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ARTICLE



The neutralisation of the political. Carl Schmitt and the depoliticisation of Europe

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ABSTRACT

Making use of Carl Schmitt's theoretical tool kit, in this article, we intend to offer an insight into the liberal depoliticisation presupposed and sustained by the process of European integration. We argue that the comprehension of the current deficit of legitimacy of the EU – materialised in a formal self-constitution (which dismisses completely the question of the European demos) and a technocratic governance whose liberal-authoritarian traits produces an essential insulation of the decision-making processes – must pass through an engagement with the epochal and ideological conditions upon which it has been thought; that is the necessity to find a solution to the endless European civil war, on the ground of widespread liberal forms of depoliticisation. In the exaltation of the law as a supreme/exclusive means of an indefinite process of integration, the political soul of integration has become lost, caged in formalist procedures deliberately intended to depoliticize the decision-making process. Leaning on Schmitt's concept of 'neutralisation' and 'depoliticisation' is functional to the comprehension of how the process of European integration has used the law, a liberal ethos and market economy and as strategies to thwart the political.

KEYWORDS

European Union; Integration; Carl Schmitt; Depoliticisation; Political; European Court of Justice

1. Introduction

The last decade saw the consolidation of a new literary sub-genre that might be provisionally named: 'The European Union is in ruins: what is to be done?' Often with a good dose of passionate disillusion, a significant number of scholars tried to diagnose the current crisis of the European project, sketching at the same time recipes for the future.¹ While the rigour of such exuberant literature is out of doubt, in an age like the one we are living, in which the sequence of contingent decisive events is extremely accelerated, it would be wiser to leave predictions apart – unless one believes to have those divinatory abilities prerogative of some reputed economists. The *epoché* over the future, however, must not be seen as an invitation to intellectual passivity. Indeed, in the face of the existential crisis of the EU (Menendez 2013), putting into question the nature of such political project becomes an urgency; especially since the most disputed aspects of the European institutional machinery seem to be the direct outcomes of the operative principles that have sustained the process of integration.

Of course, we all know the story of European integration, and it is not our intention to repeat it. What remains somehow still liable to fruitful interrogations of such grand narrative is the political logic that is driving it. The philosopher Michael Marder, in this regard, asked one of those questions

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that we should never refrain from asking: ‘what is presupposed by the concept of the Union?’ Predictably, the answer he offers is not edifying: ‘nothing more than the concept of integration, assembly, the process of unification’ (Marder 2014, 98). The lack of a clear political orientation and shared meanings presupposed by the concept of the Union is, for Marder, a ‘symptom for the dearth of political life at its foundation’, outcome of a substantial ‘liberal depoliticisation’ (Ibid.). And the democratic deficiencies of the EU – materialised in a formal self-constitution (which dismisses completely the question of the European *demos*), and a technocratic governance whose liberal-authoritarian traits produces an essential insulation of the decision-making processes – are the logical outcome of such depoliticisation.

Making use of Carl Schmitt’s theoretical tool kit, in this article, we intend to offer an insight into the liberal depoliticisation presupposed and sustained by the process of European integration. Indeed, there is a concept that the *éminence grise* of twentieth century jurisprudence elaborated in the late Weimar period that represents a useful heuristic instrument for the comprehension of such tendency: neutralisation. For Schmitt, neutralisation is, primarily a specific performance of sovereign power and state’s form. By establishing the normal framework of the life of a community (Schmitt 2005), sovereign power guarantees peace through the neutralisation of conflicts and the creation of a communal space in which the plurality of social interests and values can find a non-disruptive accommodation. But neutralisation, according to Schmitt, is also a meta-historical pattern guiding the progression of European history. In the essay *The Age of Neutralizations and Depoliticizations* (2007), written in 1929, he sustains that the history of modern Europe is structured upon a sequence of stages characterised by different spiritual ‘central domains’ [*Zentralgebiete*] – theological, metaphysical, humanitarian-moral and economic, with a fifth ‘technical’ gradually emerging along with the economic – that worked as ‘governing conceptual paradigms’ (Minca and Rowan 2016, 104). These stages compose a process of increasing neutralization of conflicts. ‘Europeans’, Schmitt writes, ‘have wandered from a conflictual to a neutral domain, and always the newly won neutral domain has become immediately another arena of struggle’ (Schmitt 2007, 90). After the hopeless confessional wars of the sixteenth century, theology was replaced by metaphysical concerns, which subsequently left the stage to humanitarian-moral questions; the last shift saw the emergence of an epoch dominated by economy and technical thinking. Liberalism and liberal depoliticisation – in Schmitt’s historical hermeneutic – are the political embodiment befitting such epoch.

This series of shifts reveals a basic cyclical impulse that oriented European history: the search for a neutral metaphysical/ideological ground on which to establish pacified political relationships. The spirit of each epoch, Schmitt maintains, constitutes the cement sustaining the organisation of social, cultural and political life, and the ideological horizon against which decisions as to the form of political association are made. The modern state-form, for instance, emerged after the Thirty Years’ War with the explicit purpose of bringing to end an enduring series of conflicts (Schmitt 2006, 140–141). And the modern secular state served as a neutral frame capable of creating a space for politics alien to the theological controversies that have caused much pain among European people.

In what follows we will consider the process of European integration and the emergence of the EU’s institutional apparatus as a further step in what Schmitt has called the search for a neutral ground. In the wake of the spiritual and material destruction of the Second World War, when national zealotry and grandeur led the European peoples to the brink of self-annihilation, political elites took a pragmatic approach in shaping the future of Europe: consolidating peaceful relations, by connecting nations on the base of their common interests, using the national material-economic needs as channels for unity and as an instrument to neutralise conflicts. This was the kernel of the ‘Monnet method’: fostering the emergence of a European community, through economic cooperation.

The intention was to cover political divisions with a growing network of international agencies, inserted in a newly formed legal framework, through which the lives of European nations could gradually be integrated around a common market. Clearly, the functionalist (and neo-functionalist) method envisaged neutralisation and depoliticisation as its operating logic. Functionalists believed

in the possibility of defining certain technical non-political areas, sustained by a high level of consensus, upon which a successful and peaceful integration could be established (Caporaso 1972). The constitutional framework sustaining European institutions developed, therefore, in response to the establishment of a common market, lacking as a consequence of the foundational characteristic of modern constitutionalism; or as Turkuler Isiksel puts it, a *finalité politique* (Isiksel 2018). Built upon a constitution unique to a policy-orientated polity, the principal aim of which is the creation of a common market, the EU governance assumed quasi-authoritarian technocratic traits. Indeed, as the European constitutional frame has been shaped with the objective of creating a market, constitutionalism becomes substantially orientated towards achieving those objectives – not towards a socially balanced and inclusive political union.

With this article, we purport to offer a critical insight into the ideological presuppositions making up the peculiar architecture of that institutional assemblage called European Union. We are convinced that the comprehension of the current deficit of legitimacy of the EU and its multifaceted crisis must pass through an engagement with the epochal and ideological conditions upon which it has been thought, that is the necessity to find a solution to the endless European civil war (Traverso 2016), on the ground of a widespread liberal consensus and capitalism. Leaning on Schmitt's concept of 'neutralisation' is functional to this purpose. Indeed, as John McCormick argues, the legal and political framework of the EU could be interpreted fruitfully through reference to many of the themes intertwined in the concept of neutralisation more 'specifically, the sense that Europe must use its technology – albeit economic [...] to distinguish and strengthen itself' (McCormick 2003, 140).

2. Neutralisation and the political

Although it is not our intention to engross the already enormous *corpus* of commentaries on Schmitt's concept of the political, a brief mention of it at this point is due, above all because of its strict relation with the idea of neutralisation. For Schmitt, the concept of the 'political' serves as a theoretical/metaphysical justification for the very existence of the state-form. In line with the postulates of Modern political thought, the political is conceived (much like the state of nature) as an original conflictual dimension presupposed by the state. The tendency of humans to group and define themselves across the line that separates (and connects) friends and enemies, constitutes 'the political' as the original *factum* of politics.² The State functions as a 'decisive unity': it represents an institutionalised formation that creates peace through the establishment of a legal coercive order in which the life of the members of the community is protected.

While Schmitt places it in a dialectical relation of determination with the state, the political lives of its own autonomy: it is the degree of intensity of an opposition, and therefore, which is not reducible to any attribute of a specific sphere of human existence. The political, Schmitt writes, 'denotes the utmost degree of intensity of a union or separation, of an association or dissociation. It can exist theoretically and practically, without having simultaneously to draw upon all those moral, aesthetic, economic, or other distinctions' (Schmitt 2007, 26–27). The autonomy of the political logically implies that every sphere of human life can be politicised – and vice versa depoliticised. Political institutions, in this regard, absorb and puts-in-form the political, creating an always precarious space in which human natural belligerence can be contained. Therefore, the state-form turns out to be grounded on the removal of its origin, on the neutralisation of the 'political'. The concept of neutralisation, thus, represents the logical counterpart of the concept of the political. If the latter refers to the natural propensity of humans to conflicts and contestations, the first names all those strategies adopted to deactivate hostility and contestation: to reach political stability.

When placed in the context of the unfolding of European modern history, the neutralisation of the political acquires further meanings. As Schmitt wrote in the 1929 essay *The Age of Neutralizations and Depoliticisations*, all the major changes in Modern European history are marked by shifts in the metaphysical (cultural) structures. European modern mind, he argues, saw a succession of 'four great, simple, secular stages [...] proceeding from the theological to the metaphysical domain, from there to

the humanitarian-moral, and, finally, to the economic domain' (Ibid., 82). The significance of each central concept lies in its being the metaphysical centre of an epoch, the source of meaning and orientation for the different forms of human associations. In the sixteenth century, existential questions were framed in theological terms, and the primary sense of state's power was defined theologically, according to the principle *cuius regio eius religio*. The seventeenth and eighteenth century, instead, saw the spiritual dominion of, respectively, metaphysical thinking and humanitarian-moralism. The essential questions of these two epochs were construed upon rational-scientific thinking, virtue and morality; and the leading form of political association that emerged in these periods was the 'nation'. The last phase, corresponding to the nineteenth and twentieth centuries, saw the emergence of 'economic and technical thinking'. The existential questions in this phase of European history were of economic nature: the distribution and allocation of resources and the well functioning of economic orders were the principal concerns. In nineteenth and twentieth centuries, *cuius regio eius oeconomia* was for Schmitt the maxim orienting the decisions as to the organisation of political formations (Ibid., 88).

This succession of stages forms a 'series of progressive neutralisations of domains' (Ibid., p. 89). Epochal changes in European culture were driven by the fact that at each stage, the central domain became the terrain of dogmatic conflicts, which makes the need to find a new central domain allowing the possibility of establishing peace and security. The sequence of stages, with which Schmitt has described the evolution of modern Europe, is a series of different attempts at neutralising the 'political' by finding new metaphysical and practical-political grounds to accommodate conflicts and antagonisms.

The gradual materialisation in the twentieth century of an epoch of dominated by technology, however, seems to halt the cycle of politicisation. Technology, Schmitt claims, appears totally neutral; and its spiritual essence, technicity [*Technizität*],³ turned out to be rather desirable, as a domain of total neutralisation and depoliticisation. Technology is 'a domain of peace, understanding, and reconciliation' (Schmitt 2007, 91), which, through instrumental reason, offers objective answers to questions of very different nature. Pure technical problems, 'are easy to solve, and it is easily understandable why there is a tendency to take refuge in technicity from the inextricable problems of all other domains' (Ibid.). The spirit of technicity points to an absolute neutralization; a way towards the total depoliticisation of social life. However, as Schmitt warns, it is because of its total value neutrality and passivity that technology is prone to be used for whatever political purpose. The dominion of technological progress and the spirit of technicity do not mark the end of metaphysics and politicization; it merely signals a further shift towards a nihilistic and materialist ideology, according to which the faith of human potentiality supplanted religious-traditional values. The twentieth century represents the moment of the definitive triumph of technical and economic rationality, as a cultural-ideological asset concerned solely with the material world that elevates instrumental reason as its functional logic.⁴

For Schmitt, liberalism is the outmost embodiment of this age: the liberal state – he maintains – is 'a symptom of general cultural neutrality [...] characteristic of the age of technology' (Ibid. 88). Liberalism is in this perspective a sort of fifth column of technicity into politics, the most evident manifestation in political theory of an epoch dominated by economic-technical thought. Legitimised by their supposed neutrality, liberal institutions are devised as an antidote to the political. They reflect the need to preserve the integrity of private interests from the intrusion of political power. The state, for the liberals, must keep a neutral position vis-à-vis religious and ideological questions, and above all must not hamper economic competition. The liberal engagement with politics is instrumental to the attainment of the goal of insulating the private-economic sphere from political contestation, with the consequent tendency to depoliticise social life.

3. Liberal Depoliticisation (I): the rule-by-law

What makes Schmitt's critique interesting from our point of view is that it provides the means to consider the effects of economic-technical thinking on the sphere of law and politics. His

deconstruction of the ideological ground of liberalism is a radical dissection of the impact that instrumental reason had on the juridico-political sphere. Neutrality and formal rationality are, in Schmitt's view, the fundamental structures underpinning liberal institutions. The liberal state is neutral and must serve the protection of individual interests. All this 'undergirded by the anti-political fantasy in which things manage themselves, the ideal of the marketplace as an objective and impersonal mechanism, in which the pursuit of private interest will, guided by the free hand, add up to the public good, rendering politics and the state unnecessary' (McLoughlin 2009, 142).

An example of the liberal attempt to thwart the political is embodied, for Schmitt, in the principle of the rule of law [*Rechtsstaat*]⁵ (Bielefeldt 1998). The idea of the rule of law (as rule-by-law state) is the expression of a growing process of rationalisation, expressed and sustained by the dogmas of legal positivism (which Schmitt calls also 'normativism'). The hyper-formalist approach to law typical of modern jurisprudence, Schmitt claims, is based upon a disjunction between sociology and jurisprudence (Schmitt 2005), according to which all the elements that are not reducible to the formality of norms are excluded from legal consideration. And the liberal conception of the rule of law is a product of such approach to legal questions; which produced a degeneration of law into mere technicism (McCormick 1997, 206) and a purely instrumental conception of legal normativity.

For the rule of law, all judicial and political decisions, and ultimately the whole administrative apparatus of the state, are considered as parts of a consistent and legitimate system of norms which constitutes the inner mechanism of a coherent machinery. By affirming the primacy of abstract norms and principles over concrete political positions and decisions, the rule of law aims at purifying legal (and political) decisions from personal (subjective) elements. Political orders coincide with their legal architectures; and decisions are the rational outcomes of formal procedures. But what is more, this conception of law and of the state – dear to the liberal-bourgeoisie tradition – does not guarantee any substantial protection against tyranny. On the contrary, Schmitt claims: 'in a *Rechtsstaat* [...] a merely formal concept of law, such as that law is anything the lawmaking bodies ordain via the legislative process, would transform the rule of law into an absolutism of legislative offices' (Schmitt 2008, 191), which acquires the authority to enact whatever law. For Schmitt, the idea of the rule of law is serving the needs of a secularised – disenchanted – world, in which law and politics are deprived of any value other than its own abstract correctness; it is ingrained in a cultural-social universe dominated by materialist instrumental rationality, where the law is meant to facilitate the pursuit of private subjective interest and values.

But for Schmitt, the liberal idea of the rule of law has a further decisive problem regarding the question of its legitimacy. As he claimed in different occasions, such 'normativist' conception of law and of state power – of which Kelsen's pure theory of law represents its outmost expression – turns out to be a groundless, nihilist enterprise. For the *Rechtsstaat*, the question of the political legitimacy of the order (and of its origin) is resolved tautologically: a legal norm has its legitimate existence only if deduced from another legal norm. The rule of law, Schmitt claims, 'knows no origin and has no home. It recognizes only causes or basic norms ... Its ultimate goal is control and calculability' (Schmitt 1990, 56–57). But what is more, the reduction of the question of legitimacy to a problem of legality – of correct formal procedures – excludes the foundational political moment of the decision towards a constitutional order from legal concern. From the perspective of the liberal-bourgeois *Rechtsstaat*, the law is essentially a mere abstract, neutral and depoliticised instrument of administration, whose utility lays precisely in its capacity to channel and to limit the possibility of political contestation, reducing the 'political' to legal form. Indeed, by placing political decisions and ultimately the whole of the state form into the sphere of the juridical, the liberal rule-by-law turns politics and political contestations into a question of procedures and rational-technical administration: indeed, 'the higher degree of accountability through law may act as a substitute for a lesser degree of accountability through politics' (Van Gerven 2005, 104).

4. Neutralisation and the legal constitution of Europe

In the political imaginary of post-war Europe, integration was regarded as part of a narrative that envisaged the idea of a community of states based on liberal-democratic principles and economic interests as bulwarks for the limitation of political and social conflicts. Indeed, the rhetoric of neutralisation imbued all the main foundational moments and documents of the process of integration. Starting with the Schuman Declaration of 1950 – which stands as a primordial constitutional moment (Weiler 1999, 3) – the need for integration has been expressed through discourses fitting perfectly Schmitt's characterisation of modern European history as structured on a cyclical search for a neutralised and depoliticised ground. In Schuman's words, the 'pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe', which will make the war 'not merely unthinkable, but materially impossible'.⁶

In the treaty of Paris the rhetoric of neutralisation is expressed in a more 'functionalist' tone: by creating an economic community, we read, the parties resolved 'to substitute for historic rivalries a fusion of their essential interests; to establish [...] the foundation of a broad and independent community among peoples long divided by bloody conflicts; and to lay the bases of institutions capable of giving direction to their future common destiny'.⁷ The image of a gradual integration as an antidote to interstate conflicts is reiterated, like a mantra, in the preambles of all the crucial constitutional texts of the EU. The Treaty on European Union (1992) recalls 'the historic importance of the ending of the division of the European continent'⁸; while the Lisbon Treaty (2007) in Article 3 states that the Union's aim is to promote peace.⁹ The preamble to the Treaty establishing a Constitution for Europe (signed in 2005, but never ratified), made it clear that the aim of the constitution was to unite Europe after 'bitter experiences'.¹⁰

As Andrew Williams pointed out, the essential plot of this foundational narrative is a sense of history based on the *longue durée* (Williams 2010, 28). European integration is not only an immediate reaction to the dreadful memories of the twentieth-century European civil war but is a further (hopefully decisive) step in the neutralisation of a centuries long tension that pervaded the Old Continent. The memory of the series of interstate wars that have characterised European history permeates the sequence of treaties that led to the actual configuration of the EU. And in this sense, using the words of Schuman, economic cooperation would make war 'impossible'. The coincidence with the philosophy of the history of neutralisation, offered by Schmitt in the interwar period, is evident here. European integration is the product of a will to neutralise war and conflicts that has envisaged economy as a driving force, as the 'central-spiritual domain'. European peace, in this regard, was to be obtained not by diplomatic-political relationship, but by means capable of neutralising the possibility of war more effectively. Resorting to the reduction of political decision-making processes to formal legal procedures and the market as driving forces towards the constitution of a polity capable to depoliticise Europe, are the logical outcome of an epoch dominated by liberal economic-technical concerns.

The law constituted one of the driving forces of European integration, which – using Schmitt's words – could be described as largely a 'normativist' accomplishment. Summarised in slogans such as Walter Hallstein's a 'community of law' [*Rechtsgemeinschaft*]¹¹ or 'integration through law', the establishment of a European constitutional took the form of a 'legal enterprise of constitutionalisation of the European treaties', which 'came as a masterly and opportune for a real constitution' (Cohen 2007, 112). As Antonin Cohen argues, the law became a 'convenient expedient for politics', which turned many of the political issues raised by European integration into technical matters: into questions regarding the "'form" and "structure" of this loosely institutionalized transnational order'. (Ibid.). It is not an accident if something like a European constitution emerged not as a result of a constitutional political event, but as the outcome of a formal operation of the European Court of Justice.¹² The basic doctrines and principles underpinning the constitutional legal framework of the EU have been, in fact, introduced long before the idea of Europe as a community has

been laid down in the Treaty of the European Union. The cases *Van Gend en Loos*¹³ and *Costa v. ENEL*¹⁴ the ECJ, establishing the doctrines of direct effect and supremacy of Community law, amounted to a proper constitutional moment, initiating the negative integration of European market, and the gradual constitutionalisation of the treaties. By establishing that the Treaty of Rome (EEC) 'constitutes a new legal order on international law for the benefit of which the states have limited their sovereign right', which imposes upon individuals obligation and rights, in *Van Gend en Loos* the Court 'appropriate the language of constitutional jurisdiction, creating its own legal subjects in the figure of the individual European' (Everson and Eisner 2007, 51). *Costa v. ENEL* added the principle of supremacy of European law, and therefore 'by contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the treaty, became an integral part of the legal systems of the Member States and which their courts are bound to apply'. In so doing, by 1965, the judges of the ECJ effectively transformed the treaty of Rome into a constitution, with its own subjects and its supreme validity. With the foundational rulings in *Van Gend en Loos* and *Costa v. ENEL*, both the member states and the European citizens and companies were transformed into subjects of rights and obligations, without any substantial deliberation. To the extent that constitutionalisation of the EU has occurred, it is a result of the exercise of judicial authority and political and bureaucratic power; and indeed, it has been described as a 'quiet revolution' (Weiler 1994).

Burley and Mattli maintain that the constitutionalisation of the treaties, and more generally the action of the ECJ in fostering the political integration on the basis of the single market, operated properly a transformation of the political into the juridical. By placing the process of political constitution, in the form of court adjudication, political decision is masked by the neutrality guaranteed by the apparently non-political character of the court. The law, thus, works properly as a 'mask and a shield. It hides and protects the promotion of one particular set of political objectives against contending objectives in the purely political sphere' (Burley and Mattli 1993, 72–73). The law, in this perspective, becomes an instrument that transforms political decisions into non-political legal processes, limiting the possibility of political contestation of decision-making. Indeed, the establishment of a European constitutional order through judicial means has been defined as an act of formalist constitution-making to protect 'European law from potential political embroilment within the conflicts between national and supranational interests' (Everson and Eisner 2007, 51).

The political logic behind the constitutionalisation of the EU treaties stands essentially at odds with 'classical' constitutionalism, which sees a constitution as, using Schmitt's words, the 'conscious act of a people' (Schmitt 2008). In the constitutional imaginary of the European Union, the question of the *demos* is marginalised if not totally removed. But as Etienne Balibar sustains, the disappearance of the question of the 'people' – as a symbolic source of legitimisation and as an instance of real control – is not only a symptom of the 'bureaucratisation and professionalisation of politics', but marks 'the return to a technical, reglementary status of the *law*' (Balibar 2004, 160). Indeed, the establishment of a European constitution – via the constitutionalisation of the treaties – operated by the ECJ, finds its sources of legitimacy on the technical-formal ground upon which it has been enacted: first 'from the composition of the ECJ, which had as members senior jurists from all member states [...] second from the legal language itself: the language of reasoned interpretation, logical deduction systemic and temporal coherence' (Weiler 1994, 521).

5. Liberal Depoliticisation (II): the strong state

By elevating the idea of a social order as organised according to an idealised market, in which the economic interest of the citizen (intended as *homo oeconomicus*) can thrive, liberalism seeks to neutralise the political, by transforming the natural human antagonism, into market competition. Liberalism, Schmitt claims, transforms 'the enemy from the viewpoint of economics into a competitor and from the intellectual point into a debating adversary' (Schmitt 2007, 28). State power, for the liberals, must be confined to securing the conditions for liberty and eliminating

infringements of freedom. There are no friends and no enemies for liberal society but only competitors in a market.

For Schmitt, democratic parliamentarism is explicitly construed upon such principle. The parliament, he writes, is 'an artificial machinery, produced by liberal reasoning' (Schmitt 1988, 17), which replicates the logic of market competition. The principle of open discussion appears to Schmitt as a translation of the economic principle of the free competition. As in the market, the free determination of supply and demand, gives rise a harmonious coexistence of interests, for the same token in the parliament the free and open competition of opinions produces a peaceful and open decision-making process, out of which a common good could arise. In contrast to the absolutist tradition of state's secrets [*arcana imperii*] (Ibid. 37), the open confrontation of opinion of liberal parliamentarism is a democratic and transparent process in which liberty reigns supremely.

However, Schmitt argues, the reality of twentieth-century parliamentarism shows that government by open discussion became a mere chimera; the liberal parliament is indeed 'gigantic antechamber in front of the bureaus or committees of invisible rulers' (Ibid. 7). The modern state has evolved gradually into an executive machinery for making decisions, for which the principles of discussion and openness are simply a masquerade: 'small and exclusive committees of parties or of party coalitions make their decisions behind closed doors, and what representatives of the big capitalist interest groups agree to in the smallest committees is more important for the fate of millions of people' (Ibid., 49–50). Parliamentarism is nothing other than the expression of an ideology according to which democratic institutions are mere instruments for the preservation of economic interests. Democracy is reduced to a simple 'mechanism for choosing and empowering governments', expression of a 'competition between elites'; while citizens 'are treated as consumers in the marketplace' (Mouffe 1993, 120).¹⁵

Schmitt's critique of liberalism is not confined to the repetition of the usual adage according to which liberal principles are never consistent with the reality of the liberal democracies, but it goes much further. He has not only affirmed the ontological difference between liberalism and democracy, but has also exposed how the goal of the separation of state's power and market/society – a key principle of liberal thought – can be reached only through a 'strong state' and the limitation of democratic interventions at the economic and political level.¹⁶ Economic liberalism and liberal institutions are, therefore, only nominally at odds with authoritarian forms of governments; indeed, as Schmitt claimed while addressing the *Langnamverein* – a lobby of industries – in 1932, a strong state is needed in order to defend a free and efficient market economy against the democratic stances coming from society (Schmitt 1998).

The freedom of the market and ultimately of society from the interference of state's power is not a natural condition but it is something that must be politically constructed and defended through a specific use of state's authority. What Schmitt in that occasion has called 'qualitative total state' is nothing other than a strong form of government, which guarantees a substantial autonomy to owners of private capital, while at the same time suppressing the 'enemy' of free economy. The qualitative total state – whose essence is summarised with the witty expression *Strong State and Sound Economy* [*Weiterentwicklung des totalen Staats in Deutschland*] – combines the necessity of insulating state's power and government from democratic contestation of the exploited classes, with the need for the capitalist economy to administer itself autonomously, avoiding social turbulences and uncertainties. The liberal-capitalist-state, in Schmitt account, to eliminate the threat brought by its enemies – socialist and communist movements, unions, etc. – and to promote and consolidate the interests of capital, needs a state-form characterised principally by the strength of its authority rather than by its democratic virtue.

What Schmitt called qualitative total state was, indeed, a form of authoritarian liberalism,¹⁷ which should serve a capitalist economy granting security and efficiency. But what is more, he seems to suggest that a 'strong-authoritarian-state' is the only true political form capable of realising the founding principles of liberalism. Wolfgang Streeck in this regard claims that the total state Schmitt had in mind is the liberal state in its pure form:

strong and weak at the same time: strong in its role as protector of 'the market' and 'the economy' from democratic claims for redistribution—to the point of being able to deploy the public power to suppress such claims—and weak in its relationship to the market as the designated site of autonomous capitalist profit-seeking, which government policy was to protect and if necessary expand without, however, entering it (Streeck 2016, 152).

The realisation of liberal principles, Schmitt maintains, can be obtained only through the establishment of a normalised space in which private economic interests can thrive, and the subsequent depoliticisation of specific sectors of human social life. 'Only a strong state – he claims – can depoliticise, only a strong state can openly and effectively decree that certain activities remain its privilege and as such ought to be administered by it, that other activities belong to the sphere of self-management, and that all the rest be given to the demonian of a free economy' (Schmitt 1998, 226–227). As Werner Bonefeld put it, the 'strong state of sound economy curtails democratic excess, rules society with the identified stranger to sound economy in mind and maintains its independence from society to enforce the rules of order' (Bonefeld 2017, 54). Democracy weakens the capacity of state power to neutralise and depoliticise the spheres of social life central to liberalism, by allowing the whole of society to take position and to contest both the socio-economic order and the state. While the rule of law provides the technical-legal framework to reduce the possibility of social contestations, only a strong state can guarantee the efficient enforcement of such framework. Of course, such characterisation of the liberal state might appear as contradictory; however, as Wilkinson suggests, authoritarian liberalism, 'expresses a standard classical liberal animosity towards irrational interference in the economy', which however, indicates as a specific threat the 'bottom-up social democratic pressures' (Wilkinson 2015, 313). It might be argued that the authoritarian liberal state operates a depoliticization of society – by channelling the emergence of conflicts into the legal framework – and of the state – by insulating state's authorities from accountability and political contestation.

6. Integration's authoritarian side: the constitution of depoliticization

The problem of the authoritarian side of European integration has gradually become a standard critique of EU democratic deficits. The idea of authoritarian liberalism, as the political ethos and form of European Union institutions, has been advanced by a number of authors, denouncing the substantial non-democratic nature of EU governance and quasi-total insulation of the decision-making processes and of the market to social and political contestations (Bonefeld 2017; Streeck 2016; Wilkinson 2015, 2018). As Michael Wilkinson argues, the term 'authoritarian liberalism' captures two symptoms of the constitutional development of Europe:

First, there is an authoritarian aspect to EU, and especially Eurozone, governance, represented by a twofold process of de-democratisation and de-legalisation. This refers to the bypassing of parliamentary authority and parliamentary debate as well as the violating or circumventing of normal guarantees associated with the rule of law, including the protection of social rights [...] second [...] is the material nature of this authoritarianism and its historical pedigree: its aim at the maintenance of a regime of economic liberalism represents a deepening of rather than diversion from the normal path of integration (Wilkinson 2018, 104).

For Wilkinson, the democratic deficits, and lack of a substantial political legitimation of the EU, are rooted in the constitutional imagination that has guided the process of integration. Post-war Europe was a time in which the esteem of mass democracy was not at its height; the oscillation of the political sentiments of the masses was feared. A new vision of democracy, which could guarantee a certain degree of participation, while at the same time limiting the possibility of state's power to be taken up by popular irrational forces, was needed. Presaged in the work of the Ordoliberal School, the idea of a society of individual market participants rather than political citizens, coupled with a technocratic conception of state government, were considered as the instruments to neutralise and depoliticise European peoples.¹⁸ One of the most noticeable developments in constitutional theory forwarded by ordoliberals is the coining of the idea of 'economic constitution'

(*Wirtschaftsverfassung*). Such concept is normatively loaded as it denotes a 'decision for a specific economic model' (ibid. 128) and a political form. As Teubner sleekly described it, the economic constitution is 'a legal concept based on social theory' (Teubner 2015, 219–221), which envisages a free-standing economy as the political product of a strong state.

For the ordoliberals, the governmental action of the state must be limited to specific tasks, provided by the economic constitution: it has to be 'a strong state "capable of creating and guaranteeing the legal framework for a competence-based economy' (Tuori 2015, 131). State intervention is not completely excluded but is desired only to correct market imbalances and ensure competition: the state is regarded, thus, as a proper market-police (Bonefeld 2017). Political power must be limited to the establishment of the rules of the game, confining economic intervention to an indirect framework regulation of the economy through general laws, such as banking, bankruptcy or company legislation, as well as, most importantly, competition law" (Tuori 2015, 131–132). But what is more ordoliberal political economics theory ensuring that 'the crucial underpinnings of economic policy remained absent from the realm of discretionary politicking or the sway of possible anti-competitive interests' (Rittershausen 2007, 11). A defining characteristic of ordoliberalism is the 'overcoming [of] the defects of pluralist democracy through will formation by the state insulated from societal pressures under the direction of committed servants of the common good who are, in turn, guided by the expertise of economists and lawyers' (Biebricher 2017, 110). Ordoliberals hold a strong disbelief in democracy, which is considered a source of irrational, interference in the economy. In the words of Wilhelm Röpke, state democracy must be 'hedged in by such limitations and safeguards as will prevent liberalism [from] being devoured by democracy' (Röpke 1969, 97). Vital economic decision-making should be removed from majoritarian institutions and entrusted to the hands of technocratic institutions. In this regard, it has been rightly observed that the ordoliberal predicaments resemble Schmitt's conception of a strong total state, and liberal depoliticisation. It might be argued that the ordoliberals offered an organic economic, political, and legal theory of the strong state of a sound economy. For the ordo-liberals, the economic constitution was intended to achieve the total neutralisation of political and social conflicts (Wilkinson 2018) through a radical de-politicisation of both market society and of state institutions. The strong state will protect the market by disarming democratic threats to it.

After the catastrophe of two world wars, the political logic driving European integration accommodated some of the tenets of ordoliberal ideology. And the favour with which some of the members of the school have welcomed the birth of the EEC is a proof of this. (Walter 1972; Röpke 1969) The current democratic deficit of the European Union is in part the logical legacy of such initial choice. With the establishment of the individual rights of the European market citizens and their imposition over national jurisdictions, and the creation of a governance immune to democratic contestations, the European Union 'provides an institutional resolution to the market-liberal argument that recognises mass democracy as a pathological form of government'; the economic constitution of the EU does not 'permit a mass democratic union, in which parliamentary majorities make law and hold government accountable' (Bonefeld 2017, 119–120). The 'political[ly] engineered depoliticisation' of society (Streeck 2016, 152), and the immunisation of the institutional apparatus to political accountability, which Schmitt and the ordoliberals envisaged as crucial for the self-standing of the liberal state, is manifested directly into the institutional framework of the EU.

The European Constitutional Settlement (Moravcsik 2008) seems to have taken the need for a form of authoritarian depoliticised governance literally.¹⁹ In the multi-dimensional and multi-temporal process of European constitutionalism, which, as Kaarlo Tuori (Tuori 2014) suggests, is structured upon at least three sectors – the economic, the social and security – the language and practice of 'economic constitutionalism' (in the ordoliberal sense) is dominant compared to the other sphere of the European many constitutions (Wilkinson 2013, 216). The economic constitution articulates a comprehensive decision in favour of an economic system and sets a clear priority of policy objectives; what ordoliberals termed as *Ordnungspolitik* (literally, 'the politics of order'). The aim of a constitution, therefore, is to set up the conditions for the realisation of a free market based on competition and ensure the viability of those conditions by setting a clear hierarchy of policy objectives with

competition serving as the guiding norm. Central to ordoliberal predicaments is the concept of *Rechtsstaat*. Indeed, in the idea of *Ordnungspolitik*, the rule-by-law government is adapted and transferred to the sphere of economy (Gerber 1994; Bonefeld 2017) to sustain and defend a free economy.

Based on the notion of an economic constitution, ordoliberals interpreted the Treaty of Rome (Walter 1972; Engel 2003) as 'a framework for a common market as a self-organising system' and identify competition as the mechanism through which economic actors can exercise self-control' (Streit and Mussler 1995, 14). Such a reading implies that 'the Treaty of Rome manifested a [...] fundamental decision, in favour of the ordoliberal model of the market economy emphasizing free, performance-based competition' (Tuori 2015, 151). As competition policy is afforded constitutional primacy, other policy fields are 'expected to succumb to the limitations warranted by the superior policy field' (Ibid., 160). In other words, the interpretation of European constitutionalism as an economic constitution means that all law-making, including national legislation, is subordinate to the constitutional decision for a free market with undistorted competition (Article 101 TFEU). By affording competition policy a constitutional character, the protection of economic conditions such as competition is transformed to a higher constitutional norm. It ensures, in other words, the protection of economic conditions from any form of irrational interference by regulating the degree and nature of state, or private, interference.

These, now well-accepted, observations have important implications on the way European integration is conceived. Firstly, the supranational realm was consciously excluded from any social policy considerations. The common market was viewed as an apolitical space whereby economic policy could be pursued by technocrats based on economic principles. The implication of such division is that democratic legitimation was deemed relevant only for the adoption of redistributive politics and, therefore, retained at the national level. And by disembodiment the common market from any social or other considerations, the European Economic Community was understood as a market without a state that is not in need of democratic legitimation but, also, that its economic policy decisions are 'non-political' in the sense that it was not subject to political interventions (Joerges 1997, 2010).

What these discussions indicate, in very clear terms, is that the European Union was never meant to be democratic (Weiler 2012), to the extent that the whole discussion of a democratic deficit is, in fact, based on a misunderstanding (Anderson 2011, 101). As we have indicated throughout this paper, the constitutional imagination guiding the EU's process of integration is centred around the ideas of depoliticization and neutralisation of conflicts by insulating the technical-economic administration from political, majoritarian or societal pressures. In this setting, the necessary democratic deficit is not a happenstance or an undesirable by-product of an imperfect Union. Instead, it is a central characteristic of the EU's integration rationale.

As depoliticization and neutralization are part of the EU's integration rationale, developments in the history of integration continue to be defined by these characteristics. For example, the debates on EU governance and the influence of neoliberalism²⁰ that unfolded in the late '90s and early 2000s (and which have continuing significance as well as relevance) can be interpreted as an attempt to capture the EU's operating rationale. Indeed, the shift from government to governance has a distinctive neoliberal flair (Brown 2015). At this point, it may be useful to state that neoliberalism is a term that escapes rigid definitions mostly due to the versatility of neoliberal practices. In general terms, though, neoliberalism is a set of economic beliefs concerning the conditions under which markets should operate, their relationship to the state and how governance should be exercised in a number of sectors beyond the economy. It is for these reasons that the term is said to describe 'the new political, economic, and social arrangements within society that emphasize market relations, re-tasking the role of the state, and individual responsibility', extending market logic 'into all areas of life, including the economy, politics, and society' (Springer, Birch, and MacLeavy 2016, 2). In the context of our discussion, the neoliberal turn of EU governance can be positioned within the broader constitutional rationale of EU integration, which we have identified as revolving around the neutralisation and depoliticization of institutional life. Indeed, as Wendy Brown sustains, neoliberal

governance emptied democratic participation of its substance, separating 'inclusion and participation' from the 'the powers and the unbounded field of deliberation' (Brown 2015, 128), making of democracy a simple procedural question.

In Schmittian terms, the process of integration, and the emergence of something like a European constitutional order, accounted for a proper constitution of depoliticisation, in which large sectors of socio-economic life has been insulated from political-majoritarian contestation, through the delegation of competences and powers to the EU institutional apparatus. Streeck in this regards argues that the institutional framework of the EU operates an 'engineered depoliticisation' of capitalism: 'Europeanization today', he writes, consists primarily of 'a systematic emptying of national democracies of political-economic content, cutting off the remnants of potentially redistributive social democracy [...] from an economy that has long grown beyond national borders into a politically constructed and contracted Single Market' (Streeck 2016, 157). It is no surprise, though, if the only European institution holding democratic legitimacy – the European Parliament – has no real executive control as it lacks legislative initiative and the authority to change the constitution of Europe. Within the constitutional settlement of Europe, the parliament is elected by a *demos* that cannot be really called such. Elections often become an arena in which parties competes sustaining national rather than European agendas. And despite its growing centrality in the institutional life of the EU, the European Parliament is still lacking the powers and authority that traditionally Parliaments have in shaping and informing the plurality of popular demands – and conflicts – coming from the peoples of Europe. Indeed, as Bonefeld writes the European Parliament is 'not and institution of a European legislative state. It is a deliberative institution of a union of executive states' (Bonefeld 2017, 165).

8. Conclusions: a return of the political?

In this article, we have attempted at arguing that the process of European integration represents a further moment of what Schmitt defined as the search for a neutral ground, which has used the law, a liberal ethos and market economy as strategies of depoliticisation. In the exaltation of the law as a supreme/exclusive means of an indefinite process of integration, the political soul of integration has become lost, caged in formalist procedures deliberately intended to depoliticize the decision-making process. Conceived as promoting solidarity among European people, integration guaranteed the survival of some of the central values of its tradition. However, at each stage of this journey those values became increasingly diluted into a utilitarian/individualist conception of liberty, which glorifies personal freedom and private economic interests (based on the binomial production-consumption), transforming citizens into consumers and thwarting the political potential of the public sphere. Accordingly, the single market is not a means of integration among others, it is the only one. The creation of a common market, however, is an operation only remotely coherent with ideas like solidarity or re-distribution (Hesselink 2007). The internal market, as we argued, commands the abolition of divergences, interferences, and democratic-majoritarian contestation.

Where the trust in the abstract depoliticised use of legal instruments and the faith in the market and capital has led Europe is not clear: unanimous is the judgment that the crisis of the phase of integration risks to produce an epochal involution that could jeopardize all its positive achievements. The reason for this disillusion, which is fuelling waves of contestation of the economic and political legitimacy of the EU, are multiple but easily identifiable. They can all be summed up in the loss of confidence in the promise of growth and continued prosperity, which had been made realizable with the building of the internal market, crowned by the single currency, and the lack of democratic accountability of the EU liberal-authoritarian institutions. The crisis of the EU should be read, in this regard, as a wave of re-politicisation, which takes as a target the very form of neutralisation upon

which integration has been thought and engineered. Indeed, the growing consensus for euro-sceptic parties and ultimately the emergence of a post-functionalist theory of integration (Hooghe and Marks 2008), which brought to the fore the point the politicisation of European integration as crucial to the evolution of integration itself, shows how the object of contestation is no longer the just use of power, but the power itself which appears in all its political groundlessness.

Notes

1. The literature on the crisis of the EU is more than vast. Probably there is no better example *Is the EU Doomed?* (2014) and Jürgen Habermas' *The Crisis of the European Union. A Response* (2012). It is also worth mentioning Champeau, Closa, Innerarity, Maduro, *The future of Europe: Democracy, Legitimacy and Justice after the Euro crisis* (2014).
2. On Schmitt's idea of sovereignty as a neutralising power, see: Badii (2010).
3. He distinguishes between the machine-specific realm of technology [*Technik*], which is 'dead,' and the intellectual-spiritual [*geistige*] realm of technicity [*Technizität*], which is very much 'alive' (McCormick 1997, 44).
4. Schmitt describes technicity with the same terminology that he has employed in his critique of economic-technical thought, or Weberian rationalization, in *Theodor Däublers 'Nordlicht'* (1991) and in *Roman Catholicism and Political Form* (1996). Technicity, economic-technical thought and rationalisation are part of a 'metaphysics' of activity concerned solely with the material world; it is practised through the 'limitless' and 'unbounded' domination of nature, including human nature. What is new is his claim that although it may be responsible for modern technology and the "splendid array of [its] instruments. See: (McCormick 1997, 45).
5. It must be noted that the while the German *Rechtsstaat* is usually translated in 'rule of law', it has not to be confused with the idea of rule of law of English and American tradition. The German concept of *Rechtsstaat*, at least in its original form, refers to a system in which all state authority finds its legitimacy and is governed by law (Van Gerven 2005, 105–109), and does not relate to the substantive idea of rule of law.
6. https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en
7. Treaty establishing the European Coal and Steel Community (Paris, 18 April 1951).
8. Treaty on European Union.
9. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union.
10. Treaty establishing a Constitution for Europe 2005.
11. See: Hallstein 1979. The ECJ refers to this idea speaking of a 'Union based on the rule of law': Judgment in Case C 619/18 *Commission v Poland*: 46 Lastly, as is apparent from settled case-law, the European Union is a union based on the rule of law in which individuals have the right to challenge before the courts the legality of any decision or other national measure concerning the application to them of an EU act (judgments of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C 64/16, EU:C:2018:117, paragraph 31 and the case-law cited, and of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C 216/18 PPU, EU:C:2018:586, paragraph 49).
12. See: Burley and Mattli (1993), Weiler (1999), Everson and Eisner (2007) and Grimm (2015).
13. *Van Gend en Loos v Nederlandse Administratie der Belastingen* Case 26/62.
14. *Costa v ENEL* C 6/64.
15. As Rafał Mańko poignantly claims, the ideological construct of the 'consumer' refers to the 'the passive character of the individual in the economy, even referred to as *homo oeconomicus passivus*. . . The ideological interpellation of individuals in their capacity as consumers is conceptually opposed to their interpellation qua citizens' (2015, 43).
16. On the relation between liberal legality and strong authoritarian governmental tendencies see the recent intervention by Cosmin Csercel (2019).
17. The term authoritarian liberalism has been coined by Hermann Heller in 1933 (2015) in a text which assessed critically Schmitt's notion of the strong state.
18. The direct impact of ordoliberalism on European integration is a contested matter. However, it is safe to say that the Ordoliberal School expressed in theory some of the concerns permeating the political imagination of European political elites in the post-war period. See: (Wilkinson 2013; Tuori 2015; Streeck 2016; Bonefeld 2017).
19. Marija Bartl defines the mechanism adopted to facilitate the establishment of 'isles' of uncontested rational/technical knowledge in the EU governance as 'reification'. Reification, she claims, produces a 'depoliticisation of EU goals qua settled knowledge (assumptions) both restricts the space for democratic determination of what kind of internal market Europeans want and constrains the possibility to control for the possible mistakes (biases) in those assumptions, which may in turn translate unhampered into the EU law'. (2015, 574)

20. Heiskala and Aro (2018).

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