

# RULE OF LAW FOUNDATIONS AND EUROPEAN UNION CITIZENSHIP: THEORY AND PRACTICE, BETWEEN CULTURE AND POLITICS

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«Europe will not be made all at once,  
or according to a single plan.  
It will be built through concrete achievements  
which first create a de facto solidarity».  
*The Schuman Declaration* – 9 May 1950.<sup>1</sup>

Excellencies, Ladies and Gentlemen,

I'm very honoured to participate in this Conference, when Portugal holds the Presidency of the Council of the European Union, and is celebrating 35 years as a Member State of the European Union (whilst facing a crucial stage in the fight against the Covid-19 pandemic, and with a programme focused on the main areas of the EU: reinforcing Europe's resilience; promoting confidence in the European social model; promoting a sustainable recovery; accelerating a fair and inclusive digital transition; and reaffirming the EU's role in the world, based on its openness and multilateralism).

Bearing in mind its Rule of Law foundations, on the one hand, and European Union citizenship as specified and projected in the

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<sup>1</sup> *The Schuman Declaration* – 9 May 1950, available at <[https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration\\_en](https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en)>.

Lisbon Treaty, on the other, I propose a very brief reflection on the cultural and political meaning of Europe, and of the European Union within it. Which implies, both theoretically and practically, emphasizing such a meaning as a civilizational *acquis* and the inner meaning of law as a civilizational project; and, therefore, starting from the analysis of the word Europe as a *signifier*, and regarding the requirement of the recognition of an identifiable meaning of a European *ethos*, and the consequent cultural and political understandings of the *rule of law* in the context of the European Union, from the question of the primacy of supranational law over the national law to the specific autonomy of each Member State.

Such an approach involves regarding, globally, the contemporary pulverization of axiological *reference horizons*, meaning the ideas of *logos* and of *ethos* as foundations of nuclear cultural representations, and, specifically, reflection on the existence of a constitutive *ethos* of Europe, and, within this, on the special cultural and political significance of the European Union. Accordingly, a historically constituted intersubjective *ethos* – not just institutionally affirmed – progressively included within the framework of the European Union, and particularly in the light of the Lisbon Treaty –, but effectively representing the sharing of different *forms of life*, with a culturally-intersubjectively aggregating intention<sup>2</sup>.

The splintering of the axiological elements aggregating the *logos* that sustain the *praxis*, confirmed by the diagnoses of European crises, leads to an analysis of the signifier *Europe*, with the requirement to think about the (im)pertinence(s) of the recognition of the (in)existence of a multiply identifiable *signified*, carved out of a European *ethos*, and of the consequent (im)possibilities of intersubjectivity – between (in)tolerance and hospitality –, and, on such ground, of the (de)limitation of intersubjectivity, which law – and the relations between law and politics – must undertake. Rarefying the axiological referents aggregating the sustaining *logos* – or, at least, the ideal – or the imaginary – of a certain nuclear aggregating cultural representation –, the constitutive *ethos* of the signification Europe seems today to be

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<sup>2</sup> Also the title of the new book edited by Loïc AZOULAI, *European Union Law and Forms of Life: Madness or Malaise?*, Bloomsbury Academic, 2022 (forthcoming).

progressively fading, in *liquid time(s)*<sup>3</sup>... and the law, as a result, seems to be diluting itself, intentionally and institutionally – whether from a legislative or from a judicial point of view –, in *regulation*, at the service of a harmonization(-unification) and of a reciprocal confirmation of rights whose only link is of an economic-financial nature, veiled by an (inter)subjectively traced (dis)aggregation. In this *diagnosis of crisis*, (inter)subjectivity – also juridical – seems to allow itself to be dominated by finalist *pragmatisms*, under a (merely) discursive summoning of *values*, at the same time being blurred out by the *undefinition* of identity, and, above all, by the *fear of difference*, all of these presented as essential presuppositions of the *peace/security* binomial.

Far from the mythological image of Europe carried on the back of Zeus – *L'enlèvement d'Europe*<sup>4</sup>... – somehow, given the cultural reference it generated (which generated it...) and represents, we have been witnessing the rarefaction of the culturally axiological referents, in recurrent diagnoses of a European crisis, or crises<sup>5</sup>... Which constitute the motto for this reflection, from a juridical -philosophical point of view, on the (im)pertinence(s) of recognizing the meaning of the signifier Europa, and the consequent understanding(s) of juridical intersubjectivity.

The possibilities of a constitutively intersubjective *ethos* of Europe seem currently to be fading away – and this is not just an institutional *ethos*, of which Andrew Williams talks about, for example, in *The Ethos of Europe*<sup>6</sup>, but the effective sharing of *forms of life*, within a culturally-intersubjectively aggregating sense. And, within this, the cultural meaning of law also vanishes, intentionally and institutionally, both from the legislative and from the judicial point of view, progressively diluting into regulation, at the service of the harmonization (unification) and the reciprocal (con)formation of rights, veiled by a (inter)subjectively plotted (dis)aggregation. In these continuous and accelerated *metamorphoses*, as also stated by Ulrich Beck<sup>7</sup> – of increasingly

<sup>3</sup> Zygmunt BAUMAN, *Liquid Times. Living in an Age of Uncertainty*, Polity, 2006.

<sup>4</sup> Remember, e.g., *L'enlèvement d'Europe*, by Rembrandt (1632), by Jacob Jordaens (1643), by Noël-Nicolas Coypel, (1727), by Valentin Serov, (1910), and others.

<sup>5</sup> Eduardo LOURENÇO, *A Europa desencantada: para uma mitologia europeia*, Lisboa: Visão, 1994.

<sup>6</sup> Andrew WILLIAMS, *The Ethos of Europe: Values, Law and Justice in the EU*, Cambridge University Press, 2010.

<sup>7</sup> Ulrich BECK, *The Metamorphosis of the World. How Climate Change Is Transforming Our Concept of The World*, Polity, 2016.

problematic definition and sedimentation, in itself and in its material references of meaning, as foundation and value –, several axiological and political-ideological paradigms are daily at stake, and, so, the position of the self vis-à-vis the other becomes increasingly distant, in a devouring individualization<sup>8</sup>, in the absence of pondering and of dialogue, which may reflect the senses that, as historically mobilized reference horizons, in their self-transcendentality – whether of intention of justice or validity –, may critically guide the *praxis*. In a human condition of permanent confrontation with *difference*, with the *otherness* of the *other* – positively or negatively considered, depending on the ethical option assumed. Though, independently of all that, the otherness remains – in its equality and its difference –, appealing to a *friendship* that may attend the other in its specificity, as proposed by Jacques Derrida<sup>9</sup>. And, however, an otherness, which, in the words of Zygmunt Bauman, mirrors itself both positively and negatively – and thus bi-fronted (Janus-faced...)<sup>10</sup>. In a determination of post-modernity, within a gradation of being-aside/being-with/being-for, as inspired in Bauman by Emmanuel Levinas<sup>11</sup>. In the

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<sup>8</sup> «Dans les sociétés contemporaines, les individus agissent et se représentent comme libres de toute allégeance, mobiles, solitaires, s'éloignant sans cesse les uns des autres». – François OST/Michel van de KERCHOVE, *De la pyramide au réseau?: pour une théorie dialectique du droit*, Facultés Universitaires Saint-Louis: Bruxelles, 2002, 513.

<sup>9</sup> «C'est peut-être dans une région ainsi soustraite à la subjectivité métaphysique que résonne alors, pour Heidegger, «la voix de l'ami». Peut-être s'agit-il de ce que nous appelions plus haut la «communauté» minimale – mais aussi incommensurable à toute autre, parlant la même langue ou priant, ou pleurant pour la traduction dans l'horizon d'une seule langue, fût-ce pour y manifester un désaccord: amitié d'avant les amitiés. Il faudrait ajouter: d'«avant» l'inimitié». – Jacques DERRIDA, *Politiques de l'amitié*, Paris: Galilée, 1994, 273-274 (9. “En langue d'homme, la fraternité...”, 253-300). Vide IDEM, 339 (10. “Pour la première fois dans l'histoire de l'humanité”, 301-340).

<sup>10</sup> See Zygmunt BAUMAN, *Life in Fragments. Essays in Postmodern Morality*, Oxford: Cambridge –Massachusetts: Blackwell, 1995, 126-138 (5. “The Stranger Revisited – and Revisiting”), mostly 135-137 (“The Stranger ante portas”), and 137-138 (“The Stranger, Janus-faced”).

<sup>11</sup> See Zygmunt BAUMAN, *Life in Fragments*, 44-71 (“2. Forms of Togetherness”), especially p. 49 ff., referring to Emmanuel Levinas. See also Ana Margarida GAUDÊNCIO, *O intervalo da tolerância nas fronteiras da juridicidade: fundamentos e condições de possibilidade da projecção jurídica de uma (re)construção normativamente substancial da exigência de tolerância*: Coimbra, Instituto Jurídico da Faculdade de Direito da Universidade de Coimbra, 2019, Part II, 3.2.1.

European geographical-cultural context – Europe is far from being reduced to the geographical area within which it is physically located – the question has arisen with special acuteness: setting Europe before the *Other* seems an inevitable exercise, thus setting Europe before itself. An exercise carried out, between utopia, dystopia and *retrotopia*, as sought, in recent times, in several allegories around Thomas More’s – such as by Zygmunt Bauman and Philip Alott<sup>12</sup>.

Indeed, the progressive *atomization* of social relations and of their *subjects*, and, therefore, of *intersubjectivity*, illustrate multiple scenarios of at least apparent (and paradoxical...) *deconstructions* of *subjectivity*... As if, in a *critical* reflexivity-retrospectivity, with *individuality* overcoming *personality*, the whole cultural construction, as the generator of *intersubjectivity*, in general, and *juridical intersubjectivity*, in particular, could only be seen as a reflex of the *macroscopically* critical convictions splintering... And as if, in a (compensatory...) counterpoint, (*postmodern*) densifying *communitarian* aggregations are *voluntarily* (re)raised (still *individualistically*...), in *microscopically* substantiated *forms of life*. And the axiological bounds of intersubjective action wavering, then, between supposedly referential hegemonic conservatism(s) and supposedly identity-based vanguardism(s). In the still continuously growing *globalization* movements, generating a *homo communicans*<sup>13</sup> in a *Telepolis*<sup>14</sup>, it is the cultural significance of Europe that is at stake. As we can see, for instance, in the reflections on the *Idea of Europe*, as proposed by George Steiner<sup>15</sup>, but also by many other Authors – just for instance, and though differently, in *cosmopolitan approaches*, by Jürgen

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<sup>12</sup> See Zygmunt BAUMAN, *Retrotopia*, Polity, 2017; Philip ALLOTT, *Eunomia: New Order for a New World*, Oxford: Oxford University Press, 1990; PHILIP ALLOTT, *Eutopia: New Philosophy and New Law for a Troubled World*, Cheltenham, Northampton: Elgar, 2016, *Foreword*, vii ff.

<sup>13</sup> See, in this sense, João Maria ANDRÉ, “Pluralidade de crenças e diferença de culturas: o ecumenismo do século xv e a educação intercultural na actualidade”, in IDEM, *Diálogo intercultural, utopia e mestiçagens em tempos de globalização*, Coimbra: Ariadne, 2005, 13-64, 53-54; and IDEM, “As utopias do Renascimento e o renascer das utopias”, in IDEM, *Diálogo intercultural, utopia e mestiçagens em tempos de globalização*, 65-100, 93.

<sup>14</sup> João Maria ANDRÉ, “As utopias do Renascimento e o renascer das utopias”, 94, quoting Javier ECHEVERRIA, *Telópolis*, Barcelona: Destino, 1994, 19.

<sup>15</sup> George STEINER, *The Idea of Europe*, Nexus Institute, 2004.

Habermas<sup>16</sup>, and in Ulrich Beck, and Edgar Grande<sup>17</sup>. Europe, as also Joseph Ratzinger said, is, above all, a cultural and historical concept<sup>18</sup>. In the globalization movement, the meaning of European is discussed, from the free movement of Europeans of the most diverse origins and cultures across the continent to the multiplicity resulting from the immigration of extra-Europeans<sup>19</sup>: Europe, therefore, in its historical-cultural balance, as Beck and Grande state, in a *culture of divided ambivalence* (“Kultur der geteilten Ambivalenz”), which a *reflexive constitutionalism* could foster<sup>20</sup>. With two different models of *cosmopolitanization*: one based on the principle of cosmopolitan integration and the other on the principle of differentiated integration<sup>21</sup>. Which,

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<sup>16</sup> See the crucial reflection proposed by Habermas, in Jürgen HABERMAS, *Der gespaltene Westen: kleine politische Schriften*, Frankfurt am Main: Suhrkamp, 2004, mostly 52-58 (4. “Gegenmacht Kerneuropa? Nachfragen”), and *ibidem*, 68-82 (6. “Ist die Herausbildung einer europäischen Identität nötig, und ist sie möglich?”): «Eine politische Identität der Bürger, ohne die Europa keine Handlungsfähigkeiten gewinnen kann, bildet sich nur in einem transnationalen öffentlichen Raum. Diese Bewusstseinsbildung entzieht sich dem elitären Zugriff von oben und lässt sich nicht wie der Verkehr von Waren und Kapital im gemeinsamen Wirtschafts- und Währungsraum durch administrative Entscheidungen »herstellen«. – *Ibidem*, 82. See also Seyla BENHABIB, “Who are ‘We’? Dilemmas of Citizenship in Contemporary Europe”, in IDEM, *The Claims of Culture: Equality and Diversity in the Global Era*, Princeton: Princeton University Press, 2002, 147-177.

<sup>17</sup> Ulrich BECK/Edgar GRANDE, *Das kosmopolitische Europa. Gesellschaft und Politik in der Zweiten Moderne*, Frankfurt am Main: Suhrkamp, 2004; and Ulrich BECK, *Der kosmopolitische Blick oder: Krieg ist Frieden*, Frankfurt am Main: Suhrkamp, 2004.

<sup>18</sup> Joseph RATZINGER, *Europa. I suoi fondamenti oggi e domani*, Milano: San Paolo, 2004.

<sup>19</sup> See Michael WALZER, *On Toleration*, New Haven, London: Yale University Press, 1997, 48-51 (3. «*Complicated Cases*», p. 37-51). See also, considering the implications of the diverse European cultural roots in the secularity of the State, Silvio FERRARI, “The New Wine and the Old Cask. Tolerance, Religion and the Law in Contemporary Europe”, *Ratio Juris*, 10/1, March 1997, 75-89; and, specifically on the cooperative model and the separatist model concerning relations between Churches and State, recognizing the nature of the cultural diversity underlying the term “European”, Iván C. IBÁN, “Religious Tolerance and Freedom in Continental Europe”, *Ratio Juris*, 10/1, March 1997, 90-107, specially p. 93 ff.: «There is no such thing as a pure European; Europe’s greatness lies, in effect, in its assimilation of different cultures». – *Ibidem*, 98.

<sup>20</sup> Ulrich BECK / Edgar GRANDE, *Das kosmopolitische Europa*, 338-344, 392-393. See also Ulrich BECK, *Der kosmopolitische Blick*, 10 (Einleitung: «*Warum des kosmopolitische Blick »kosmopolitisch« ist*», 7-25).

<sup>21</sup> See Ulrich BECK / Edgar GRANDE, *Das kosmopolitische Europa*, 360-371; Ulrich BECK, *Was ist Globalisierung? Irrtümer des Globalismus – Antworten auf Globali-*

without definitively solving it, could relieve some of the dilemmas of cosmopolitan Europe: universality, integration, insecurity, borders, foreigners<sup>22</sup>... Thus, aiming to overcome the dichotomy between conflicts over inequality and conflicts over the *recognition of difference*<sup>23</sup>. Distinguishing globalization from cosmopolitanization, Beck pragmatically assumes the need for a *cosmopolitan realism*<sup>24</sup>. This cosmopolitan perspective is not intended to be reduced to the establishment of universal brotherhood ties between peoples, or to the emergence of a world republic<sup>25</sup>, or to a floating global perspective, or to a supplement that will relocate nationalism and provincialism. It means rather that, in a world of global crises and dangers caused by civilization, traditional differences lose their validity, stating, in such a view, a new *cosmopolitan realism* («(...) es bedarf eines neuen, kosmopolitischen Realismus (...)») necessary for survival<sup>26</sup>. And, thus, a Europe which is not reduced to its cultural and religious roots, and which, beyond Kantian perpetual peace, within those roots, is open to diversity – in an internal *cosmopolitanization of Europe* (“eine innere Kosmopolitisierung Europas”)<sup>27</sup>.

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*sierung*, Frankfurt am Main: Suhrkamp, 1997, 2007, mostly VII. Europa als Antwort auf Globalisierung”, 259-265. «(...) um eine *exklusives* Europa, also um den Bau der Festung Europa? Oder (...) um ein *inklusives* Europa, das sich als politischer Dompfeiler wirtschaftlicher Globalisierung begreift, diese aktiv politisch gestaltet. (...) *Ohne Europa gibt es keine Antwort auf Globalisierung*». – *Ibidem*, 261.

<sup>22</sup> Ulrich BECK / Edgar GRANDE, *Das kosmopolitische Europa*, 385-391.

<sup>23</sup> Ulrich BECK / Edgar GRANDE, *Das kosmopolitische Europa*, 280-284; Ulrich BECK, *Der kosmopolitische Blick*, 10 ff.

<sup>24</sup> «Globalismus vertritt die Idee des Weltmarkts (...).

*Kosmopolitisierung* muß demgegenüber als *multidimensionaler* Prozeß entschlüsselt werden (...). – Ulrich BECK, *Der kosmopolitische Blick*, 18.

<sup>25</sup> Differently, in the sense of establishing a global justice, protected, in a subsidiary way, by a *world federal republic* (*Subsidiäre und föderale Weltrepublik*), see Otfried HÖFFE, *Demokratie im Zeitalter der Globalisierung*, München: C. H. BECK, 1999, mostly Zweiter Teil – “Subsidiäre und föderale Weltrepublik”, and specially p. 422-426 (16.1 “Eine komplexe Weltordnung”).

<sup>26</sup> «Kosmopolitischer Blick meint: In einer Welt globaler Krisen und zivilisatorisch erzeugter Gefahren verlieren die alten Unterscheidungen von innen und außen, national und international, Wir und die Anderen ihre Verbindlichkeit, und es bedarf eines neuen, kosmopolitischen Realismus, um zu überleben». – Ulrich BECK, *Der kosmopolitische Blick*, 25.

<sup>27</sup> Ulrich BECK, *Der kosmopolitische Blick*, 249, and 262-266 (Zweiter Teil: *Konkretisierungen, Ausblicke*, VI. “Kosmopolitisches Europa: Realität und Utopie”, 245-266).

A *new figure* of Europe, which Derrida himself also drew – as a deconstruction, which, paradoxically maintains the *idea of Europe*, started with the Enlightenment –, in the aftermath of the analysis of the attacks of September 11, and of the occurrence of terrorism in general<sup>28</sup>. Waiting for a *democracy to come*<sup>29</sup>, based on the *absolute otherness* – as an immeasurable friendship, or even *of* the immeasurable, on *fraternity*<sup>30</sup>, with no exclusions, and always in *hyperbolization*<sup>31</sup>.

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<sup>28</sup> Jacques Derrida, in Giovanna BORRADORI, “Autoimmunity: ‘Real and Symbolic Suicides’”, in GIOVANNA BORRADORI, *Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida*, Chicago: University of Chicago Press, 2003, 85-136, 116-118: «I would like to hope that there will be, in “Europe” or in a certain modern tradition of Europe, at the cost of a deconstruction that is still finding its way, the possibility of another discourse and another politics, a way out of this double theologico-political program. “September 11” – whatever is ultimately put under this title – will thus have been at once a sign and a price to pay, a very high price, to be sure, without any possible redemption or salvation for the victims, but an important stage in the process». – *Ibidem*, 118.

<sup>29</sup> «“Democracy to come” does not mean a future democracy that will one day be “present”. Democracy will never exist in the present; is it not presentable, and it is not a regulative idea in the Kantian sense. But *there is the impossible*, whose promise democracy inscribes – a promise that risks and must always risk being perverted into a threat». – “Autoimmunity: ‘Real and Symbolic Suicides’”, 120. On the *democracy to come*, see Jacques DERRIDA, *Politiques de l’amitié*, 126-127 (specially 4. “L’ami revenant (au nom de la ‘démocratie’)”, 93-129; 10. «Pour la première fois dans l’histoire de l’humanité», 301-340) : «Car la démocratie reste à venir, c’est là son essence en tant qu’elle reste: non seulement elle restera indéfiniment perfectible, donc toujours insuffisante et future mais, appartenant au temps de la promesse, elle restera toujours, en chacun de ses temps futurs, à venir: même quand il y a la démocratie, celle-ci n’existe jamais, elle n’est jamais présente, elle reste le thème d’un concept non présentable». – *Ibidem*, 339.

<sup>30</sup> «*Il s’agirait donc de penser une altérité sans différence hiérarchique à la racine de la démocratie*. (...) cette démocratie libérerait une certaine interprétation de l’égalité en la soustrayant au schème phallogocentrique de la *fraternité*». – Jacques DERRIDA, *Politiques de l’amitié*, 259 (9. «En langue d’homme, la fraternité...», 253-300). «Une démocratie à venir devrait donner à penser une égalité qui ne soit pas incompatible avec une certaine dissymétrie, avec l’hétérogénéité ou la singularité absolue, les exigeant même et y engageant depuis un lieu qui reste invisible mais qui m’oriente ici, de loin, sans doute au-delà du propos heideggerien». – *Ibidem*, 372 (“L’oreille de Heidegger. Philopolémologie (Geschlecht IV)”), 341-419 (2. “L’avoir, l’être et l’autre: Tendre l’oreille, accorder ce qu’on n’a pas”, 367-390).

<sup>31</sup> Jacques DERRIDA, *Politiques de l’amitié*, 264-265. «La fraternisation est toujours prise, comme l’amitié même, dans un processus vertigineux d’hyperbolisation». – *Ibidem*, 267. «(...) ce que nous relevons ici de la fraternité, comme schème dominant de l’amitié, transporte en celle-ci, comme dans toutes les valeurs sémantiques associées, sa déroutante hyperbole». – *Ibidem*, 268.



And also a *new figure of the world*, in a crucial transition in law and juridical institutions<sup>32</sup>. As a context of globalization-*mondialisation* in which *difference* proliferates at all levels of subjectivity, repositioning the problem of the tension between tolerance and intolerance<sup>33</sup>. And a *democracy to come*, beyond the limits of cosmopolitanism, oriented towards a *life together*, in which citizenship is not merely formal, but substantially constructed<sup>34</sup>, and in which human rights – as historical, non-natural rights – may become effective<sup>35</sup>; despite specifying cosmopolitanism and world citizenship, for Derrida, the *commitment to justice* may not be fully fulfilled within the limits of law and of cosmopolitanism<sup>36</sup>.

The fast horizontal levelling promoted by so-called *globalization* has provoked the most disparate reactions, in all directions, from the most radical optimism within the creation of a market on a global

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<sup>32</sup> «I do not wish to grant too great a privilege to the juridical sphere, to international law and its institutions, even if I believe more than ever in their importance». – Jacques Derrida, in Giovanna BORRADORI, “Autoimmunity: ‘Real and Symbolic Suicides’”, 119.

<sup>33</sup> «BORRADORI: What is the relationship between globalization – or what you call *mondialisation* – and tolerance?

DERRIDA: If the term and theme of tolerance have come back of late, it is perhaps to accompany what is called in a rather simplistic and confused fashion the “return of the religious”. (...) In tolerance, then: how old is that concept? Can one still ask the question, “What is tolerance?” as Voltaire did in the first sentence of his article on the subject in the *Philosophical Dictionary*? How would this article be written today? Who would write it, with and without Voltaire?». – Giovanna BORRADORI, “Autoimmunity: ‘Real and Symbolic Suicides’”, 124-125, referring VOLTAIRE, “Tolerance”, in *The Philosophical Dictionary*, E. R. Dumont, 1991, 10: 100-112.

<sup>34</sup> Jacques Derrida, in Giovanna BORRADORI, “Autoimmunity: ‘Real and Symbolic Suicides’”, 130-131.

<sup>35</sup> «We must (*il faut*) more than ever stand on the side of human rights. *We need (il faut) human rights*. We are in need of them and they are in need, for there is always a lack, a shortfall, a falling short, an insufficiency; human rights are never sufficient. Which alone suffices to remind us that they are not natural. They have a history (...).» – Jacques Derrida, in Giovanna BORRADORI, “Autoimmunity: ‘Real and Symbolic Suicides’”, 132.

<sup>36</sup> *Vide* Giovanna BORRADORI, “Deconstructing Terrorism”, in Giovanna BORRADORI, *Philosophy in a Time of Terror*, 137-172, 163. On the notion of law in Derrida, and the discussion between law and justice, mostly the consequences of the Modern identification of *law as legality*, see José Manuel AROSO LINHARES, “Dekonstruktion als philosophische (gegenphilosophische) Reflexion über das Recht. Betrachtungen zu Derrida”, *Archiv für Rechts- und Sozialphilosophie* 93/1 (2007) 39-66.

scale to the fear of cultural uprooting and insecurity<sup>37</sup>, from the possibility of democratization of a growing number of countries to the increasing of material inequality, and of conflicts, and even of terrorism. Which, as analysed by Derrida and Habermas, taking different plans and options, though converging in some criticisms and results – such as inequality and the link between globalization and the Enlightenment –, will undertake different assumptions, as Derrida understands globalization either as a *factor* of modernization and as its *result* – in an *autoimmune crisis* –, or as a *rhetorical illusion of modernization*, and Habermas states that *reason* – a *transparent non-manipulative communicative act* – is a response to the challenges of modernization, and of a culturally peaceful *globalization* – economically inevitable –, demanding a self-reflection of the West on itself<sup>38</sup>. Which, materialized in the so-called “September 11”, imported unprecedented cultural, social and political consequences, in a cosmopolitanism of increasingly different and more diffused contours, and, therefore, in some moments and readings, the restatement of a cosmopolitanism, in some sense also inspired by Kant<sup>39</sup> – in Habermas’s reading, at a *supranational level*, in view of the manifest insufficiency of the Nation-State in the face of the pluralism implied in globalization, and of the concomitant risks<sup>40</sup>. The

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<sup>37</sup> See José Manuel AROSO LINHARES, “Jus Cosmopoliticum e Civilização de Direito: as ‘alternativas’ da tolerância procedimental e da hospitalidade ética”, *Boletim da Faculdade de Direito* 83 (2006) 135-180, 153-156.

<sup>38</sup> Giovanna BORRADORI, *Philosophy in a Time of Terror*, 20 (“Introduction. Terrorism and the Legacy of the Enlightenment”, 1-22).

<sup>39</sup> «Perhaps at a later point important developments will be traced back to September 11. But for now we do not know which of the many scenarios depicted today will actually hold in the future. The clever, albeit fragile, coalition against terrorism brought together by the U. S. government might, in the most favorable case, be able to advance the transition from classical international law to a cosmopolitan order». – Jürgen HABERMAS, in Giovanna BORRADORI, “Fundamentalism and Terror. A Dialogue with Jürgen Habermas”, in IDEM, *Philosophy in a Time of Terror*, 25-43, p. 27 (see also Jürgen HABERMAS, *Der gespaltene Westen*, 1. “Fundamentalismus und Terror”, 11-31).

<sup>40</sup> «Die Globalisierung des Verkehrs und der Kommunikation, der wirtschaftlichen Produktion und ihrer Finanzierung, des Technologie- und Waffentransfers, vor allem der ökologischen und der militärischen Risiken stellen uns vor Probleme, die innerhalb eines nationalstaatlichen Rahmens oder auf dem bisher üblichen Wege der Vereinbarung zwischen souveränen Staaten nicht mehr gelöst werden können. Wenn nicht alles täuscht, wird die Aushöhlung der nationalstaatlichen Souveränität fortschreiten und einen Auf- und Ausbau politischer Handlungsfähigkeiten auf su-

(factual) inevitability of the growing pluralism process of coexistence, and of conviviality, within an also growing number of different *forms of life*, would refer, in this sense, to a *constitutional patriotism* (“Verfassungspatriotismus”), as an alternative to the declining *nationalism*<sup>41</sup>. And which, as an expression of a *post-national constellation*, inspires the *idea of Europe* as an *unfinished adventure*, as also in the words of Bauman<sup>42</sup>. Moreover, as Williams assumes<sup>43</sup>, affirming a European *ethos* requires the identification of *the* corresponding cultural meaning, on the one hand, and of *the* political meaning, on the other, both intentionally and institutionally. And, concomitantly, projecting both into their corresponding juridical meaning and relevance... Which allows us also to recall the decisive reflection proposed by Habermas, in *The*

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pranationaler Ebene nötig machen, den wir in seinen Anfängen schon beobachten». – Jürgen HABERMAS, “Der europäische Nationalstaat – Zu Vergangenheit und Zukunft von Souveränität und Staatsbürgerschaft”, in IDEM, *Die Einbeziehung des Anderen. Studien zur politischen Theorie*, Frankfurt am Main: Suhrkamp, 1996, 128-153, p. 129-130. See also IDEM, “The European Nation State – its Achievements and its Limitations”, *Ratio Juris* 9/2 (June 1996) 125-137, specially p. 133-137.

<sup>41</sup> «Die politische Kultur eines Landes kristallisiert sich um die geltende Verfassung. Jede nationale Kultur bildet im Lichte der eigenen Geschichte für dieselben, auch in anderen republikanischen Verfassungen verkörperten Prinzipien – wie Volkssouveränität und Menschenrechte – eine jeweils andere Lesart aus. Auf der Grundlage dieser Interpretationen kann ein »Verfassungspatriotismus« an die Stelle des ursprünglichen Nationalismus treten. Ein solcher Verfassungspatriotismus erscheint manchen Beobachtern für den Zusammenhalt komplexer Gesellschaften als ein zu schwaches Band». – Jürgen HABERMAS, “Der europäische Nationalstaat”, 143. On the cosmopolitan order proposed by Kant, see Immanuel KANT, in the *determination of the cosmopolitan law (Das Weltbürgerrecht)*: «(...) Dieses Recht, so fern es auf die mögliche Vereinigung aller Völker, in Absicht auf gewisse allgemeine Gesetze ihres möglichen Verkehrs, geht, kann das weltbürgerliche (ius cosmopoliticum) genannt werden». – Immanuel KANT, *Die Metaphysik der Sitten*, Königsberg: Friedrich Nicolovius, 1797-1798, in Wilhelm WEISCHEDL, Hrsg., *Immanuel Kant. Werkausgabe*, Band VIII, Frankfurt am Main: Suhrkamp, 1977, Erster Teil. “Metaphysische Anfangsgründe der Rechtslehre”, II. Teil, “Das öffentliche Recht”, 3. Abschnitt. “Das Weltbürgerrecht”, §62, A 229, B 259, 475-477, 476. *Vide* también Immanuel KANT, *Zum ewigen Frieden. Ein philosophischer Entwurf*, Königsberg: Johann Friedrich Nicolovius, 1795, in Wilhelm WEISCHEDL, Hrsg., *Immanuel Kant. Werkausgabe*, Band XI, Frankfurt am Main: Suhrkamp, 1977, 191-251. See also José Manuel Aroso LINHARES, “Jus Cosmopoliticum e Civilização de Direito”, specially 135-151.

<sup>42</sup> See, referring Habermas, Zygmunt BAUMAN, *Europe: An Unfinished Adventure*, Cambridge: Polity, 2004, mostly 124-142.

<sup>43</sup> Andrew WILLIAMS, *The Ethos of Europe: Values, Law and Justice in the EU*: Cambridge University Press, 2010, 70 ff..

*Crisis of the European Union: A Response (Zur Verfassung Europas. Ein Essay)*), in which, considering the successive integrative steps undertaken – culminating in the Lisbon Treaty –, the Author highlights a tension between the *system* established by the European Union vis-à-vis the *lifeworld* Europe constitutes<sup>44</sup>. Considering the intentionally material densification of juridicity within such divergences, it is crucial to reflect on the conditions of possibility of the axiologically material foundations of the institutionally binding juridical regulations, in view of the functionalization of law derived from the increasing imposition of externally presented goals, on the one hand; and, on the other hand, in view of the assimilation of the growing divergent affirmations of *identity* and *difference*, or, in other words, of the currently noticeable splintering of identities, eventually in *communities of communities*.

The continuous changes in *paradigms* which we have seen since the beginning of the 21<sup>st</sup>. century – considering the meaning of *paradigm* proposed by Thomas Kuhn<sup>45</sup> –, now not only in a strictly scientific sense, but rather in socio-economic, technological and geo-strategic senses, and, within these, also in political, sociological, philosophical, cultural and political, and, still, juridical ones – reveal a *new world*, not more the one that the 20<sup>th</sup> century knew. And, within it, theoretically, and practically, the juridical and political new institutionalizations of the Rule of Law play a crucial role, as the frameworks for immediate solutions to the urgency of *praxis*, in order to give it the ground for valuation and guidance criteria, and, consequently, considering the corresponding intersubjectivity approaches that European Union citizenship combines, in its democratic construction, from the cultural, political and juridical points of view. And also reflecting on the decisive impact of the effective realization of the Rule of Law principles in the lives of European Union and of their citizens in the different Member States. Which means, consequently, the improvement of the individual and of the collective representations of the intention and content of European Union citizenship. Take article 20 of the Lisbon

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<sup>44</sup> Jürgen HABERMAS, *The Crisis of the European Union: A Response (Zur Verfassung Europas. Ein Essay)*, Suhrkamp: Berlin, 2011), trad. Ciaran Cronin, Polity, 2012.

<sup>45</sup> See Thomas S. KUHN, *The Structure of Scientific Revolutions*, Chicago: The University of Chicago Press (1962), 1970, specially 10-51 and 208-210.

Treaty<sup>46</sup>: «1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship». Concerning the meaning of such a form of citizenship, as the effective reciprocal recognition of each citizen by the community and in the community, concentrating the reflection on the binding propositions of the Treaty, in article 2, a crucial assumption of the normative principles of European Union citizenship is at stake: «The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail». And, referring to article 6, following the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In the European civilizational *matrix* – from pre-Modern times, and first of all, from Roman Law, and, then, Modern, and, still, in late-/post-Modern times –, juridical intersubjectivity expresses the relationships in which rights are correspondingly affirmed towards duties – and, therefore, within a specific *comparability* and *reciprocity* –, dialectically assimilated, between autonomy and responsibility, and presupposing a foundational structure, constituted by normative principles, due to the corresponding accent of the *tertiality* of law towards juridical subjects and juridical reality – within such a continuous historical *construction* and *densification*, allowing for the proposition of an *axiologically normative foundation* of a *materially autonomous meaning of law*<sup>47</sup>. In this assumption, the understanding of the intention and

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<sup>46</sup> *Consolidated Version of The Treaty on European Union*, Official Journal of the European Union, 26.10.2012, available at <[https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/doc\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/doc_1&format=PDF)>.

<sup>47</sup> See António Castanheira NEVES, “Uma reconstituição do sentido do direito – na sua autonomia, nos seus limites, nas suas alternativas”, *Revista da Faculdade de Direito da Universidade Lusófona do Porto* 1/1 (2012) available at <<http://revistas.ulusofona.pt/index.php/rfdulp/issue/current/showToc>, 20-21>; and also IDEM, “O direito interrogado pelo tempo presente na perspectiva do futuro”, in António Avelãs NUNES / Jacinto de Miranda COUTINHO, coord., *O Direito e o Futuro. O Futuro do Direito*, Coimbra: Almedina, 2008, 9-82, p. 42-51 (also in *Boletim da Faculdade de*

content of the binding values set out in article 2 of the Treaty, in their substantive meanings, requires a dialectically continuous constitution within the corresponding meaning of law, re-densifying and renewing their substantial and regulative bindingness. Playing a reflexive and practical role, as a cultural project<sup>48</sup>, Law, as a substantially established, and targeted, plural support, and as a binding normative dimension of social practice<sup>49</sup>, establishes a crucial normative order in social construction, both for laying on – asserting, at the same time as discussing – axiological foundations – therefore, providing an autonomous normative contribution –, and for structuring political projects. And, therefore, Law constitutes the keystone of the development and of the reinforcement of the substantially and institutionally characterized Rule of Law, as the specifically essential framework for the European Union<sup>50</sup>.

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*Direito* 83 [2007] 1-73); Ana Margarida GAUDÊNCIO “From Centrifugal Teleology to Centripetal Axiology(?): (In)adequacy of the Movement of Law to the Velocity of Praxis”, *Boletim da Faculdade de Direito* 88/2 (2012) 91-103.

<sup>48</sup> José Manuel Aroso LINHARES, “Law’s Cultural Project and the Claim to Universality or the Equivocalities of a *Familiar* Debate”, *International Journal for the Semiotics of Law* 25 (2012) 489-503.

<sup>49</sup> António Castanheira NEVES, “O problema da universalidade do direito – ou o direito hoje, na diferença e no encontro humano-dialogante das culturas”, in IDEM, *Digesta – Escritos acerca do Direito, do pensamento jurídico, da sua metodologia e outros*, III, Coimbra: Coimbra Editora, 2008, 101-128, 127-128; IDEM, “Pensar o direito num tempo de perplexidade”, in Augusto Silva DIAS *et al.*, org., *Liber Amicorum de José de Sousa e Brito, em comemoração do 70.º Aniversário*, Coimbra: Almedina, 2009, 3-28, 25-28.

<sup>50</sup> Theodore KONSTADINIDES, *The Rule of Law in the European Union. The International Dimension*, Oxford / Portland: Hart, 2017.