒体和国家政府将不得不为解决

方案增添正当性，这种解决方案不可避免地要涉及更高程度的一体化。这将会成为一个完全具有欧洲特征的现象，在欧洲建构演变的决定性时刻，民族国家作为一体化进程的最深层次的正当性源泉，其重要性，甚至是首要作用将会再次得到证明。