FRACTURED INTEGRATION X SOFT POWER DEBITS: CONTESTED LEGITIMACY IN EUROPE

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The European Union's ('EU') soft power resources and underpinning constitutional values (including the rule of law, solidarity, equality, non-discrimination and respect for human rights) have historically exerted a magnetic attraction, offering distinct opportunities for regional and international development. If the EU regime and legal order have induced public acceptance until now it is because most of the people have considered that it serves their interests most of the time. However, through a series of crises from the Eurozone crisis to the migration crisis and now Brexit, the EU has endured growing party-based Euroscepticism and a changing perception of its value from within and without. This crisis narrative is impacting negatively upon the EU's capacity to contribute to European development, while also shrinking its soft power resources. The future of European integration ('EI') and of European influence depends not only upon the EU's ability to maintain legitimacy as a producer of public goods but also on its ability to invoke acceptance of its legal order or regime and to sustain an alluring narrative of expansion, influence and success. This article examines the extent to which the EU's normative power and its capacity to act in the international sphere are shaped by its measurable achievements and its soft power resources.

I INTRODUCTION

A *Background*

As a social and regulatory system, the European Union ('EU') is characterised by a pattern of relationships between supranational, national and subnational structures that confirm an obligation towards regulatory compliance. To remain competitive in the global marketplace, the EU's regulatory institutions offer effective problem-solving capabilities. By securing beneficial outputs for EU

citizens the EU system is legitimated. It is argued in this article that the EU's continuing viability is largely dependent on the ability of the system to deliver on its essential function as a producer of public goods at home and to transmit, through a convincing narrative, the values underpinning its constitutional order abroad. It is this narrative of economic success and constitutional coherence that legitimates and perpetuates the system and imbues it with soft power.

On this analysis the EU's ability to influence global affairs is a matter of coherence between the way foundational values are implemented domestically and transmitted globally. There is ample acknowledgement of this viewpoint in a succession of communications from the European Commission including those that provide the basis of the EU's aspirations as a global player: 'Europe should project a coherent role as a global partner, inspired by its core values in assuming regional responsibilities, promoting sustainable development, and contributing to civilian and strategic security.'[1]

The relationship between Europe's domestic values and global interests is evident in the statement: 'Global leadership and influence are best exerted if actors shape their international strategies in a way which ensures their domestic agendas and values, their global interests, and the concepts and projects they sell to the world reinforce each other.'[2]

While it is no doubt true that a united response from Europe is required to meet the challenges of globalisation for Europe's citizens, it is conversely argued that the EU's potential as a global player is equally dependent upon its ability to secure public goods in Europe, which facilitates the transmission of its emblematic values abroad. Furthermore, when the EU is said to affect a third country 'both directly — through trade, investment and political summitry — and indirectly — through EU governance norms',[3] we find tacit support for the contention that the EU, through its regulatory activities as much as its external relations, has the capacity to inform policy, legal and institutional developments in other jurisdictions.

It is not the purpose of this article to establish that the EU is a model of any kind for any other jurisdiction. Indeed, the EU's piecemeal responses to the Eurozone financial crisis and the migration crisis do not convey the desired image of the EU as an effective problem solver and model of supranational governance. Rather, this article seeks to uncover the *likely* connections between the EU's failure to deliver public goods at home with its broader failures on the international stage. From this

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1   Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament: Building Our Common Future*, COM(2004) 101 final/2, 26 February 2004, 6 (emphasis omitted).

2   Adolf Kloke-Lesch, 'Why Is the EU Failing to Champion the SDGs?' (2018) 12 (Summer) *Horizons* 144, 159 <https://www.cirsd.org/en/horizons/horizons-summer-2018-issue-no-12/why-is-the-eu-failing-to-champion-the-sdgs>.

3   Philomena Murray, *Australia and the European Superpower: Engaging with the European Union* (Melbourne University Press, 2005) 3.

perspective it is contended that the EU can maintain and enhance its actor capacity on the international stage only if it fulfils its promise as a distinctive polity whose solutions to complex problems of international governance offer something different from the norm. A riven community of European states, which struggles on the domestic policy front, will offer little by way of distinctive solutions to global problems and will quickly lose influence on the international front.

B *Crisis Dynamics from Interdisciplinary Perspectives*

For years Europe has been contending with a number of crises which point to an unprecedented degree of system malfunction and threaten to interfere with the EU's capabilities and spheres of influence. These legitimacy-eroding crises are generally well known. They include the Eurozone crisis, the migration crisis and Brexit. An examination of the dynamics of each of these crises reveals a network of intersecting and conflicting national perspectives and preferences that exacerbate and heighten the differences between the States. Implicated in each is Euroscepticism and an unevenness of EU commitments, obligations and outcomes as between the Member States. Against a background of winners and losers of the European integration project, of diminishing legitimacy and increasing Euroscepticism, nationalism and discord, it is easy to forget the enormous hard capabilities and soft resources of the EU in terms of its regulatory power and global appeal respectively. This article proceeds on the basis that revisiting the constitutional compact between the EU, its Member States, and its citizens, and recasting priorities towards a more people-oriented EU, can contribute to advancing the goals of European integration ('EI') and neutralise Euroscepticism. The EU may be in crisis, and in need of change, but it is far from moribund. Through renewed debate and a process of reflection, recounting and reimagining, one can give back not what the EU is, but what it might be, for Europeans and the world — 'an improvement on the original'.[4]

Deploying the theories of legitimacy to evaluate the EU's policies on the Eurozone and migration crises, this article comments upon the likely consequences for the way the EU is perceived both at home and abroad. Although there are numerous conceptions of legitimacy, mostly theorised according to techniques and methods of political science, there are many under-theorised legal dimensions of legitimacy. These highlight the relationships between legitimacy and the procedural correctness, justice and legality of EU regulatory outputs. Certainly, the EU's significant legitimacy challenges demand that EU legitimacy be explored in all its dimensions and permutations — political, legal, economic and social.

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4   This formulation draws from John Biggs, *Teaching for Quality Learning at University: What the Student Does* (Society for Research into Higher Education, 1999) 6 (emphasis omitted): 'reflection in a mirror is an exact replica of what is in front of it. Reflection in professional practice, however, gives back not what is, but what *might be*, an improvement on the original.'

This article resists a neo-imperialist logic, a conclusion that European soft power is necessarily interpreted through the lens of colonialism or that hegemony and political control are the inevitable goals of the EU's global vision and reach. Power may have multiple and diverse ends, not all of them exploitative. The EU's foundational values of peace, reconciliation and solidarity hold the promise of a different kind of regime on the international stage. It is this promise that is arguably worth pursuing in an increasingly discordant world.

In keeping with the notion that power has a symbolic dimension that can be influenced by ideas from within and without, this article will focus on the ideational as well as the material. It explores the power of ideas in constituting a polity itself — the ways in which perceptions of self and the perceptions of others can be constructive; the normative dimension of ideational factors.[5] Viewed as a socialising force,[6] the EU can invite discussion of what it might represent in terms of potential as much as actuality. So how does one assess and conceptualise the EU's contribution to global institutional reality?

Among the many possible critiques and images of the EU — from economic, political, social and legal perspectives — the critique of the EU as soft power, exporter of democracy and good governance norms, monitor of human rights, and major contributor of development aid around the world bears close examination. The EU's development policy is in fact responsible for the spread of EU principles and values ('democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity')[7] under which the EU purports to act. By placing conditions on the grant of aid to recipient countries, the EU seeks to

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5 Drawing on a social constructivist approach, which highlights the existence of a 'socially constructed reality': Thomas Christiansen, Knud Erik Jørgensen and Antje Weiner, 'The Social Construction of Europe' (1999) 6(4) *Journal of European Public Policy* 528, 530. Social constructivism proceeds on the premise that 'the building blocks of international reality are ideational as well as material; that ideational factors have normative as well as instrumental dimensions; that they express not only individual but also collective intentionality; and that the meaning and significance of ideational factors are not independent of time and place': John Gerard Ruggie, *Constructing the World Polity: Essays on International Institutionalization* (Routledge, 1998) 33. See also Ian Manners, 'The Concept of Normative Power in World Politics' (Danish Institute for International Studies, May 2009) <http://pure.diis.dk/ws/files/68745/B09_maj_Concept_Normative_Power_World_Politics.pdf>.

6 See, eg, Jeffrey T Checkel, 'International Institutions and Socialization in Europe: Introduction and Framework' (2005) 59(4) *International Organization* 801.

7 The *Treaty of Lisbon* gives a higher profile to these principles. See *Treaty on European Union*, opened for signature 7 February 1992, [2012] OJ C 326/13 (entered into force 1 November 1993) art 21 ('*EU*').

secure objectives of democratisation and human rights protection among others.[8] In so doing it extols a vision of the world made in its own image.[9]

This article presupposes that the way the EU conducts its international relations in certain policy fields contributes to affirming or disaffirming its values at home and its power abroad. Inversely, it posits that the EU's operational and policy failures on the domestic front in respect of economic, institutional and political questions negate its values and simultaneously produce a decline of influence in the international sphere. Yet there appears to be little consideration in EU discourse of whether implementing or failing to fully implement EU development policy and other foreign policy objectives might have a bearing on Europe's own domestic future[10] or whether the achievement of EI objectives or the diffusion of its values at home might have implications for EU international relations and the pursuit of EU global objectives. This article seeks to correct this deficiency by building on recent interdisciplinary work on the interplay between the EU's domestic and foreign policies,[11] while also giving consideration to how the EU's values may be legally effected in an internally divided and sceptical EU — ultimately a matter of EU constitutional law.

C   *Contextualising the Problem*

The EU appears on the international stage as a new kind of polity, with supranational

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8   The EU has a standard human rights clause that it requires in its many bilateral trade or cooperation agreements with third countries: see Commission of the European Communities, *Communication from the Commission on the Inclusion of Respect for Democratic Principles and Human Rights in Agreements between the Community and Third Countries*, COM(95) 216 final, 23 May 1995; Council of the European Union, *Council Conclusion on Human Rights Clauses in Community Agreements with Non-Member Countries* (29 May 1995) reported in [1995] (5) *Bulletin of the European Union* 9 [1.2.3]. This clause stipulates that human rights are central to relations with the EU: see Carlos Carnero González, 'Report on the Communication from the Commission on the Inclusion of Respect for Democratic Principles and Human Rights in Agreements between the Community and Third Countries: COM(26) 216' (Committee on Foreign Affairs, Security and Defence Policy, European Parliament, 26 June 1996). See generally 'Human Rights and Democracy', *Europa* (Web Page, 26 June 2019) <http://europa.eu/pol/rights/index_en.htm>.

9   This approach is not universally acclaimed. Larsen notes, for example, that '[t]he Australian elite shows little understanding of how the EU projects a view of itself as a guardian of global governance and trade norms': Henrik Larsen, 'The EU as a Normative Power and the Research on External Perceptions: The Missing Link' (2014) 52(4) *Journal of Common Market Studies* 896, 904. Nor is there widespread acceptance of the argument that the EU always leads by example. For instance, Askola notes that there are 'governance challenges and potential gaps in [EU] human rights protection', most notably in the field of migration: Heli Askola, 'Human Rights in the European Union: The Challenge of People on the Move' in Normann Witzleb, Alfonso Martínez Arranz and Pascaline Winand (eds), *The European Union and Global Engagement: Institutions, Policies and Challenges* (Edward Elgar Publishing, 2015) 104, 108.

10   Kloke-Lesch (n 2).

11   See, eg, Natalia Chaban and Martin Holland (eds), *Shaping the EU Global Strategy: Partners and Perceptions* (Palgrave Macmillan, 2019); Normann Witzleb, Alfonso Martínez Arranz and Pascaline Winand (eds), *The European Union and Global Engagement: Institutions, Policies and Challenges* (Edward Elgar Publishing, 2015); Natalia Chaban and Martin Holland (eds), *Communicating Europe in Times of Crisis: External Perceptions of the European Union* (Palgrave Macmillan, 2014); Natalia Chaban et al, 'Images of the EU Beyond Its Borders: Issue-Specific and Regional Perceptions of European Union Power and Leadership' (2013) 51(3) *Journal of Common Market Studies* 433; Sonia Lucarelli and Lorenzo Fioramonti (eds), *External Perceptions of the European Union as a Global Actor* (Routledge, 2010).

supervision of many facets of legal, economic and social life. It promotes itself as a citizens' Europe, a region which privileges diversity and promotes rights. This constitutes a distinctive EU soft power, developed over time, 'based on its power of attraction to trade partners and potential members and on the promotion of the rule of law, multilateralism, and human rights'.[12] Thus, the EU's emblematic image, the image it projects, is of a creative, transnational, soft power founded on principles of pluralism, solidarity, equality, non-discrimination and respect for human rights.

It is contended that this image is under severe strain as a consequence of the EU's management of the Eurozone crisis and the migration crisis. Whilst the idea of a worsening image in global politics does not convey the full extent of damage inherent in the suite of policies, laws and practices that have perpetuated and prolonged these crises, it is argued that image and narrative are linked in time and place in so far as a failure of narrative has deleterious consequences for image. It is the narrative — the 'stories people [tell] to make sense of their reality'[13] — that 'help us to understand political community'.[14] Manners and Murray make the point that '[t]o understand the role and importance of narratives for interpreting European integration, we need to conceptualize and theorize them as having social, symbolic and political affect'.[15] Accordingly, the new narrative of 'economic Europe',[16] responding to the creation of the single market in a globalising world,[17] remains contested in the face of the Eurozone crisis, which has arguably produced winners and losers of EI, rendering the narrative of economic Europe unconvincing. While its effects are still inchoate, Brexit and the unrelated worsening economic outlook in many EU countries — most notably Italy — together with political and social unrest in France and elsewhere represent a further emerging challenge to the new narrative of economic Europe. Longo and Murray have observed that the EU's struggle to 'overcome economic blockages [has led to serious doubts about] its vision, its purpose and its credentials as a problem-solver'.[18]

The EU responses to its multiple governance dilemmas have been conditioned by

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12   Zornitsa Stoyanova-Yerburgh, 'The European Union: Still a Global Player?' (Web Page, 15 October 2010) *Carnegie Council for Ethics in International Affairs* <https://www.carnegiecouncil.org/publications/ethics_online/0050>.

13   Ian Manners and Philomena Murray, 'The End of a Noble Narrative? European Integration Narratives after the Nobel Peace Prize' (2016) 54(1) *Journal of Common Market Studies* 185, 185, quoting Molly Andrews, Catarina Kinnvall and Kristen Monroe, 'Narratives of (In)Security: Nationhood, Culture, Religion, and Gender' (2015) 36(2) *Political Psychology* 141, 141.

14   Manners and Murray (n 13) 186.

15   Ibid, citing Ian Manners, 'Symbolism in European Integration' (2011) 9(3) *Comparative European Politics* 243.

16   Manners and Murray (n 13) 190–2.

17   See Michael Longo and Philomena Murray, *Europe's Legitimacy Crisis: From Causes to Solutions* (Palgrave Macmillan, 2015) 39.

18   Ibid 41.

the institutional and constitutional crises instigated by the rejection of the Draft Constitutional Treaty ('DCT') by France and the Netherlands in 2005. Although the outcome of French and Dutch referendums on the DCT put a brake on the explicit process of constitutionalisation of the EU, the process itself did not die with the abandonment of the DCT. Constitutionalisation continued in a covert way — effectively a return to the elite-driven constitutional process that has characterised the EU from its inception.[19] This process has been driven by the European Council, primarily and historically, by its powerful states — Germany and France. The European Council has asserted a vision of European integration which does not coincide with the interests and preferences of many Member States. The implementation of prescriptions adopted by the EU in response to the Eurozone crisis have hardened anti-EU sentiment among citizens, as relentless austerity has become associated with economic decline and pain.[20] Conversely, the failure to implement a Europe-wide asylum policy has raised questions about the effectiveness of EU migration and security policies. Thus, while the EU's constitutional orientation has remained implicit, its exercise of power has been explicit, as has been the erosion of public support in response to the exercise of that power.

The EU exists by the will of its Member States. There are significant ontological and epistemological questions about the nature of the EU, and the grounds of allegiance to it, as well as the nature of its influence in the world. Closely connected to the idea of soft power, this article argues that the EU's symbolic power is derived from an affirmation of its foundational values, its self-perception as well as the perceptions of those affected by its regulatory outputs, that is, people in the EU, and sometimes beyond. With the exception of Eurobarometer survey data to assess opinion on the EU or the state of Euroscepticism in Europe, this article does not use empirically grounded information to trace the EU's diminishing effectiveness and falling global influence. Instead it applies an analytical framework, drawing on diverse theoretical perspectives, to support reflection and observation, and refers to academic literature which utilises data to assess the EU's image in the world. The underlying premise of this article is that the EU's power is the product of its legitimation as a viable actor in European governance; an 'actorness' accepted by each of its Member States according to the fundamental tenet of public international law: consent. An EU experiencing widespread contestation of its regulatory outputs and policies will not only experience fading status (and power) at home but, importantly, also abroad.

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19   See Michael Longo, *Constitutionalising Europe: Processes and Practices* (Ashgate, 2006).

20   See Longo and Murray (n 17) ch 3.

This article therefore employs an interdisciplinary,[21] socio-legal approach[22] to comprehend the EU's normative influence, in recognition of the fact that constitutional values as well as political and social conditions play a part in determining normative choices including the adoption of rules. It proposes the institution of a wide-ranging debate on the EU's priorities, goals and aspirations and the return to an overt constitutional discourse to determine how those priorities, goals and aspirations should be given legal effect. There is a dynamic interaction between political action and norms. The normative capacity of national and supranational institutions depends, in part, on the ability of the political system to command authority. A political regime/legal order that is deemed legitimate enjoys considerable normative capacity. Accordingly, there is a strong nexus between the legitimacy of a regime and its normative credentials.

II EU SOFT POWER: A SOLID RESOURCE?

According to Nye, soft power resources are the assets that produce attraction, which can lead to acquiescence.[23] These assets include the politics of values, policies and culture. He asserts that: 'seduction is more effective than coercion, and many values like democracy, human rights, and individual opportunities are deeply seductive'.[24] So too is economic prosperity in an interconnected world. Indeed, it is customary to speak of the EU's soft power resources in terms of its influence vis-a-vis third states, its ability to attract through its cultural diplomacy, values and similar resources. The issue of soft power places the theme of values at the centre of political debate. It is instructive to consider the values upon which international development depends and the extent to which those values drive the EU imperative of international cooperation. In recognition of its soft power credentials, the Nobel Committee in 2012 awarded the peace prize to the EU for its contribution to 'the advancement of peace and reconciliation, democracy

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21   While some of the most comprehensive explanations of EU integration have come from international relations and political science, there is great benefit in interdisciplinary research in this area. Interdisciplinary studies of European integration comprising law and political science can introduce additional perspectives and methodologies to the analysis, which may broaden its appeal to lawyers, political scientists and possibly new audiences. The dynamic interaction between law and political science in European integration studies is captured by the statement that 'legal integration is one of the essential mechanisms for attaining the political aspiration of the EU, of creating an ever closer union': Normann Witzleb, 'European Legal Integration: Processes, Difficulties, Achievements' in Normann Witzleb, Alfonso Martínez Arranz and Pascaline Winand (eds), *The European Union and Global Engagement: Institutions, Policies and Challenges* (Edward Elgar Publishing, 2015) 41, 41. It is also apparent that questions concerning the legitimacy of EU governance invite an interdisciplinary approach: an approach that presumes a degree of convergence between law and political science in the study of European integration. For further discussion of this approach, see Karen J Alter, Renaud Dehousse and Georg Vanberg, 'Law, Political Science and EU Legal Studies: An Interdisciplinary Project?' (2002) 3(1) *European Union Politics* 113, 123–7; Longo (n 19) 3.

22   According to Mathias Siems, two elements characterise this approach. First, the socio-legal approach 'replaces the formal understanding of "law" with a socio-legal one — often using the term "legal culture"'; and second, 'it reflects on how law and society are related in a causal way': Mathias Siems, *Comparative Law* (Cambridge University Press, 2nd ed, 2018) 147.

23   Joseph S Nye Jr, *Soft Power: The Means to Success in World Politics* (Public Affairs, 2004) 6.

24   Ibid x.

and human rights in Europe' for more than six decades.[25] Contentious or not, the recognition of the EU for its achievements in these areas is premised on the success of its journey of peace and reconciliation, which has transformed a war-ravaged continent into a paradigm of regional cooperation.

This narrative has imbued the EU with a sense of purpose since the earliest days of the European project. Since its inception as the European Economic Community ('EEC') in 1957 it has expressed its raison d'être as a peace project; the EEC was on an irreversible course to reconciliation and prosperity. To a significant extent the ideals of peace and prosperity have conferred legitimacy on the EU and its predecessors, the EEC and the European Community ('EC'). And the legitimising quality and potential of the EU as a peace project may not have escaped the Nobel Prize Committee.

The key to the EU achieving its international relations objectives is credibility. For some, soft power is not enough — that is, the only way the EU can deliver credibility is to have a military force to back up its normative statements. For others the pursuit of soft power is a strategic choice born of necessity in view of its bloody history, its renunciation of traditional power-based politics and its fundamental impotency. Thus:

> Europe was rebuilt on the basis of saying goodbye to military power, firstly between member countries, then with respect to the world in general. By aspiring to a form of 'unending peace' between its members, the EU recast itself as a soft power, and certainly not a hard power. … The European Union has at its core a form of voluntary renunciation of all power-based politics. Ontologically, it has no real desire for power. Promoting an ambiguous multilateralism provides an alibi for this strong tendency to impotency.[26]

However, EU successes in spreading its values in diverse policy fields from international development aid[27] to human rights-focused international trade agreements[28] suggest that the EU is nonetheless capable of delivering credibility through policy coherence and persuasion. Although the EU's soft power resources are considerable, the EU will struggle to retain credibility if its normative power,

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25 Michael Pearson, 'From War to Peace: European Union Accepts Nobel Prize', *CNN* (online, 10 December 2012) <http://edition.cnn.com/2012/12/10/world/nobel-peace-prize/>.

26 Pierre Verluise, 'The European Union Is Losing Its Global Clout' (Commentary Note No 22, *Fondation pour la Recherche Stratégique* [Foundation for Strategic Research], 6 November 2015) 7 <https://www.frstrategie.org/en/publications/notes/european-union-losing-its-global-clout-2015> (emphasis omitted).

27 'The EU is the largest donor of development aid in the world. It [has] committed to increasing its contribution … [to] at least 0.7% of its gross national income a year': 'International Development Aid', *Europa* (Web Page) <https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/international-economic-relations/international-development-aid_en>.

28 The EU has included human rights clauses in its international trade agreements since the early 1990s. These clauses permit a party to a trade agreement to adopt *appropriate measures* if the other party violates human rights or democratic principles: see Ionel Zamfir, 'Human Rights in EU Trade Agreements: The Human Rights Clause and Its Application' (Brief, European Parliamentary Research Service, European Parliament, July 2019).

its values and its legitimacy, are challenged within the European space. A weakening of the EU foundational values of peace, reconciliation and solidarity will mark a loss of coherence and legitimacy for the EU.

Contrasting images of Europe are currently testing the EU's credibility. There is Europe of mounting debt, recession, austerity, unemployment, inequality, social unrest, rising populism, extremism, and intolerance towards immigrants. Putting the UK, a serial EU critic, aside, the EU's political credentials are also being put to the test in other Member States.[29] France entered new unchartered territory of protest against austerity, high taxes and inequality following the emergence of the Yellow Vests protest movement in November 2018, which now shares the populist stage with Le Pen's National Front (renamed National Rally in June 2018). Euroscepticism has a strong presence in the European Parliament ('EP') and in many national parliaments, particularly in Hungary and Italy. Taggart and Szczerbiak noted in 2013 that Euroscepticism was becoming incorporated in mainstream politics as more parties engaged the 'EU dimension for electoral or ideological purposes'.[30] By 2018 Taggart and Szczerbiak reported on the basis of survey data that 'Euroscepticism was an almost universal feature of contemporary European party systems making it a near universal staple component of European politics'.[31] Thus, it may no longer be possible to speak of the UK as a curious anomaly.

Of course, national institutions are often equally maligned by protesters. In many states they are at least as unpopular as EU institutions, often more.[32] To a great extent this reflects the rise of populist, anti-establishment opposition and governing parties in many EU Member States as well as the conflation of issues under the banner of anti-liberalism. There are serious implications for the way the rest of the world perceives the EU. So, what are the causes of this discontent in the EU heartland and on the periphery?

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29   Surveys from 2013 indicate that citizens have been losing faith in the EU. Statistics from Eurobarometer April 2013 showed a fall in citizen trust of the EU across the six biggest countries — Germany, France, UK, Italy, Spain and Poland, with the biggest falls in traditionally pro-EU countries, Spain and Italy: see European Commission, *Public Opinion in the European Union* (Standard Eurobarometer No 79, Spring 2013) 97–100. By Spring 2014 public attitudes towards the European institutions had hardened further: European Commission, *Public Opinion in the European Union* (Standard Eurobarometer No 81, Spring 2014) 88. The 'unpopularity of the European Parliament, the European Commission and the European Central Bank were the highest ever [recorded] in these surveys': at 88–9. While trust in the EU has gained ground since Autumn 2017 (note, in particular, European Commission, *Public Opinion in the European Union* (Standard Eurobarometer No 91, Spring 2019) 108–9, which demonstrates the highest level of trust in the EU (44%) since 2014) trust has remained particularly low in three Member States: Greece (32%); France (33%); and Italy (37%).

30   Jale Tosun, Anne Wetzel and Galina Zapryanova, 'The EU in Crisis: Advancing the Debate' (2014) 36(3) *Journal of European Integration* 195, 204, citing Paul Taggart and Aleks Szczerbiak, 'Coming in from the Cold? Euroscepticism, Government Participation and Party Positions on Europe' (2013) 51(1) *Journal of Common Market Studies* 17.

31   Paul Taggart and Aleks Szczerbiak, 'Putting Brexit into Perspective: The Effect of the Eurozone and Migration Crises and Brexit on Euroscepticism in European States' (2018) 25(8) *Journal of European Public Policy* 1194, 1203.

32   This is evident from the results of European Commission, *Public Opinion in the European Union* (Standard Eurobarometer No 89, Spring 2018) 38, which demonstrates that trust in national governments and in national parliaments stood at 34% across the EU.

As intimated above, two policy areas have seriously detracted from the EU's lustre in recent years: the Eurozone crisis and immigration. In both cases the degree of fragmentation within the EU has gnawed away at solidarity. Referring to the Eurozone crisis and the EU's response to it, Tosun, Wetzel and Zapryanova opine that these have had an impact on how citizens perceive the EU and its legitimacy.[33] At the same time, the image of boatloads of immigrants from war-torn countries making life threatening maritime voyages to Europe raises ire with respect to the EU's reactionary response to the problem.

At the core of the debates surrounding these issues is the incapacity of the EU to find solutions to dilemmas of governance and coexistence; a loss of 'normative basis',[34] as Manners would describe it, and of 'actor capacity'.[35] If norms are constructive[36] and are seen to influence actors' behaviour, then normative power may be viewed as both an ideational resource[37] and a material support. As long as these policy failures persist, the EU will see its soft power resources diminish. This outcome will have negative geopolitical effects, as a contested polity whose legitimacy is under question will struggle to assert global influence in its own neighbourhood and beyond.

Before examining the Eurozone and asylum crises and the responses to them, it will be instructive to consider how the EU is currently perceived in the world.

III   EXTERNAL PERCEPTIONS, INTERNAL REALITIES?

There is recent literature dealing with the interplay between EU internal developments and EU global engagement, which reveals significant internal

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33   Tosun, Wetzel and Zapryanova (n 30) 204–6.

34   See Ian Manners, 'Normative Power Europe: A Contradiction in Terms?' (2002) 40(2) *Journal of Common Market Studies* 235. Highly influential in EU Studies and International Relations, Manners' formulation of Normative Power Europe ('NPE') relies on the core premise that 'it exists as being different to pre-existing political forms', which difference 'pre-disposes it to act in a normative way': at 242. This 'normative difference 'comes from its historical context, hybrid polity and political-legal constitution': at 240. Shaped by crucial constitutional norms — '[t]he principles of democracy, rule of law, social justice and respect for human rights': at 241 — the EU's international role is determined not by 'what it does or what it says, but what it is': at 252. According to Manners, the broad normative basis of the European Union is situated in the foundational ideals located in 'a series of declarations, treaties, policies, criteria and conditions' spanning decades: at 242. He identifies 'five "core" norms within this vast body of Union laws and policies' — 'the *acquis communautaire* and *acquis politique*' — which together constitute the EU's normative identity: peace, liberty, democracy, the rule of law, and respect for human rights and fundamental freedoms: at 242. In addition to these 'core' norms he suggests four 'minor', though contested, norms, namely social solidarity, anti-discrimination, sustainable development and good governance: at 242–3. The EU's status as a normative power is therefore understood by its *normative difference*, reflected in its commitment to 'universal norms and principles': at 241; and its pursuit of the diffusion of these norms in international relations: at 244–5. The 'ability to shape conceptions of "normal" in international relations' ultimately marks its normative power: at 239.

35   See Alexander Ruser and Helmut K Anheier, 'The EU's Future Role on the Global Stage' (2014) 5(Supplement 1) *Global Policy* 58.

36   See, eg, Thomas Christiansen, Knud Erik Jørgensen and Antje Wiener (eds), *The Social Construction of Europe* (SAGE Publications, 2001); Longo (n 19).

37   Drawing from Manners (n 34) 239.

contradictions of the EU project across many policy areas.[38] The ability of a Union struggling with its own crises to assert normative power or export its social model is open to serious doubt. Whether the EU is even perceived as a normative power is, of course, preliminary to any discussion on its role as a legitimate exporter of universal values such as democracy, the rule of law and human rights.

Critical to this discussion is the literature interrogating whether, and if so, the extent to which external perceptions of the EU match the way the EU perceives itself. Chaban, Holland and Suet-Yi note that '[a] study of EU external perception provides a "mirror" through which a globally ambitious Union can realize itself'.[39] In the same vein, Lucarelli and Fioramonti state that the EU cannot avoid taking into consideration the expectations, images and perceptions in the rest of the world if it wants to have a chance at implementing efficient policies:

> [L]ooking at external images means looking at one of the variables that contributes to shaping a European political identity among the Europeans. As a matter of fact, self-rhetorical representation, public debate and mirror images are fundamental components of a political identity in the making like the EU/ropean one. For this reason it is useful to understand what the external images are.[40]

This imperative is emphasised if we accept that 'a mass-based European political identity is still in the making'.[41] To the extent that external images influence self-perception, those images are likely to aid the construction of a common European (political) identity.

Adding to the body of influential work on external perceptions of the EU, Chaban and Holland's recent edited volume advances the proposition that images and perceptions significantly influence the behaviour and foreign policy choices of actors.[42] In connection with the theory of 'Othering', it is posited that 'consideration of the "Other" adds an innovative touch to the study of EU external relations',[43] while also providing 'a better understanding of the contemporary influence

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38   See in particular the edited volume by Witzleb, Martínez Arranz and Winand (n 11).

39   Natalia Chaban, Martin Holland and Lai Suet-Yi, 'Dysfunctional Relations? Asian Stakeholder Views on the European Union' in Normann Witzleb, Alfonso Martínez Arranz and Pascaline Winand (eds), *The European Union and Global Engagement: Institutions, Policies and Challenges* (Edward Elgar Publishing, 2015) 237, 238. The authors note that the interview data concerning the EU's international role and opinions on its importance to the locality 'broadly reflect attitudes towards the EU prior to the impact associated with the European sovereign debt and Eurozone crisis': at 242.

40   Sonia Lucarelli and Lorenzo Fioramonti, 'Introduction: The EU in the Eyes of the Others — Why Bother?' in in Sonia Lucarelli and Lorenzo Fioramonti (eds), *External Perceptions of the European Union as a Global Actor* (Routledge, 2010) 1.

41   Ibid 4.

42   Chaban and Holland, *Shaping the EU Global Strategy: Partners and Perceptions* (n 11).

43   Paula Sandrin and Andrea Ribeiro Hoffmann, 'The EU Seen from Brazil: Images and Perceptions' in Natalia Chaban and Martin Holland (eds), *Shaping the EU Global Strategy: Partners and Perceptions* (Palgrave Macmillan, 2019) 27, 28. The authors 'argue that the construction of EU identity (internally and externally) and capacity to have an impact on world politics may be fully understood only when perspectives of and interactions with the Others are factored in'.

of the Union in a changing world'.[44] Commissioned by the European External Action Service to research perception of the EU in the BRICS, the USA, Mexico, Canada, South Korea and Japan, the findings presented in this book are purported to have helped to inform the content and focus of the 2016 EU Global Strategy.[45]

Prevailing external images of the EU in this and other perceptions literature characterises the EU as 'an economic powerhouse',[46] 'an undisputed commercial colossus'[47] and, in some geographical locations, 'a pioneer and an advocate of liberal norms such as the promotion of human rights and rule of law'.[48] In the latter case, it appears the EU is indeed seen as 'a normative model'.[49] These perceptions are confirmed by Larsen, though with further qualifications relating to geographical locations. Larsen provides a synthesis of research findings in respect of the EU's image as a normative power:

> In summary, an image of the EU as a normative power can be found in its neighbourhood and in individual countries around the world, but, in general terms, the perception of the EU as an economic power is the dominant image. … To the extent that there is a component of EU normative power connotations that is widely accepted, it is the 'peace' element. The EU's status as a mediator or reconciler is viewed in … positive terms … [i]t should be added that the research on external perceptions focusing on public opinion and the media corroborates this picture in general terms …[50]

Larsen also juxtaposes the EU's perception of itself as a promoter of legitimate norms with the occasionally expressed view of the outside world that this represents an attempt by the EU to 'reintroduce neo-colonial control'.[51] Despite widespread discussion of the existence of 'Normative Power Europe', Larsen remarked that 'there have been no systematic analyses of the importance of international perceptions for whether the EU can be characterized as a normative power'.[52] Whilst this gap is being filled, there is still the need for systematic research to establish the connections between a legitimate EU and a normatively influential

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44 Natalia Chaban and Martin Holland, 'Introduction: Partners and Perceptions' in Natalia Chaban and Martin Holland (eds), *Shaping the EU Global Strategy: Partners and Perceptions* (Palgrave Macmillan, 2019) 1, 2. See further at 7–9 for a discussion of the theoretical framework of 'Othering'.

45 Ibid 2.

46 Roberto Dominguez, 'Strategic Partner and Model of Governance: EU Perceptions in Mexico' in Natalia Chaban and Martin Holland (eds), *Shaping the EU Global Strategy: Partners and Perceptions* (Palgrave Macmillan, 2019) 147, 148.

47 Youri Devuyst, 'European Union Trade Policy After the *Lisbon Treaty*: The Community Method at Work' in Normann Witzleb, Alfonso Martínez Arranz and Pascaline Winand (eds), *The European Union and Global Engagement: Institutions, Policies and Challenges* (Edward Elgar Publishing, 2015) 138, 155, citing Chad Damro, 'Market Power Europe' (2012) 19(5) *Journal of European Public Policy* 682.

48 Chaban, Holland and Suet-Yi (n 39) 253.

49 Ibid.

50 Larsen (n 9) 905–6.

51 Ibid 906. For a similar view see Chaban, Holland and Suet-Yi (n 39) 253.

52 Larsen (n 9) 896.

EU on the world stage. There is a need for critical discussion of whether the internal challenges of the EU have altered, or are likely to alter, perceptions in the outside world of the EU's capacity to continue to assert normative influence in areas where the EU is regarded as a normative power, namely as a promoter of peace and reconciliation, an advocate of liberal norms such as the promotion of human rights and the rule of law, and perhaps as a model of *regional* integration.

Below is an analysis of the relevance of the core EU value of solidarity to European integration and how the Eurozone and asylum crises are contributing to a loss of support for the EU, manifested in the rise of populism across Europe. It is argued that the absence of solidarity has legitimacy-eroding effects while at the same time it diminishes the ability of the EU to assert influence in international relations.

IV   UNSOLVED CRISES EVIDENCING A LACK OF SOLIDARITY

The EU has the capacity to positively influence the direction of international governance in diverse fields from international trade to climate change to human rights. This statement raises several questions. To what extent is this influence expanded or diminished by perceptions of its success or failure respectively? To what extent is the EU's capacity in the global sphere diminished by its shrinking economic weight and demographic slowdown?[53] To what extent is the EU able to drive international development if it loses its ability to transmit its values?

It is instructive to reflect on the nature of discourses regarding the Eurozone and migration crises. In each case, there is evidence of a lack of a coordinated and effective EU crisis response as well as fundamental disagreement among Member States. For instance, the German or Finnish perspective of the Eurozone crisis is different to the Greek perspective; the French perspective on migration is different to the Italian, which again differs from the Hungarian, which in turn differs from that of the Commission.[54] The adoption of sectoral EU solutions to the Eurozone crisis cannot build consensus towards EI if the adopted solutions are seen to favour some Member States and not others or the institutional structure of Economic and Monetary Union ('EMU') is seen as unsound.[55]

There is a strong sense that the EU's value of solidarity is waning, and this is threatening to nullify the positive effects of EI. The EU is on shaky ground when the national interest is seen to prevail over the common interest. This is

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53   See Verluise (n 26) 4–5.

54   See Philomena Murray and Michael Longo, 'Europe's Wicked Legitimacy Crisis: The Case of Refugees' (2018) 40(4) *Journal of European Integration* 411.

55   Longo and Murray (n 17) ch 3.

fundamentally a failure of values and of the foundational community narrative of solidarity, peace and prosperity. At the heart of the debates surrounding these issues is the loss of direction and the incapacity of the EU to find solutions to problems of governance, which are partly of the EU's making. As long as these policy failures persist, and EU values questioned, any idea of effective EU soft power global leadership appears fanciful. This diagnosis finds support in the blunt statement that 'the EU risks international marginalization if it does not assert its interests and values abroad, becoming an "increasingly irrelevant western peninsula of the Asian continent"'.[56]

A *Eurozone Divergences and Political-Legal Contestation*

The Eurozone crisis has been bubbling along since 2010, threatening to gradually install a new order of winners and losers of EI. While bailouts have been provided to several Member States in profound financial crisis, Greece has been the focal point of discontent as its GDP contracted by over 25%.[57] There were and still are widely divergent views among the Member States, economists and commentators as to the causes and required solutions to the financial crisis. While Italy has not received bailouts, this country (with a debt of around 134.8% of GDP as at 2018) is now viewed as the major risk to the continued viability of the Eurozone,[58] being too big to fail and too big to bail out. Again, there are divergent views on what is required to stabilise the Eurozone, the lack of consensus an ever predictable outcome of negotiations.

The crisis has revealed significant cracks in the European edifice. The program of austerity implemented in Southern Europe, often at the expense of work, social cohesion, equality and democracy has raised questions about the EU's commitment to European solidarity and of the ability of its citizens to influence EU governance. The current policies of the EU are objectionable to a large number of citizens across countries and across political ideologies. There is a belief — whether within or without the Eurozone — that the cause of the social, political and economic upheaval affecting the Eurozone area is the economic and monetary governance of the EU, or more specifically, the euro.

Rather than helping the Member States to converge, the euro has exacerbated the underlying differences between them. According to De Grauwe, monetary union has failed to adequately deal with the divergence in economic conditions across

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56   Stoyanova-Yerburgh (n 12), quoting Reflection Group on the Future of the EU, *Project Europe 2030: Challenges and Opportunities* (Report, May 2010) 13.

57   See 'Greece's Debt: 1974–2018', *Council on Foreign Relations* (Web Page) <https://www.cfr.org/timeline/greeces-debt-crisis-timeline>.

58   The Italian debt figure at the end of 2018 was high but relatively stable at 134.8% with only small increases expected for 2020 and 2021: European Commission, *European Economic Forecast: Autumn 2019* (Institutional Paper No 115, November 2019) 96–7. Italian debt is, however, ballooning as a result of Italy's efforts to combat the effects of the COVID-19 pandemic.

Member States, especially in terms of prices and competitiveness.[59] Similarly, although Habermas posits the need 'to work towards a convergence of the member states' economic and social development',[60] the EU (under German leadership) has instead pursued rigid austerity to balance the books and reforms to restore competitiveness. Indeed, debtor states have tended to view the EU as German-dominated, neoliberal and excessively autocratic, while creditor states have focused on the assumed profligacy of debtor states, offering strong opposition to proposals for wholesale reform of the Eurozone such as the introduction of transfers and debt mutualisation. In defining the crisis as 'a conflict over redistribution',[61] Member States have risked deep divisions over the terms of EU membership and a consequential rise in populism. The value of solidarity has been a casualty of this approach.

To deal with the crisis the EU has attempted to strengthen coordination with binding rules to impose fiscal discipline via a so-called fiscal compact, including the strengthening of fiscal surveillance and improved supranational monitoring of Member States' spending and fiscal imbalances such as current account deficits.[62] Increased coordination and surveillance over national spending are the substitute for presently absent or limited EU fiscal powers. Pursuant to this approach the Member States and the EU are obliged to work together towards meeting agreed financial goals. However, coordinated action to complement monetary policy has proved difficult to achieve as national imperatives have tended to intervene.

Nonetheless, the EU has had some success in shoring up the euro currency, largely the result of the European Central Bank's ('ECB') demonstrations of

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59   Paul De Grauwe, 'The Governance of a Fragile Eurozone' (Working Paper No 346, Centre for European Policy Studies, May 2011) <http://aei.pitt.edu/31741/1/WD_346_De_Grauwe_on_Eurozone_Governance-1.pdf>. See generally Longo and Murray (n 17) ch 3.

60   Jürgen Habermas, *The Crisis of the European Union: A Response*, tr Ciaran Cronin (Polity Press, 2012) 50.

61   Paul Statham and Hans-Jörg Trenz, *The Politicization of Europe: Contesting the Constitution in the Mass Media* (Routledge, 2012) 164.

62   The Maastricht criteria and the Stability and Growth Pact ('SGP') featured a system of surveillance and coordination of fiscal policies among its Member States: *Council Regulation (EC) No 1466/97 of 7 July 1997 on the Strengthening of the Surveillance of Budgetary Positions and the Surveillance and Coordination of Economic Policies* [1997] OJ L 209/1, 1–5; *Council Regulation (EC) No 1467/97 of 7 July 1997 on Speeding Up and Clarifying the Implementation of the Excessive Deficit Procedure* [1997] OJ L 209/6, 6–11. With the onset of the debt crisis in Europe, policymakers introduced the Fiscal Compact. These measures were complemented by new control structures, referred to as the European Semester, which include greater surveillance of national budgets by the Commission and an early warning mechanism to deal with macroeconomic imbalances within and between Member States. See Christopher Needham, 'A Short History of the Eurozone Crisis' (Brief, Parliamentary Library, European Parliament, 29 March 2012).

commitment and strength, but this has not been without controversy.[63] To be sure, controversy and discord over proposed solutions have marked the Eurozone crisis from the beginning. Some Member State positions have assumed an increasingly trenchant quality. German constitutional challenges to the legality of the EU's economic policies, always a fact of life in the EU, intensified as the Eurozone crisis deepened.[64] Recent polemics between the European Commission and Italy over that state's proposed budget deficit of 2.4% of GDP in 2019 raised the indignation of populist politicians and commentators in Italy who lamented the apparent bias of the European Commission in not pursuing a similar reduction of the French budget, which actually overshot the 3% of GDP limit in the same year.[65] Deficits have also exceeded the fiscal rules in other Member States over the years, including Spain and Portugal, with no apparent consequences.[66] This outcome has attracted rebuke from Italian populist politicians who are contributing to the further politicisation of the Eurozone's perceived failings. To Italy's dismay, the Commission briefly considered instituting an excessive deficit procedure against the country in accordance with art 126(3) of the *Treaty on the Functioning of the European Union* ('*FEU*'),[67] but concluded in July 2019 that the procedure was 'no longer warranted … at this stage'.[68]

The single currency and Eurozone crisis have introduced a system of winners and losers within the EU, as a recent empirical study of the Centre for European

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63   The ECB instituted a bond-buying program in early 2015, commonly referred to as Quantitative Easing ('QE'), to combat deflation and economic stagnation. There has been division among central bankers and politicians as to the effectiveness of this program. The QE program followed another ECB initiative — the Outright Monetary Transactions ('OMT') program — a promise to buy the debt of stressed countries if needed. However, the OMT program was not universally acclaimed, being opposed or viewed with suspicion by some policymakers and bankers in Germany. See Anne Seith, 'Monetary Fallacy? Deep Divisions Emerge over ECB Quantitative Easing Plans', *Spiegel Online International* (online, 3 November 2014) <http://www.spiegel.de/international/business/deep-divisions-emerge-over-ecb-quantitative-easing-plans-a-1000713-2.html>.

64   The German Constitutional Court has made it clear that the transfer of sovereign powers to EU institutions in certain areas including finance is circumscribed. See, eg, the *Maastricht Treaty Case*, Bundesverfassungsgericht [German Constitutional Court], 2 BvR 2134/92, 12 October 1993 reported in (1993) 89 BVerfGE 155; the judgment regarding the European Stability Mechanism ('ESM'), the EU's permanent bailout fund: Bundesverfassungsgericht [German Constitutional Court], 2 BvR 1390/12, ECLI:DE:BVerfG:2012:rs20120912.2bvr139012, 12 September 2012 reported in (2012) 132 BVerfGE 195; the *Outright Monetary Transaction Case*, Bundesverfassungsgericht [German Constitutional Court], 2 BvR 2728/13, ECLI:DE:BVerfG:2016:rs20160621.2bvr272813, 21 June 2016 reported in (2016) 142 BVerfGE 123, [63], [69]; the *Public Sector Purchase Programme Case*, Bundesverfassungsgericht [German Constitutional Court], 2 BvR 859/15, ECLI:DE:BVerfG:2020:rs20200505.2bvr085915, 5 May 2020.

65   See Alex Pigman, 'Italy's Budget Battle with Brussels: What You Need to Know', *The Local* (online, 25 October 2018) <https://www.thelocal.it/20181025/italys-budget-clash-with-brussels-what-you-need-to-know>.

66   Ibid.

67   *Treaty on the Functioning of the European Union*, opened for signature 7 February 1992, [2012] OJ C 326/47 (entered into force 1 November 1993) art 126(3) ('*FEU*'); Jorge Valero, 'Commission to Launch Sanction Procedure Against Italy', *EURACTIV* (online, 28 May 2019) <https://www.euractiv.com/section/economy-jobs/news/commission-to-launch-sanction-procedure-against-italy/>.

68   European Commission, 'Commission Concludes that an Excessive Deficit Procedure Is No Longer Warranted for Italy at This Stage' (Press Release, 3 July 2019) <https://europa.eu/rapid/press-release_IP-19-3569_en.htm>.

Policy demonstrates.[69] Employing a synthetic control method,[70] the authors of that study asked: 'How high would the per-capita GDP of a specific eurozone country be if that country had not introduced the euro?'[71] The results showed that of eight countries surveyed (Belgium, France, Germany, Greece, Italy, the Netherlands, Portugal and Spain), only Germany and the Netherlands had gained substantial benefits from 20 years of the euro, while Italy and France suffered the greatest losses. For the period 1999–2017, the impact of the euro on German prosperity was said to be +€1,893 billion, while the loss of prosperity for Italy and France in the same period was –€4,325 billion and –€3,591 billion respectively.[72] According to the think tank's evaluation, Italy and France had failed to find a way of becoming competitive inside the Eurozone, the devaluation of currency no longer being available to them.[73] Given the magnitude of these economic losses, it is unsurprising that populist political parties have made such inroads into national and regional politics in both countries. The 'incomplete nature of European integration'[74] and the conspicuous failure of the EU to champion reform of economic and monetary governance, necessary for the wellbeing of its own Member States, must raise questions of just how the EU will positively influence the rest of the world.

It is argued that the risks, challenges and disagreements attending the Eurozone crisis are diminishing Europe's economic fortunes, credibility and standing in the world. Jones, Kelemen and Meunier observe that '[p]olitically, the perception that the EU is constantly in crisis is undermining popular support for European integration and the credibility of the EU on the world stage'.[75] To some extent, the Eurozone and other EU crises reveal the social and cultural limitations of the EU integration project. In an article that explores the changing conceptions of the social in social theory, Delanty canvasses the 'widespread concern at the failure of European integration to deal with social integration and questions pertaining to its democratic legitimation'.[76] He makes a case for 'the need to articulate a degree of social integration and cultural cohesion'[77] through the '"knowledge society"' — a concept pertaining to the 'cognitive capacity of society to interpret

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69   Alessandro Gasparotti and Matthias Kullas, '20 Years of the Euro: Winners and Losers' (Empirical Study, Centre for European Policy Studies, February 2019) <https://www.cep.eu/fileadmin/user_upload/cep.eu/Studien/20_Jahre_Euro_-_Gewinner_und_Verlierer/cepStudy_20_years_Euro_-_Winners_and_Losers.pdf>.

70   Using this method, the 'actual trend in per-capita GDP of a eurozone country can be compared with the hypothetical trend assuming that this country had not introduced the euro (counterfactual scenario)': ibid 2.

71   Ibid.

72   Ibid 4.

73   Ibid 8, 10.

74   Erik Jones, R Daniel Kelemen and Sophie Meunier, 'Failing Forward? The Euro Crisis and the Incomplete Nature of European Integration' (2016) 49(7) *Comparative Political Studies* 1010, 1011.

75   Ibid 1013.

76   G Delanty, 'Social Theory and European Transformation: Is There a European Society?' (1998) 3(1) *Sociological Research Online* [3.3] <http://www.socresonline.org.uk/3/1/1.html>.

77   Ibid.

itself and to imagine alternatives'.[78]

Absent solidarity, absent a degree of social integration, the only solutions that present themselves are those that spring from the competitive arena; solutions that do not seek common ground and end up generating division. If the EU continues to provide suboptimal solutions to the crisis and fails to accommodate the interests of all Member States and citizens, it will lose the ability to transmit its foundational values within Europe and beyond. It will fail to assert its legitimacy domestically and it will gradually see its normative power resources diminish.

B *Migration Policy Failures*

The EU's so-called common asylum and refugee policy was unveiled in 1999 in the *Amsterdam Treaty*.[79] This policy featured a regulatory framework of expanding EU competence and increased cooperation between Member States, which pledged the emergence of an 'area of freedom, security and justice'.[80] Every refugee would be entitled to the same fair asylum procedure regardless of where in the EU the applicant sought asylum. Despite the fanfare, this promise has not been realised. The EU's Dublin Regulation,[81] which seeks to determine the Member State responsible for an asylum claim — usually the state through which the asylum seeker entered the EU — has contributed to serious delays in processing claims and other human rights violations and imposed uneven burdens on Member States.[82]

The crisis has had focal points in Greece, Italy and Spain. In Italy, the mass politicisation of this issue coincided with a shift towards nationalist solutions by the populist Salvini/Di Maio government. The system has also been the subject of disagreement between the Commission and some Member States (primarily the Visegrad Group) and between Member States (primarily France and Italy), contributing to significant diplomatic rifts.[83]

In the face of extraordinary human tragedy the EU is open to criticism both for the failure of its common asylum policy and for its investment of hundreds

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78 Ibid [6.4].

79 *Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts*, opened for signature 2 October 1997, [1997] OJ C 340/1 (entered into force 1 May 1999) ('*Amsterdam Treaty*').

80 See ibid.

81 *Council Regulation (EC) No 343/2003 of 18 February 2003 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-Country National* [2003] OJ L 50/1.

82 See, eg, Michael Longo and Matteo Pretelli, 'Refugee Roulette: Fences, Deflected Responsibilities and the Politics of Excision' (2014) 20(1) *Australian Journal of Human Rights* 163.

83 See generally Simon Toubeau, 'France-Italy: Behind the Crisis Lies a Deeper Rift over Europe', *London School of Economics and Political Science* (Blog Post, 13 February 2019) <https://blogs.lse.ac.uk/europpblog/2019/02/13/france-italy-behind-the-crisis-lies-a-deeper-rift-over-europe/>.

of millions of euros on measures to prevent unwanted immigration: measures such as the deployment of police units to external borders; the building of fences and the use of radar and 'satellite technology to monitor refugee routes' in the Mediterranean Sea.[84] Benhabib has pointedly noted that '[e]ven in one of the most developed rights regimes of our world [Europe], refugees and asylum seekers still find themselves in quasi-criminal status'.[85] Evidently, the EU's rhetoric on human rights is not matched by its practice. To be sure, the EU experience is not isolated. For decades Western states have been pursuing ever more restrictive policies aimed at preventing entry. 'However, more is expected of the EU'.[86] The disjuncture between practice and rhetoric is particularly apparent because the restrictive policies appear to contradict the way the EU polity defines itself and projects itself to the rest of the world. The EU needs (and many expect it to implement) orderly, carefully thought out solutions that do not penalise the large number of asylum seekers fleeing persecution and war. Instead, immigrants continue to arrive on Europe's doorstep to a cold reception without any sign of a common European solution to the crisis. Accordingly, the EU is open to criticism for avoiding its responsibilities on asylum, leaving it to beleaguered states to shoulder a disproportionate burden. If the EU is to not appear hollow, if it is to endure as a soft power, as a global promoter of human rights, it must find innovative, equitable and just solutions to the problems of coexistence in an increasingly unfair and chaotic world.

Notwithstanding internal cleavages (the rise of populism and xenophobic politics) a recent Eurobarometer survey on the Future of Europe indicates that 45% of respondents believe that 'improv[ing] the situation in the countries where migrants come from' should be given priority, while 34% consider the reinforcement of 'collaboration between EU countries in managing migration' to be the answer.[87] Given the receptiveness of a large number of Europeans to a holistic approach to the migration crisis, it is striking that the EU has failed to capitalise on positive public sentiment. The reasons for this failure may be twofold: a lack of effective leadership, which is feeding supranational incapacity in this policy area; and a growing politicisation of the issue, which is interfering with effective policymaking. Schimmelfennig provides a compelling explanation for the crisis dynamics of both the migrant crisis and the Eurozone crisis, whereby 'domestic politicization reinforce[s] the intergovernmental distributional conflict between

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84   See Walter Mayr and Maximilian Popp, 'Lampedusa Tragedy: Deaths Prompt Calls to Amend Asylum Rules', *Spiegel Online International* (online, 7 October 2013) <http://www.spiegel.de/international/europe/lampedusa-tragedy-prompts-calls-for-eu-to-amend-asylum-agreement-a-926453.html>; Hans-Jürgen Schlamp, 'Europe's Failure: Bad Policies Caused the Lampedusa Tragedy', *Spiegel Online International* (online, 4 October 2013) <http://www.spiegel.de/international/europe/lampedusa-tragedy-is-proof-of-failed-european-refugee-policy-a-926081.html>.

85   Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (Cambridge University Press, 2004) 168.

86   Murray and Longo (n 54) 421. See also Longo and Pretelli (n 82).

87   European Commission, *Future of Europe* (Special Eurobarometer No 479, October – November 2018) 7.

the member states'.[88] He states:

> During the crises, the financial issues of the eurozone and the migration issue became the dominant issues of contestation in domestic politics and national elections — especially in the countries hit hardest by the crises. Polarization ran high — within and between the member states of the EU. Eurosceptic parties thrived on their opposition against bailouts in the North and against austerity in the South during the eurozone crisis. In the Schengen crisis, they mobilized successfully against immigration and Islam.[89]

The dynamic of domestic political contestation provides partial explanatory force in other EU crises, including Brexit. Whereas theories of EI previously focused on explaining progress in integration, supporting debates about the mechanisms of expanding integration and path-dependence, Schimmelfennig notes a recent shift in integration theory to Euroscepticism, differentiated integration and even disintegration.[90] While many scholarly contributions on the Eurozone crisis and/or the migration crisis have highlighted the integrative steps that were agreed, or not, in relation to EMU and the common asylum policy respectively,[91] it is apparent that integration is incomplete and imperfect in both cases. It is also apparent that the shift in integration theory to Euroscepticism and disintegration is supporting a new narrative for Europe, which is proving self-fulfilling, as Brexit demonstrates, though to date Brexit has not had a domino effect amongst the EU27.[92] That narrative pits presumed national interest against solidarity and contains a fundamental misunderstanding about the nature of solidarity.

88 Frank Schimmelfennig, 'European Integration (Theory) in Times of Crisis: A Comparison of the Euro and Schengen Crises' (2018) 25(7) *Journal of European Public Policy* 969, 979.

89 Ibid.

90 Ibid 969.

91 See, eg, regarding the Euro crisis: Demosthenes Ioannou, Patrick Leblond and Arne Niemann, 'European Integration and the Crisis: Practice and Theory' (2015) 22(2) *Journal of European Public Policy* 155.

92 It is apparent from Eurobarometer data for 2019 that pro-EU sentiment in the UK and the EU27 is on the rise where 'seven Europeans in ten said they would vote to remain in the EU if a referendum was held in their country': European Parliament, *Closer to the Citizens: Closer to the Ballot* (Special Eurobarometer No 91.1, Spring 2019) <https://www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2019/closer-to-the-citizens-closer-to-the-ballot/executive-summary/en-parlemeter-2019-executive-summary.pdf>; '[a]n absolute majority of respondents in 25 Member States hold this view': at 7–8; while 'a relative majority shares this view in Italy, Czechia and the UK': at 8. This result was arguably influenced by almost daily news of political disarray in the UK as it struggled to find an acceptable solution to the deadlock with Brussels over the Irish backstop. At the same time there appears to be a surge in the number of Britons who oppose Brexit altogether as the realities of what it might mean sink in. Furthermore, for many Europeans the familiarity and security that the EU offers in an increasingly uncertain and divided world arguably work in favour of a positive attitude towards the EU. For candidate and potential candidate countries, particularly in the so-called Western Balkans, the EU still holds considerable appeal for the promise it holds of economic prosperity, peace and stability. For Vukasović and Matić 'Western Balkan states have an irrevocable accession perspective': Dejana M Vukasović and Petar Matić, 'The Power of "Normative Power Europe" Discourse' in Dejana M Vukasović and Petar Matić (eds), *Discourse and Politics: International Thematic Collection of Papers* (Institute for Political Studies, 2019) 291, 303. It is possibly too early to state with confidence that the EU's fortunes at home are on the rise in these challenging times. Moreover, the Spring 2019 Eurobarometer data (above) confirms that Italy remains exceedingly pessimistic about its relationship with the EU as well as the benefits of EU membership: European Parliament (n 92) 16. It is noteworthy that populist political parties in that country have been fuelling anti-EU sentiment and promoting the narrative of disintegration against a backdrop of perceived EU failings in the field of migration and EMU.

C *Solidarity*

The concept of solidarity in the EU has been expressed in various terms: as a constitutional value upon which the EU and its predecessors were built; as an aspiration; and as a goal. For as long as the EU aspires to closer union, integration, harmonisation of laws and similar objectives, solidarity will always be viewed as a vehicle to that destination, a launching pad to something bigger and better. This is encapsulated in Schuman's 'functional federalism' vision, as expressed in his landmark speech in May 1950: 'Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create de facto solidarity.'[93]

The key feature of solidarity is a sense of 'collective responsibility'.[94] Solidarity is about unity; the EU will succeed or fail together. The *Treaty on European Union* ('*EU*')[95] and the *FEU*[96] provide numerous statements on the concept of solidarity, both within a European and international context, which serve mainly constitutional and aspirational purposes. These include the preamble of the *EU,* arts 2, 3, 21, 24(2) and (3) of the *EU* and arts 67 and 80 of the *FEU.* In these statements there is recourse to the fair sharing of responsibility between the Member States as well as fairness to third country nationals, among other things. Some of these provisions go so far as to invoke the spirit of 'loyalty' and 'mutual solidarity' as the foundation of EU action.[97]

Despite these lofty assertions the Eurozone and migration crises are testing the strength and viability of European integration in the absence of de facto solidarity. As discussed above, the Eurozone crisis has blighted the European economic landscape for a decade, threatening to install a new order of winners and losers in Europe. From one point of view, politicians from Eurozone countries like Germany speak of the 'multi-billion-euro solidarity they have shown the countries they have bailed out'.[98] From another, solidarity is conspicuously absent as evidenced by a failure on the part of creditor states to implement policies of debt mutualisation and other measures to adjust for the macroeconomic imbalances brought about by EMU. From this perspective it appears that the bailouts have not been motivated by altruism but

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93   For a reproduction of the Schuman Declaration, see 'The Schuman Declaration: 9 May 1950', *Europa* (Web Page, 24 October 2017) <https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en>.

94   Kate Cook, 'Solidarity as a Basis for Human Rights: Part One' [2012] (5) *European Human Rights Law Review* 504, 508.

95   *EU* (n 7).

96   *FEU* (n 67).

97   See, eg, *EU* (n 7) arts 24(2)–(3); *FEU* (n 67) art 67(2).

98   'Charlemagne: A Walk Down Solidarity Street' (13 June 2015) *The Economist* 40, 40 <https://www.economist.com/europe/2015/06/13/a-walk-down-solidarity-street>.

by a 'self-interest calculus'.[99] It has been observed that while '[e]verybody speaks about solidarity … they all have their own dictionary'.[100]

Ambiguous to the core, the concept of solidarity variously refers to a 'moral value' or to 'a contractual promise of mutual assistance linking the members of a community'.[101] As Fernandes and Rubio note, the dichotomous meanings of solidarity are captured by Durkheim's distinction between 'mechanic' and 'organic' solidarity:[102]

> According to Durkheim, traditional societies are held together by 'mechanic solidarity'. Because these societies are small and homogenous, members are all socialised in the same patterns and hold common values. Solidarity hence is emotional, and grounded on a shared identity (on the moral imperative of helping 'one of us'). Modern societies, on the other hand, are held together by 'organic solidarity'. In these societies, members perform different roles, have a variety of experiences and hold different values. However, because they are interdependent, they must rely on one another if their society is to function effectively. … From this perspective, solidarity is not an act of altruism but a rational act driven by self-interest.[103]

Although solidarity does appear to conform to a dual meaning, it would be erroneous to portray these meanings as opposite. Modern societies can and do hold some common values, while it would be simplistic to hold that such societies can only perceive of solidarity in functional rather than emotional terms. Indeed, the forms of solidarity are not so easily categorised. Construed widely and constructively, self-interest in the EU demands solidarity in recognition that interdependent societies will break down in its absence.

The Eurozone crisis has at times prompted a response motivated by narrow self-interest considerations. True, the architects of the bailout funds for Greece and other EMU countries under financial stress were aware that if left alone the country might have ended up defaulting, which would have had 'catastrophic consequences for their own economies'.[104] However, an incorrect or partial narrative of the cause of the crisis,[105] focusing on mismanagement and/or corruption, has conditioned the punitive, austerity-driven response to it, which

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99 Sofia Fernandes and Eulalia Rubio, 'Solidarity within the Eurozone: How Much, What For, For How Long?' (Policy Paper No 51, Notre Europe, 14 February 2012) 1 <https://institutdelors.eu/wp-content/uploads/2018/01/solidarityemus.fernandes-e.rubionefeb2012.pdf>.

100 *The Economist* (n 98).

101 Fernandes and Rubio (n 99) 3.

102 See Emile Durkheim, *The Division of Labor in Society*, tr WD Halls (Free Press, 1997), cited in Fernandes and Rubio (n 99) 3–4.

103 Fernandes and Rubio (n 99) 4.

104 Ibid 19–20.

105 See generally Longo and Murray (n 17) ch 3.

has actually eroded solidarity. A solidarity-building narrative that acknowledged the structural impediments to convergence between the members of the Eurozone would have facilitated a united approach and obviated the classification of states as winners or losers, virtuous or corrupt. As an interdependent single currency zone, the interests of the Eurozone are served by solidarity (ie the EU will succeed or fail together). Yet, the EU has not demonstrated the will to pursue solidarity as a means of attenuating the crisis, thereby leaving the door open to the destructive discourse that views solidarity and national interests as opposites. The migration crisis offers another example of how solidarity is being viewed as voluntary and contingent.

The persistence of the asylum crisis and the conflation of migration with security issues are destabilising national and European polities alike as Member States seek to retreat behind borders and reject European Commission proposals for burden-sharing and other attempts to implement a common asylum policy. In this case, the absence of solidarity is also abundantly apparent, both towards third country nationals fleeing war and political upheaval as well as among the Member States themselves. The asylum crisis has accentuated the perception of solidarity as voluntary. By failing to agree on mandatory resettlement proposals of the Commission and retaining the possibility of refusing resettlement altogether, EU Member States are perpetuating a view of solidarity in perpetual deficit as the default position. While Germany proposed to resettle one million asylum seekers, Hungary agreed to none.[106] National interest has thus been offered as a stark, arithmetical calculation, a counterweight to solidarity. And it appears that a narrow self-interest calculus will always trump solidarity when the prevailing narrative pits solidarity against the national interest.

Of course, solidarity need not be viewed in this nihilistic way. Solidarity may be viewed as a stepping stone to union; a tangible product of integration; both a goal and a natural consequence of integration. This meaning conveys a transformation, as what is foreign and unknown becomes assimilated within new integrated societies. In this instance, solidarity becomes naturalised within the political community as differences and borders fade away. The present reality, instead, sees the solidarity imperative as fading. Fuelled by a growing sense of insecurity, which populist political parties and movements have readily seized upon, national citizens wearied by economic crisis and migration (both authorised and unauthorised), are closing ranks and turning away from the commitment to openness, shared responsibility and solidarity. It appears the EU foundational value of solidarity carries a mistaken meaning for ordinary Europeans today. Contrary to popular belief, the interdependence of European societies in the EU means that solidarity is itself, to quote Fernandes and Rubio, 'a rational act driven

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106 See Patrick Wintour, 'EU Takes Action against Eastern States for Refusing to Take Refugees', *The Guardian* (online, 14 June 2017) <https://www.theguardian.com/world/2017/jun/13/eu-takes-action-against-eastern-states-for-refusing-to-take-refugees>.

by self-interest'.[107] Instead, solidarity is viewed as an elite-inspired aspiration, as populists are eager to point out.

V   IMPLICATIONS AND CONSEQUENCES OF EU FAILURES

A   *The Nexus Between EU Failures and Growing Populism*

As discussed above, the EU is currently faced with widespread economic difficulties across its Member States, citizen contestation over a range of EU policies and blunt challenges from certain Member States to EU authority. Yet the EU sometimes appears oblivious to the concerns, criticisms and demands of Member States, in particular its weaker Member States and/or those who challenge EU orthodoxy. There is a widespread perception in some Member States that the national interests of powerful Member States prevail within the EU or, alternatively, that the interests of weaker Member states are being ignored unless those interests coincide with the interests of the more powerful states. To many citizens the EU's stance on highly salient issues appears unprincipled and opaque.

The EU has been criticised for its half-hearted response to the asylum emergency, nowhere more so than in Italy. The EU's Triton border surveillance and rescue operation in the Mediterranean Sea was belatedly activated in November 2014 to appease Italian criticism of the EU at being left alone to deal with a developing humanitarian crisis as more and more people lost their lives at sea en route to Europe. However, ongoing clashes between EU and Italian institutions as well as the repeated failure of EU Member States to assume joint responsibility for mass asylum arrivals in Italy, perpetuated a damaging sense of isolation within the country; Italy felt alone in dealing with the crisis.[108] As a consequence, anti-immigrant rhetoric increased with a corresponding rise in nationalism, populism and Euroscepticism while trust in EU institutions fell.

Also implicated in Italy's loss of faith in EU institutions was Europe's insistence on austerity in the face of the financial crisis. Following national elections in 2018, a government of populist parties (*Movimento 5 Stelle* and *Lega*) was installed. Mudde notes that there are 'many internal reasons for the political and social malaises in … [Italy and Greece], but the EU's lack of solidarity with a weaker member state that pays the brunt of the price of a European problem, has at the very least worsened the situation'.[109] This loss of faith is widespread.

To a growing number of Europeans, the EU seems closed to the problems of many

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107 Fernandes and Rubio (n 99) 4, discussing Durkheim's concept of solidarity: see generally Durkheim (n 102).

108 See Cas Mudde, 'The EU Helped Create the Italy Crisis: If It Doesn't Learn, Worse Will Follow', *The Guardian* (online, 30 May 2018) <https://www.theguardian.com/commentisfree/2018/may/30/eu-italy-crisis-refugees-populism>.

109 Ibid.

of its own citizens. Years of rigid austerity and fiscal pressure in response to the Eurozone financial crisis have brought economic pain to many. Left and right-wing populist parties have made major inroads in affected countries, particularly Greece, Italy and France, with a commensurate decline in favourable attitudes towards the EU. Findings of surveys conducted by *eupinions* in July 2017 on perceptions of globalisation and EI indicated that '[p]opulist left-wing party supporters think globalization is a threat but want more European cooperation. … For populist right-wing party supporters, the EU is [instead] seen as part of the problem and fuels their globalization fears. They wish to see less European cooperation in future'.[110] Referring to the support for European cooperation across different groups of party supporters in the five largest Member States of the EU (excluding the United Kingdom) — Germany, France, Italy, Spain and Poland — the authors noted that 'among supporters of the populist right, European cooperation is eyed very skeptically, especially when it concerns providing financial assistance to struggling member states or the acceptance of refugees in line with EU quota'.[111] Bailouts to indebted Eurozone states and adherence to refugee resettlement quotas have remained among the most contested policies of the EU.

Upheavals in identity politics and economic woes have therefore resulted in a surge in nationalism and support for far-right political parties across Europe. European Parliament elections in May 2019 have seen the emergence of a more fragmented EP with a sizable Eurosceptical presence.[112] The right-wing, populist *Lega* party has become Italy's largest party and although it is not, at the time of writing, part of the national governing coalition, it is likely to play a growing role in Italian and EU politics. For Italy and France, among other states, the upheavals caused by economic inequality, globalisation and/or migration (and the inability of EU institutions to meet these challenges) will continue to provoke serious questioning of liberal market democracy.[113]

To the extent that the EU fails to propose convincing, viable solutions to the economic and political problems facing Europe and its environs, the EU will continue to fragment and struggle to assert its legitimacy.[114] Declining legitimacy will negatively affect the EU's ability to capitalise on its considerable soft power, understood as magnetism, allure and symbolic power. However, suboptimal solutions to crises and popular fallout due to policy failures do not represent the

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110	Catherine E de Vries and Isabell Hoffmann, *Globalization and the EU: Threat or Opportunity?* (Report, 2018) 4 <https://www.bertelsmann-stiftung.de/en/publications/publication/did/globalization-and-european-integration-threat-or-opportunity>.

111	Ibid 23.

112	Jason Horowitz, 'Election Puts Europe on the Front Line of the Battle with Populism', *The New York Times* (online, 27 May 2019) <https://www.nytimes.com/2019/05/27/world/europe/europe-election-results-populism.html>.

113	Ibid.

114	See Michael Longo and Philomena Murray, 'No Ode to Joy: Reflections on the European Union's Legitimacy' (2011) 48(6) *International Politics* 667.

full extent of the problem facing the EU. Supranational incapacity and strong politicisation of issues have the effect of further eroding European integration as these variables constrain the ability of international and political elites to manoeuvre towards integration.[115]

Indeed, it is the EU's symbolic power, its 'power of constructing reality',[116] which represents its greatest resource and underpins its normative power. Arguably, the EU must reconnect with the emblematic image of itself, its symbolic power, to borrow a theme from social theorist Bourdieu, if it is to maintain its global appeal, its aspirations and its potential to positively influence global development through innovative ideas as much as good practice and example.

The following section returns to the question of image and considers how internal challenges in the EU may be altering perceptions on the EU's capacity to assert an effective international role. The discussion draws on scholarly literature and on the views of pan-European think tank, The European Council on Foreign Relations ('ECFR'), on how the current 'anti-European' political landscape is threatening Europe's open society and its role as a global actor.

B *International Implications of EU Internal Crises*

It is apparent that changing perceptions can lead to both positive and negative feedback processes that impact both on the EU's role in international relations and on its political identity, as self-image is influenced by what others think. Tsuruoka notes that 'Brussels has come to realise the importance of understanding how it is seen by others, because external perceptions of the EU greatly influence the extent to which the EU can achieve its policy objectives in the world'.[117] In the introduction to their edited 2014 book, Chaban and Holland comment that

> [a]n understanding of changing perceptions … constitutes an important indicator for assessing if and how the Eurozone sovereign debt crisis has had a discernible impact on the EU's influence on the rest of the world — either close or far away from its borders. It is also a 'reality check' for the EU's own vision of its role as an international leader as well as of its status as a recognized power in an increasingly multipolar world. These two elements are linked as the EU's external image influences its self-image and thus the EU's behaviour as a global and regional actor.[118]

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115 Schimmelfennig (n 88).

116 Pierre Bourdieu, *Language and Symbolic Power*, ed John B Thompson, tr Gino Raymond and Matthew Adamson (Polity Press, 1991) 166.

117 Michito Tsuruoka, 'The European Union as Seen by Japan in an Age of Uncertainty' in Natalia Chaban and Martin Holland (eds), *Shaping the EU Global Strategy: Partners and Perceptions* (Palgrave Macmillan, 2019) 127, 128.

118 Natalia Chaban and Martin Holland, 'Introduction: The Evolution of EU Perceptions' in Natalia Chaban and Martin Holland (eds), *Communicating Europe in Times of Crisis: External Perceptions of the European Union* (Palgrave Macmillan, 2014) 1, 1.

While the present article identifies the Eurozone and migration crises as legitimacy-eroding events, it is the disunity and the lack of solidarity that have accompanied these crises that present the greatest challenges to the EU's normative power. As the lack of solidarity is not confined to the above policy areas, EU crisis dynamics go beyond the identified crises and potentially implicate other policy areas where the EU does not speak with one voice, such as international security and aspects of climate change policy. For instance, Davison refers to 'the Libyan crisis in 2011 [which] saw the EU paralysed by internal divisions'[119] and the 'deep internal differences … within the transatlantic alliance concerning the future structure and purpose of NATO',[120] which have undermined the credibility of the EU's Common Foreign and Security Policy and threatened NATO's ability to act coherently. Similarly, disagreements between the Member States at the 2009 United Nations Climate Change Conference in Copenhagen meant that the EU was unable to 'project a unified stance on the international stage',[121] while its 'over-reliance on "soft" power' was 'insufficient to persuade powerful countries (such as the US and China) to accept the EU's preference'.[122]

Addressing the fallout from the European financial crisis, Winand comments that

> the effects of the multifaceted European economic crisis … have been the object of frequent commentaries not only in the EU but also much further afield. In India, for example, the European financial crisis has been perceived as a 'major crisis' as the EU is its 'biggest trading partner' … Although there were initially hopes in India that the euro could act as an 'alternative global currency' to the dollar, the EU crisis was diagnosed as having been caused by rapid EU expansion and by overestimating the coherence of its economic policy when the European Monetary Union was introduced. … From a Chinese perspective, the EU, with its need for Chinese support to help solve its debt crises, 'looked weak, even in the one realm that constituted it [sic] as a global actor: the economy.'[123]

Moreover, Arranz and Wacker remark on China's changing perceptions of the EU's problem-solving capacities and global prospects, noting that initial high hopes that 'the EU's further integration and enlargement would turn it into a full-fledged international actor and counterweight to the US' faded as the debt crisis

119 Rémy Davison, 'Continental Drift: The Transatlantic Divide over International Security' in Normann Witzleb, Alfonso Martínez Arranz and Pascaline Winand (eds), *The European Union and Global Engagement: Institutions, Policies and Challenges* (Edward Elgar Publishing, 2015) 216, 225.

120 Ibid 230.

121 Pascaline Winand, 'The European Union Today: Between Peace and Crisis' in Normann Witzleb, Alfonso Martínez Arranz and Pascaline Winand (eds), *The European Union and Global Engagement: Institutions, Policies and Challenges* (Edward Elgar Publishing, 2015) 1, 12.

122 Ibid, quoting Rüdiger KW Wurzel and James Connelly, 'Conclusion: The European Union's Leadership Role in International Climate Change Politics Reassessed' in Rüdiger KW Wurzel and James Connelly (eds), *The European Union as a Leader in International Climate Change Politics* (Routledge, 2011) 271, 286.

123 Winand (n 121) 3 (citations omitted).

continued.[124] They comment that while 'Chinese politicians and officials initially showed relative optimism regarding the ability of the EU to handle the [debt] crisis',[125] '[a]s the debt crisis dragged on, Beijing felt that the EU was losing the means to influence or coerce China'.[126] This loss of influence or coercive power speaks clearly of a loss of normative power.

Research conducted by ECFR in the prelude to the EP election in May 2019 in relation to risks associated with an increase in representation of anti-European parties in the EP was premised on the view that 'regardless of whether [they] increase their share of EP seats, the battle of ideas that they are launching looks set to reshape Europe's political landscape for years to come'.[127] The authors explore the likely effect of an increase of EP seats on a range of policy areas including rule of law, foreign trade, migration and foreign policy among others. They note that 'progress with the EU's rule of law procedures depends on the support of both the EP and the Council'.[128] Were a future EP to block the EU's so-called 'Article 7 mechanism',[129] which is designed to defend the rule of law in Member States, or the gains at the EP election were translated into a position of government at home (eg in Denmark, Estonia and Slovakia), Dennison and Zerka opine that '[a]side from its internal consequences, such a development would further erode Europe's global credibility as a champion of democracy and the rule of law'.[130]

Dennison and Zerka identify eight additional threats to European society and the EU's role as a global player in the manifesto of the numerous anti-European, Eurosceptic or anti-establishment political parties across the EU, which, if realised, would also undermine the EU's legitimacy at home and abroad. They are:

2. Compromising the EU's common foreign policy on Russia: *abolition of sanctions on Putin's government …*

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124 Martínez Arranz and Gudrun Wacker, 'China and the European Union: High Hopes, Clear Conflicts' in Normann Witzleb, Alfonso Martinez Arranz and Pascaline Winand (eds), *The European Union and Global Engagement: Institutions, Policies and Challenges* (Edward Elgar Publishing, 2015) 256, 256.

125 Ibid.

126 Ibid 257.

127 Susi Dennison and Paweł Zerka, 'The 2019 European Election: How Anti-Europeans Plan to Wreck Europe and What Can Be Done to Stop It' (Flash Scorecard No 278, European Council on Foreign Relations, February 2019) 2 <https://www.ecfr.eu/page/-/EUROPEAN_PARLIAMENT_FLASH_SCORECARD_.pdf>.

128 Ibid 3.

129 The procedure in Article 7 of the *Treaty on European Union* provides for the suspension of a Member State's voting rights in response to systemic threats to the rule of law: *EU* (n 7) art 7. However, it is not sufficiently credible as it requires unanimity in the European Council before the sanction can be imposed. Article 7 procedures are currently open against the governments of Poland and Hungary: Dennison and Zerka (n 127) 3. Dennison and Zerka remark that 'with the EP unable to initiate rule of law investigations against member states, and with a rising number of member states in the Council represented by governments that are reluctant to support it either, the EU would have severe limits on its capacity to defend democracy within its borders'.

130 Dennison and Zerka (n 127) 3.

3.   Withdrawing investment from European security frameworks: *a weakened NATO …*

4.   Promoting the EU's disintegration from within: *some member states' withdrawal from the EU …*

5.   Undermining the EU's international position in times of geopolitical turmoil: *a shift from the EU to a Europe of the nations …*

6.   Blocking the EU's external trade agenda: *obstruction of negotiations or of ratification of new trade agreements …*

7.   Compromising the EU's freedom of movement: *efforts to reintroduce strict border controls as the main solution to the EU's migration challenge …*

8.   Hampering global efforts to curb climate change: *member states' and the EU's withdrawal from multilateral arrangements such as the Paris climate agreement …*

9.   Spreading intolerance and nationalism across Europe: *renewal of nativist and other illiberal ideologies across Europe …*[131]

Although, as acknowledged by the authors of the paper, the nationalist anti-European parties 'are not currently a unified alliance'[132] and the EP election did not produce the major shift to the far-right that some expected, far-right parties nonetheless won the most seats both in France and Italy.[133] The French National Rally and the Italian *Lega* are represented in the EP Democracy and Identity Group.[134] Other anti-European, Eurosceptic or anti-establishment political parties are disbursed among other EP groups or are not attached to any group. The lack of unity among far-right political parties in the EP does not necessarily signal incapacity. Dennison and Zerka point to '[t]he experience of the 2016 Brexit referendum [which] shows the mobilising power of a rejection of the status quo in the current political climate'.[135]

Although the EP will continue to advocate for a strong EU role in international affairs, within the limits of its formal role, the EU's status as a global actor will depend much on how effective the EU institutions and Member States are in bolstering the EU's legitimacy. Ultimately, the EU's continuing capacity to

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131 Ibid 9 (emphasis altered).

132 Ibid 1.

133 European Parliament, 'Seats by Political Group and Country: 2019–2024', *2019 European Election Results* (Web Page, 2 July 2019) <https://election-results.eu/seats-political-group-country/2019-2024/>.

134 European Parliament, 'Breakdown by National Parties and Political Groups: 2019–2024', *2019 European Election Results* (Web Page, 2 July 2019) <https://europarl.europa.eu/election-results-2019/en/breakdown-national-parties-political-group/2019-2024/>. Alternative for Germany is the next largest party in the Democracy and Identity Group with 11 seats.

135 Dennison and Zerka (n 127) 2.

contribute to the construction of social reality, both within and without the EU, will rest upon its ability to maintain relevance and legitimacy as a producer of public goods. Concrete solutions in the form of enhancing the democratic credentials of EU decision-making institutions through a mix of direct democracy and effective pan-European representation of citizens have long been touted as means of improving the acceptability of EU outputs.[136] Symbolism and ideational resources are also pivotal. To this end, a renewed focus on EU foundational values and humanistic credentials may have positive effects on EU legitimacy.

VI CONSTRUCTING LEGITIMACY FROM INTERDISCIPLINARY PERSPECTIVES

As a regulatory system, the EU's continuing legitimacy depends at least in part on the quality of its outputs.[137] To accept that the EU has the responsibility to propose solutions to the Eurozone crisis or the migrant crisis is to acknowledge the EU's potential legitimation as a solution-proposing entity.[138] In other words, positive policy outputs will work towards legitimising the EU because the EU is accepted as an effective actor in the European governance space. The opposite is also true — inadequate policy outputs will have detrimental effects on EU legitimacy. However, in addition to output legitimacy, legitimacy is also discussed in input-oriented terms,[139] with a focus on democratic participation by the people.

Vivien Schmidt establishes the relevance of a third normative criterion — *throughput* legitimacy — between input and output.[140] Throughput consists of governance processes and practices, judged according to their 'efficacy, accountability, transparency [and] inclusiveness'.[141] More specifically, throughput legitimacy is conceptualised as 'the policymaking processes through which decisions go from input to output within the "black box" of EU governance'.[142] It is process-oriented and based on the quality of the 'interaction[s] — institutional and constructive — of all actors engaged in [the] EU decision-making process'.[143] '[H]ow that interaction

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136 See, eg, Thomas Banchoff and Mitchell P Smith (eds), *Legitimacy and the European Union: The Contested Polity* (Routledge, 1999).

137 See Fritz Scharpf, *Governing in Europe: Effective and Democratic?* (Oxford University Press, 1999).

138 See Longo and Murray (n 17) 55–9.

139 Scharpf (n 137).

140 See Vivien Schmidt, 'Democracy and Legitimacy in the European Union Revisited: Input, Output and Throughput' (Working Paper No 21, Kolleg-Forschergruppe, November 2010) ('Kolleg-Forschergruppe Working Paper'); Vivien A Schmidt, 'Democracy and Legitimacy in the European Union Revisited: Input, Output *and* "Throughput"' (2013) 61(1) *Political Studies* 2 ('Democracy and Legitimacy in the European Union Revisited').

141 Schmidt, 'Democracy and Legitimacy in the European Union Revisited' (n 140) 8.

142 Schmidt, Kolleg-Forschergruppe Working Paper (n 140) 20.

143 Schmidt, 'Democracy and Legitimacy in the European Union Revisited' (n 140) 5.

proceeds contributes toward, or against, their "throughput" legitimacy.'[144]

Featuring constructive interaction between input and output legitimacy, Schmidt's conception of throughput legitimacy provides a compelling explanation of the centrality of EU governance processes to the EU's legitimacy. The institutional 'output may … produce feedback in the form of citizen input processes',[145] showing that throughput can be associated with output or input legitimacy. A challenge to the EU's *output* legitimacy based on ineffective policy performance can quickly switch into a criticism of the EU's undemocratic governance structures, its *input* legitimacy. Its output incapacity may also be linked to a procedural inability to harness participation with citizens, which suggests negative *throughput* legitimacy. Moreover, governance practices that are incompetent, corrupt or biased can throw into question not just throughput but also input and output legitimacy.

The asylum crisis provides an illustration of the intersecting normative criteria that elucidate a comprehensive legitimacy deficit. As the EU's asylum policy outcomes have attracted sustained criticism for their lack of effectiveness, the EU's *output* legitimacy in this field is dubious. Similarly, the absence of democratic participation in EU asylum decision-making invokes an *input* gap. By drawing attention to the absence of citizen participation in vital EU decisions, the crisis also casts doubt on the EU's *throughput* legitimacy.

This discussion barely touches on the vast literature concerning the diverse theories of legitimacy, mostly in the field of political science. However, law too is genuinely implicated in the legitimacy discourse in two ways: first, the subject of legitimacy is usually law or the legal order, that is, the acceptance or otherwise of legal instruments or the legal order; and second, legitimacy is usually assessed against criteria steeped in the semantics of law, *namely* legality, procedural correctness and justice. This intersection is tacitly acknowledged in Hurst's articulation of the essential nature of legitimacy in distant 1971:

> Questioning, distrust, and discontent with law and related institutions all have a common ground. These questions are raised out of a demand that organized power be legitimate. Legitimacy means simply the grounds on which at any given time most of the people accept, or are willing to use, the legal order as they find it. At bottom, if they truly accept the legal order, it is because they find it in some sense good for them. That is, the legitimacy of legal order is not an abstract concept; it is the simple idea that law should be good for, and justly serve, the people who live within it.[146]

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144 Ibid 6.

145 Schmidt, 'Kolleg-Forschergruppe Working Paper' (n 140) 9.

146 James Willard Hurst, 'Problems of Legitimacy in the Contemporary Legal Order' (1971) 24(2) *Oklahoma Law Review* 224, 224.

Elaborating the interdisciplinary, *including legal*, dimensions of legitimacy reveals many alternative patterns and principles of legitimacy, which find expression to varying degrees in Hurst's statement above. For Walker, '[a] polity enjoys legitimacy *qua* polity to the extent that its putative members treat it as a significant point of reference within their political identity'.[147] Accordingly, identification with the EU promotes its recognition as a fully legitimate polity, given the synergies between identity, authority and legitimacy. Therefore, closer identification with the polity will positively influence perceptions of legitimacy and vice versa. It is the EU's status as a legitimate actor in EU and global governance, as a producer of public goods, which facilitates identification with the EU and confers power and status on the system. On this front, the often negative disposition of European publics to the EU suggests low identification with the polity and potentially negative perceptions of EU legitimacy. This account of legitimacy is intermediate between the legitimising sources of identity and output or performance. Ultimately, a legal analysis underscores the relationship between legitimacy and performance, procedural correctness, justice and legality.

While legitimacy is often seen to be conferred by democratic procedures and decision-making processes that meet some threshold requirement of reliability, efficiency, transparency and inclusiveness, it is also commonplace to view legitimacy as a function of legal authorisation. The EU legal order has certainly had a role in legitimising the EU's regulatory state in at least three ways: through an activist interpretation by the Court of Justice of the EU ('CJEU') of *direct effect* and *supremacy* of EU law over conflicting national law;[148] by the treaty assigned legal mechanism of *preliminary rulings* through which transnational law has been domesticated;[149] and through one of the biggest assets of liberal democracies, the rule of law. The latter requires closer examination.

Contemporary understandings of the rule of law cannot be dissociated from democratic practices and the pursuit of fundamental human rights. This entails a

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147 Neil Walker, 'The White Paper in Constitutional Context' in Christian Joerges, Yves Mény and JHH Weiler (eds), *Mountain or Molehill: A Critical Appraisal of the Commission White Paper on Governance* (Working Paper No 6/01, Jean Monnet Centre for International and Regional Economic Law and Justice, January 2001) 33, 37 <https://www.eui.eu/Documents/RSCAS/Research/OnlineSymposia/Walker.pdf>.

148 Weiler notes that '[f]amously, once the constitutional revolution was effectuated through the introduction of direct effect, transnational legality harnessed individuals, pursuing their personal interests, as a powerful agent of compliance by member states with their treaty obligations': JHH Weiler, 'The Political and Legal Culture of European Integration: An Exploratory Essay' (2011) 9(3–4) *International Journal of Constitutional Law* 678, 687. '[T]he hermeneutic legitimacy of reaching supremacy' is that the CJEU becomes the ultimate arbiter of EU law: at 690. Accordingly, the Member States agree to abide by the higher authority of EU law in those policy areas assigned to EU institutions. As long as the actors in EU governance act according to their constitutionally assigned roles, the Member States' monopoly on political life, including the states' legitimacy resources, are loosened.

149 Ibid 691. Weiler points out that

the preliminary reference procedure is, overwhelmingly, a device for judicial review of member state compliance with their obligations under the treaties. It is ingenious for two reasons: First, it deploys individuals, vindicating their own rights, as the monitors and enforcers of Community obligations vis-à-vis the member states. … And second, it deploys national courts. The judgment is spoken through the mouths of member state courts. The habit of obedience associated with national law is, thus, attached to European law.

departure from positivist conceptions of the rule of law, which see no connection between the rule of law and justice or morality. Weiler makes the argument that 'formalist, positivist … models are no longer accepted as representing meaningful and normatively acceptable forms of the rule of law, if not respectful of two conditions: rootedness in a democratic process of lawmaking and respectful of fundamental human rights'.[150] The legitimacy of the EU legal order is therefore increasingly seen as depending not only upon the legality of the decisions it takes — an official must act within his or her sphere of legal authority according to well-defined and established laws — but also on its reliability in producing *just* outcomes. A legitimate legal order therefore guarantees an acceptable level of justice.

Beetz observes that '[e]conomic integration has … resulted in a legal-economic system that (re-)structures relationships between EU citizens'.[151] There are numerous possible interpretations of this relationship, and the legitimacy patterns that attend it, but technocrats would consider EU governance legitimate 'because it secures otherwise unattainable outputs for EU citizens'.[152] '[B]eneficial outputs … generate support for the EU's regulatory state'[153] or legal order and vice versa. The consolidation of perceptions by EU citizens that the EU lacks effectiveness will diminish the EU's international standing, as the EU's viability is contingent on the Member States continuing to endorse its authority and conferring legitimacy resources upon it. Thus, the legitimacy of the EU will, ultimately, either be confirmed or denied by European citizens.

It is further contended that normative power has a constructivist overlay as norms influence actors' behaviour. Social constructivism[154] can shed new light on EU legitimacy discourse. As noted by Christiansen, Jørgensen and Wiener 'the constructivist project … [directs] research at the origin and reconstruction of identities, the impact of rules and norms, the role of language and of political discourses'.[155] Describing the scope of norms, Katzenstein states that '[i]n some situations norms operate like rules that define the identity of an actor, thus having "constitutive effects" that specify what actions will cause relevant others to recognize a particular identity'.[156] These understandings acknowledge 'the

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150   Ibid 691; see in particular at 687, 691–4.

151   Jan Pieter Beetz, 'A Two-Tier Conception of European Union Peoplehood: A Realist Study of European Citizens' Bonds of Collectivity' (2017) 23(6) *European Law Journal* 467, 473.

152   Ibid 471.

153   Ibid.

154   Social constructivism explains the transformative effects that institutions have, through interaction, on the processes of preference and identity formation. According to this approach institutions are understood in the light of their capacity to socialise and constitute actors, predominantly through ideas, formal and informal norm-making and deliberative processes. See Christiansen, Jørgensen and Weiner (n 5).

155   Ibid 538.

156   Peter J Katzenstein, 'Introduction: Alternative Perspectives on National Security' in Peter J Katzenstein (ed), *The Culture of National Security: Norms and Identity in World Politics* (Columbia University Press, 1996) 1, 5.

constitutive role that norms, rules, [institutions], discourse, learning, deliberative processes and other social ontologies play in the formation of actors' identities and interests'.[157] Directed to the question of the EU's global actorness, social constructivism may enable theoretical examination of the transformative effects that European norms and practices have on the process of identity formation in the EU. In this way, the EU's normative outputs become defining characteristics. They constitute ontology over time, which either attracts or repels.

EU norms, policies and rhetoric are currently defining the EU in terms that distance it from the values it has come to be known by — peace, reconciliation, solidarity, equality and unity. The EU's inattention to the plight of its weaker or more exposed Member States in the Eurozone and migrant crises and of the multitude of asylum seekers and other migrants seeking its protection, is constituting an identity at odds both with its foundation as an antidote to nationalism and its vocation as a soft power. It is hardly surprising that the EU's soft power resources have not been built on the kind of outcomes generated from its management of the Eurozone crisis or the migration crisis. Instead, the ideas associated with the EU's crisis management are reformulating identities in ways that potentially impact EU legitimacy and the continuing viability of the EU as a major global actor.

VII CONCLUSION

The EU represents a great deal both in terms of its influence in global trade and for what it represents on the international stage through its unique institutional structures, diplomacy and governance norms. From the economic-institutional perspective the EU continues to inform the world trade agenda as a pioneering regional economic organisation.[158] In the areas of human rights protection, climate change abatement, international development and cultural diplomacy the EU is still second to none. Furthermore, the EU's soft power resources can potentially influence other jurisdictions in the pursuit of public goods such as good governance and democracy. To the extent that the EU wishes to diffuse its soft power, it will need to present a credible image of itself as a producer of public goods.

A reality check reveals that the EU is currently burdened with significant shortcomings, which detract from internal growth and development as well as global appeal. The Eurozone and migration crises remain unresolved. Verluise perceives a disturbing process of decline: 'There is no getting away from the fact that the European Union is a fading force in the international arena. Demographic,

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157 See Longo (n 19) 4.

158 See Gonzalo Villalta Puig, *Economic Relations between Australia and the European Union: Law and Policy* (Kluwer Law International, 2014).

economic and strategic indicators all point to a decline in profile.'[159]

Specific shortcomings include not only growth and job deficits but also widening deficits of solidarity and social justice. Loss of EU economic and normative power will result in a reduced capacity to achieve its domestic goals and a diminished power to shape international values. There is no more effective way for the EU to nullify the positive potential of the 'European perspective' in shaping ideas and values than by not living up to the values it espouses and the standards it sets for itself in terms of good governance, human rights protection and democratic participation.

The EU needs to make good on its governance promise for the sake of its own citizens, residents and others seeking its protection before it can hope to influence other countries in the direction of good governance. On many fronts, the EU appears to be falling short of potential. There are currently too many instances of corruption and maladministration within many of its Member States to invest the EU with moral leadership in this realm.[160] Moreover, its management of the Eurozone crisis has raised genuine questions about the viability of its economic governance model. Similarly, the EU must embed an equitable asylum system that protects the rights of the weakest and most vulnerable before it can claim moral leadership in the area of human rights protection.

The absence of a sense of collective responsibility — the defining element of solidarity[161] — in respect of both the Eurozone crisis and the migrant crisis suggests that the EU will continue to struggle to find a viable basis for burden sharing. This has implications for the future of European cooperation. Importantly, the EU's ability to influence behaviour and construct a new international reality based on international cooperation to solve problems of co-existence is dependent on the ability of the regime to perpetuate its values of unity and solidarity. Absent these values, the EU loses its 'normative basis',[162] its reason for being, with a corresponding loss of legitimacy and normative power. Thus, public contestation of the universal premise that the EU 'is an equal partnership between countries and … [their] citizens'[163] is incompatible with the idea of European union. A fragmented EU consisting of new power-holders — winners and losers of integration[164] — will be unable to maintain its soft power resources.

Sometimes a picture gains clarity from a distance. To this end, the definition

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159   Verluise (n 26) 8.

160   For instance, in the 2018 Corruption Perceptions Index, eight of the EU's Member States were ranked in the range 51–77 of 180 countries: 'Corruption Perceptions Index', *Transparency International* (Web Page, 2018) <https://www.transparency.org/en/cpi/2018/results>.

161   Cook (n 94) 508.

162   Manners (n 34) 242.

163   Statham and Trenz (n 61) 168.

164   Ibid 164, 168.

of the EU from an outsider's perspective as a harbinger of new modalities and ways of thinking may assist Europe's self-perception in concrete ways. It may assist in the reconfiguration and rearticulation of what the EU seeks to be. From this standpoint, the conferral of the Nobel Peace Prize on the EU in 2012 may be viewed as a salutary reminder that much of the EU's status and legitimacy are built on its foundation as a peace project. The EU's foundational values of reconciliation and solidarity must be recognised, nurtured and broadened if the EU is to re-engage with the narrative of the EU as an 'area of freedom, security and justice'.[165]

Prevailing conditions in the EU seem to preclude the restoration of foundational values or the adoption of innovative integrative solutions to the crisis of governance. These conditions include the current institutional arrangements of the EU that prioritise the interests of powerful states over weaker states; the absence of a social dimension to European integration; rising populism and the likelihood of citizen resistance to further integration founded on public perceptions of failed EU action in key policy areas; and the possibility of challenges to the legality of innovative integrative action, especially in the German Constitutional Court. Therefore, what solutions may be invoked when conditions do not favour change and many citizens are resistant to integrative solutions?

Preliminary to the restoration of this narrative is the invocation of a widespread debate on the causes of the current internal divisions and scepticism in the EU. Such debate, to which this article seeks to contribute, will confirm the EU's priorities, goals and aspirations, so central to EU constitutionalism. This goal may not be achievable in the short term, but debate would set in train the conditions for the transformation of interests and identities as postulated by social constructivist theory.

Constructive debate on the legitimacy of current governance arrangements coupled with a relevant program of civic education across all education sectors would encourage public participation and eventually assist to produce the conditions necessary for the reasoned examination of European integration from within. This objective reveals a distinct constitutional vocation. The constitutional process, unceremoniously abandoned in 2005, needs to be restored (as process) so that the imbalances, disadvantages and failings of European integration might again be openly and respectfully debated with a view to reaching agreement on how fundamental values and priorities, including integrative solutions, can be given legal effect in the 21st century. Restoring the constitutional process has the objective, not of adopting a formal constitution, but rather of involving European publics in debates about the EU's constitutional identity, its positive role in domestic and international politics, as well as considerations of what

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165 As pledged by the *Amsterdam Treaty* on the establishment of the EU's common asylum and refugee policy: *Amsterdam Treaty* (n 79) art 1.

constitutes legitimate EU action at the domestic and international levels. This process would afford greater insights into the substance of the EU's current constitutional arrangements with the aim of achieving more nuanced and sensitive understandings of the benefits and limitations of EU action, while also involving citizens in a broad consultative process. It is that part of the abandoned constitutional process — the desire to take the EU beyond an elite project — that remains instrumental. With public involvement comes commitment, ownership and the possibility of wider acceptance of authority, fundamental to the EU's legitimacy.[166] Choices may be least contested when they are 'anchored in the legitimation that comes from popular ownership'.[167]

Drawing on Jacques Derrida's construction of the process of *iteration*, through which each repetition of a concept is a form of variation that transforms meaning, adding to it and enriching it in subtle ways rather than simply reproducing the original usage,[168] we can contribute to the rearticulation of the EU's goals by the process of iteration. It is contended that a focus on the EU's emblematic image as a creative, transnational, soft power founded on principles of pluralism, solidarity, equality, non-discrimination, adherence to the rule of law and respect for human rights may assist the EU to regain its magnetism, to reappraise its aspirations and its potential to positively influence global development through innovative ideas as much as good practice and example. There is evidence that the EU is currently perceived as a soft power when it comes to promoting global peace, reconciliation and liberal norms.[169] There is, therefore, no reason to believe that the ideas and values that gave birth to the EU have run their course and now need to be replaced with a brand new 21st century narrative. More than ever, these ideas — redolent of soft power — provide a key to the EU's ability to assert both its normative power and its legitimacy.

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166 Clearly associated with input legitimacy (participation by the people), such consultation is implicated in constructivist analyses of EU legitimacy in all its permutations through interaction between the three normative criteria — *input*, *throughput* and *output*. Participation by the people creates an expectation of continuing consultation with the people, which predisposes the EU's *throughput* governance processes to greater efficacy, accountability and openness, which in turn contributes to producing *output* effectiveness for the people. In this way, the three normative criteria are shown to intersect. See Schmidt, 'Democracy and Legitimacy in the European Union Revisited' (n 140).

167 Weiler (n 148) 693.

168 Jacques Derrida, 'Signature Event Context' in Peggy Kamuf (ed), *A Derrida Reader: Between the Blinds* (Columbia University Press, 1991) 80, 90–1, cited in Benhabib (n 85) 179.

169 Drawing on public opinion surveys completed in September 2015 across the EU's 10 strategic partners, Chaban and Holland conclude that the EU tends to be recognised as an international actor by the general public, 'typically in the area of culture … followed by economics and global peace and stability': Chaban and Holland (n 44) 21–2.