
A Disintegrating Promise of Peace

A Review of Ramona Coman, Amandine Crespy and Vivien A. Schmidt (eds.), *Governance and Politics in the Post-Crisis European Union*, Cambridge University Press, 2020. 420 pp. £29.99 (PB). ISBN 978-1-108-71177-7

patriciatuitt.com

The EU's Founding Promise

The European Union (EU) was founded on the promise that its model of cooperation between states would secure peace in Europe. However, recent years have shown that the EU is prepared to countenance preventable deaths - on a significant scale - on its lands, seas and shores. Is the promise of peace a constitutive or merely contingent element of the EU's identity? Is the promise to be narrowly construed as one related only to the technique of war, or must it be interpreted more expansively as a promise by the EU to repel deliberate or neglectful actions of member states which have the effect of bringing about widespread death, traumatic violence and other forms of human suffering and degradation?

I pose these questions as a way of engaging with scholarship on the EU which, rather than focusing on the ways and means by which EU *integration* in various spheres of activity is achieved, explores the forces that propel its *disintegration*. *Governance and Politics in the Post-Crisis European Union* exemplifies this new, and very welcome, direction in EU studies. Inspired by this eclectic mix of essays, I argue that the disintegration of the EU is seen to occur whenever it manifestly betrays its promise of peace. I will begin by conceding that no legal and political entity can be created or sustained in a manner that is entirely free from violence of some kind. To maintain its supremacy, the EU has always enacted what, per Derrida, we may think of as a form of "...discursive and hermeneutic, coercive or regulative..." (Derrida 1992, p. 927) violence. Indeed, the EU's sovereign violence was seen to be so complete that, until the coming into force of Article 50 of the Lisbon Treaty, there were doubts over the capacity of a member state to withdraw from it. So, to read the EU's founding promise as a promise against all forms of self-preserving violence is to fall for the "truly misleading" (Patel 2020, p. 39) "... characterisation of the [EU] as *suis generis* (of its own kind, exceptional) which...was pushed for by its supporters..." (Patel 2020, p. 39). Nonetheless, if the EU's promise of peace meant anything, it must have been intended to signal a commitment on the part of the EU to stand strongly against the kind of brutal, spectacular, violence that is represented through, but not fully defined by, the technique of war. Thus, I pay particular attention to the collection authors accounts of the

occasions on which, in disregard of its founding promise, the EU plans, authorises or enacts extravagant violence. From a narrow perspective, the EU's pursuit of a European defence strategy, which "[b]eginning in 2016,...rose rapidly to the top of the EU agenda" (Howorth 2020, p. 320), may be viewed as the EU's first decisive break from its founding promise. However, in the more extended sense of the promise (which is the interpretation I prefer), the seeds of the EU's disintegration are to be found in its asylum policies, which "...since the mid 1980s...has focused on strengthening border management..." (Wolff 2020, p. 241); thereby creating "...spaces of tragedy, loss and suffering..." (Coman, Crepsy and Schmidt 2020, p. 11). The scale of the suffering is evident in the fact that homelessness among migrants (Andor 2020, p. 231) is the more benign form in which EU violence towards migrants is exhibited.

The Slow Violence of Intergovernmentalism

EU asylum policies, from Schengen onwards, are emblematic forms of the slow violence that emerges when decision-making on the rights of vulnerable migrants, like refugees, are driven by "...national electoral politics..." (Schmidt 2020, p. 97) and "[c]itizens' political interests..." (Schmidt 2020, p. 107). The result are policies designed to respond less to humanitarian emergencies than to crisis narratives which are "...constructed politically" (Coman, Crepsy and Schmidt 2020, p. 2). For Jeandesboz, the Schengen *acquis* "...is the result of the political and professional construction that unfolded from the 1970s onwards rather than a reflection of facts" (p. 263). The "...political uses" (Jeandesboz 2020, p. 275) that were (and continue to be) made of the phenomenon of forced displacement are to be seen in the "... association between crime, cross-border movement of persons, migration and now terrorism [which] has been strengthened rather than weakened in the context of the measures adopted purportedly to deal with the Schengen crisis unravelling since 2015" (Jeandesboz 2020, p. 260), and is a particularly stark illustration of the integral relation between discursive and physical violence. The now all too frequent catastrophic accidents that flow from the EU's opportunist policy-thinking around refugee movements - most notably, the "...death of over 800 refugees in the Mediterranean Sea in a single boat tragedy in April 2015" (Coman, Crepsy and Schmidt 2020, p. 12) - would perhaps not have surprised the early proponents of the EU project who believed that peace would only be secured if the narrow interests of member states and their citizenry were depressed. The EU of today has strayed far from that early position, and, instead, "[i]n policies traditionally at the heart of the national sovereignty of member states (and electorally sensitive for the fates of their incumbent governments), the intergovernmental institutions matter much more than the supranational ones" (Fabbrini 2020, p. 69). In short, the further away the EU moves from a "...supranationalist perspective..." (Lacey and Nicolaidis 2020, p. 386), the further away it moves from its promise of peace, and the more swiftly it moves along the path of disintegration. Although many of the chapters enable me to draw connections between disintegration and intergovernmentalism, few are as explicit as Lacey and Nicolaidis, who opine that, among other signs, "...disintegration takes the form of returning competences to member states ..." (p. 378).

Overall, the chapters show that, with the exception of the single market, which “...represents a key example of supranational decision-making...” (Egan 2020, p. 164), having “...proved resistant to political demands for a more differentiated framework to deal with the increased heterogeneity of interests and preferences of member states...” (Egan 2020, p. 160), few areas of EU competence have been insulated from “...the influence of domestic interests on EU-level decision-making...” (Schmidt 2020, p. 97). As indicated above, such was the case very early on in the development of the EU’s highly securitised asylum policy, but, in other areas of EU policy, it was the Lisbon Treaty, which came into force in 2009, that fully enabled the “...voluntary coordination of the policies of member-states, but not their legal integration at supranational level” (Fabbrini 2020, p. 66). The number of times in which the institution that holds the legislative initiative (Commission) has proposed new developments in key areas of EU competence which “...have...been checked by state interests” (Christensen and Seabrooke 2020, p. 305) is a recurrent theme of the collection, and makes for extremely depressing reading. For example, a more equitable and just distribution of tax liability across the EU is unlikely to emerge in the near future because “... the decision-making structures in the EU and the scarcity of EU powers on tax issues, [means that] member states have significant leeway in imposing formal national interests in the area of direct tax policy by means of procedural blocking...” (Christensen and Seabrooke 2020, p. 305). A similar situation is observable in the context of policy-making in the area of agriculture and the environment, where “...an enhanced role for public debate and contestation makes EU decision-making on the CAP more political, which may inadvertently make significant policy reform even more unlikely” (Alons 2020, p. 148). It is not only in the context of asylum policy that the declaration of a crisis has enabled the heads of government of the member states, working through the European Council, to re-stage the national rivalries that were seen to have been a major contributing factor behind two World Wars. As De Ville observes in the context of EU trade policy, “...the period since the outbreak of the financial economic crisis can be seen as a critical juncture” (p. 284-285) in the balance between intergovernmentalism and supranationalism.

What this means in terms of the EU’s ability to repel violence and promote peace is abundantly clear in some spheres, but less so in others. On the one hand, the violence of austerity was starkly evident when, following the 2008 financial crash, “...richer member states...pushed the cost of the crisis onto Europe’s poorer regions” (Makszin, Medve-Balint and Bohle 2020, p. 349). From Egan and Ban’s accounts, we can deduce that the “...intergovernmental nature of euro governance...” (Egan 2020, p. 164), and the rivalrous nature of the negotiations that this form of governance allows, resulted in at least three years of “...lost output, employment and health affecting millions of people” (Ban 2020, p. 189). On the other hand, it is too soon to assess the extent to which member state stalling over “...issues relating to demographic change...[which] are important in terms of long-term planning but not urgent in terms of resources” (Hasselbalch and Tsingou 2020, p. 88), the “...rampant marketisation of healthcare...” (Crepsy 2020, p. 201), and, more generally, the fact that “[t]he 2008–10 financial and debt crisis have exacerbated the subordination of social policy to economic imperatives” (Crepsy 2020, p. 200), have impacted on the EU’s response to the coronavirus emergency.

Internal Lawlessness

The rise in intergovernmentalism has seen a decline in the power and influence of those institutions of the EU that are charged with initiating and enforcing the law: respectively, the Commission and the Court of Justice of the European Union (CJEU). This concluding section identifies, from the various contributions to *Governance and Politics in the Post-Crisis European Union*, the main harmful effects of the watering down of the rules-based system of governance which characterised earlier iterations of the EU.

On 23 September 2020, the European Commission published its proposals for “a new pact on migration and asylum” (Brussels, COM(2020) 609). The proposals represent the Commission’s latest attempt to address what many perceive to be a crisis of solidarity among member states which has greatly exacerbated the effects of the humanitarian emergencies which compel refugees to cross borders in search of asylum. If the current proposal is adopted by member states it will be because its emphasis on “...relocation or return sponsorship...[of] those who have no right to stay ...” (Brussels, COM(2020) 609, p. 5) sits very comfortably within the “internal security” (Wolff 2020, p. 247) framework that EU member states have constructed for all matters touching on refugee status and asylum. Signs that the legal branch of the EU is crumbling before member state interests is evident not only in the, so far, ineffectual efforts of the Commission in the asylum policy arena, but also in the suggestion that the CJEU “...has given way to a contentious politicisation of social matters and pressure from member states, ...powerfully exemplified by the way in which, with a series of decisions from 2013 to 2016, the court reversed its previous jurisprudence to grant the member states considerable leeway to refuse access of non-nationals to welfare benefits (such as unemployment or child-based benefits), in particular for non-working individuals” (Crepsy 2020, p. 209). Returning to the asylum context, previous burden sharing proposals have been met by nothing short of lawless conduct by member states. For example, “...in 2015, the European Commission proposed to...relocate approximately 160,000 refugees from Italy and Greece to other EU countries. Despite the proposal being adopted by the Council, Bulgaria, Cyprus, Hungary, Slovakia, Slovenia and Poland openly refused to implement this new mechanism and many other member states did not comply with their commitments. In 2018, only about 30,000 people had been relocated” (Coman, Crepsy and Schmidt 2020, p. 19). The 1951 Convention Relating to the Status of Refugees imposes obligations on all member states of the EU, and it is hard to see how these obligations - particularly that of *non-refoulement* - can be met when member states refuse to implement even the minimum standards adopted by the Council. Given this shameful track record, it is hardly surprising that other breaches of fundamental rights by member states have occurred, leading to significant reputational damage to the EU. Austria, Hungary and Poland have each been found to be in violation of those human rights that the EU holds dear (quite evidently refugee rights do not fall into that category!), and, in each case “...limitations of the existing legal framework to suspend the rights of member states who are found to be in ‘serious and persistent breach’ of those common values...” (Coman 2020, p. 366) have been found.

Much investment is now being made into proposals for a “...rule of law conditionality linked to breaches of fundamental EU values” (Bachtler and Mendez 2020, p. 130), which would allow for the imposition of “...financial sanctions ...to protect the EU budget where there is a risk of a generalised deficiency in the rule of law in a member state” (Bachtler and Mendez 2020, p. 130; Coman 2020, p. 372).

Conclusion

A collection of essays on the theme of the disintegration of the European Union could hardly overlook Brexit, and I conclude this review with a reflection on the implications for law and order in the EU of the UK’s departure. It can hardly be said that the UK approached the Article 50 negotiations with entirely clean hands. Had it done so, it is arguable that the *Miller* [2017] and *Wightman* [2018] cases would not have been brought before the UK Supreme Court (UKSC) and CJEU, respectively. Moreover, the Commission recently sent a formal notice of its intention to commence infringement proceedings against the UK for breach of its obligations under the Withdrawal Agreement. These unfortunate lapses aside, Lacey and Nicolaidis do well to point out that “...with the departure of the UK, the EU is losing one of the world’s most well-established and respected democracies. Meanwhile, the EU has proven largely unable to stem democratic backsliding among some of its member states, most notably Hungary and Poland. Article 50, therefore, has not been used by states who have decided to depart from the EU’s fundamental values, but by a state whose constitutional order remains entirely compatible with European values” (p. 390).

References

Derrida, J. (1992) “Force of Law: the Mystical Foundations of Authority”, 11 *Cardozo Law Review*, 920-1045.

European Commission, Communication on a New Pact on Migration and Asylum, Brussels, 23,9,2020, COM(2020)609 final.

https://ec.europa.eu/info/sites/info/files/1_en_act_part1_v7_1.pdf

R (*on the application of Miller and another*) (*Respondents*) v *Secretary of State for Exiting the European Union* (*Appellant*) [2017] UKSC 5.

Case C-621/18 *Wightman and Secretary of State for Exiting the European Union*

