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The empty place of European power: Contested democracy and the technocratic threat

Luigi Corrias*

Abstract

In this article, I analyse the European Union (EU) in the light of the Lefortian question: What place does power have in a democracy? Claude Lefort has argued that modern democracy is a regime where the place of power is empty. In this article, I investigate what this entails for the EU. I take the current situation of democracy in the EU as being marked by two developments: the contestation of democracy by citizens on the one hand and the hollowing out of democracy at the EU level on the other. Exemplary for the first development are the popular protest movements known as the *indignados*. The second feature is exemplified by governance and technocracy. My argument suggests that the critical response of the former to the latter can in fact be read as the claim that what should have been the empty place of power in European democracy has come to be occupied by the establishment of an authoritarian regime of expert rule.

1 | PROLOGUE

This paper is motivated by a feeling of unease: what remains of those popular protest movements in Europe which had as their hallmark the occupation of public squares, generally known under the name ‘the *indignados*’? Have their complaints actually been addressed? Or, have we all rather waited for the fury of the outraged to pass, so that we now look back on them as the occasional wrinkles in the calm, all too calm waters? My unease is fuelled by the suspicion that we might not have taken these protestors and their complaints seriously enough in our haste to return to business-as-usual. Beneath their multiple complaints, often voiced as passionate but unstructured outcries, lies a fundamental question: What place does power have in a democracy?

The aim of the article is to formulate an answer to this question with regard to the EU. Importantly, this question can be read both in a descriptive and in a normative way. In the first reading—What is the place of power in a democracy?—it asks for an analysis of the power relations within a polity which claims to be a democracy. In its normative reading—What ought to be the place of power in a democracy?—it implies a normative ideal with which to judge whether or not a democratic regime actually merits that label. The complaints of the *indignados* were voiced at the nation-state, first and foremost. Yet, it would be a mistake to conclude from this that the EU is off the hook. The features of nation-states most disturbing to the *indignados* are only exacerbated in the EU context, and often directly

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blamed on its influence.¹ To use an infamous metaphor: the EU appears as nothing more than a Superstate devouring the power of the people.² As a consequence, all the problems the *indignados* have with the nation-state apply *a fortiori* to the EU.

Now, contrary to the received view that governing through chosen representatives is the closest one can get to the idea of democratic rule, the *indignados* passionately put forward the ideal of direct democracy. Implicit in their plea is that representation is a contingent and not a necessary feature of a democratic regime. Drawing on the work of Claude Lefort, I will argue that this assumption is false. Lefort makes representation the very core of his conception of democracy. In his famous trope, democracy is marked by 'the empty place of power', meaning that nobody has a final claim to power. The empty place is the necessary representation of the conflictual unity of a democracy, a regime where power is continuously contested. At first glance, it might seem awkward to use Lefort (defending representation) in an article which takes its cue from the *indignados* (rejecting representation). As I will show, however, the choice of Lefort is warranted because his theory of democracy harbouring an empty place gives me the opportunity to both shed light on the state of democracy in the EU and point out in what respects the protestors were right.

Crucially, I argue that while the *indignados* and Lefort differ radically in their answers, they are motivated by the same concern about what place power has in a democracy. This fundamental question gains in importance at times when democracy is no longer taken for granted and is put to the test by rulers and ruled alike; when one can hear the old mantra that extraordinary circumstances ask for extraordinary measures; when other and new types of regimes are being explored (i.e., technocratic ones). Such is the current situation of the EU. Hence, this question at the heart of this article.

The article is structured as follows. Section 2 revisits the protest movements, known as the *indignados*, which were born all over Europe in response to the financial crisis and the challenges they raised to European politics. In section 3, I draw on Lefort to develop the theoretical framework of this article. For the purposes of this article, it is particularly important to understand what he meant with his theory of modern democracy being marked by an empty place of power. Sections 4 and 5 then turn to the current predicament of the EU. Section 4 picks up on the notion of governance to develop the claim that the place of power has actually become too empty in the EU. This may, in turn, help in understanding the rise of technocracy, a theme I develop in section 5. In particular, I argue how technocracy may be seen as a reoccupation of the place of power, replacing democratic aspirations by governance by experts. Finally, the short epilogue of this article takes up the question how we might proceed: What ought to be the place of power within the EU? I will sketch the contours for a renewed imagination of European democracy.

2 | THE GHOST OF PROTESTS PAST

Suddenly, there they were: the *indignados*, the outraged.³ Inspired by the Arab Spring and the global Occupy movement, protests started in Spain on 15 May 2011 with the occupation of major squares in cities such as Madrid and Barcelona. The protesters voiced their dissatisfaction with several developments, including European austerity measures, the rise of global capitalism, the power of the banks, the general loss of autonomy over their lives, etc. One

¹Pablo Calderon Martinez, 'Why the "Indignados" Matter: Spain, Revolution and the European Ideal'. Retrieved on 30 November 2017 from: <http://europeonthestrand.ideasoneurope.eu/2011/06/19/why-the-%E2%80%98indignados%E2%80%99-matter-spain-revolution-and-the-european-ideal>.

²In the words of one *indignados*: 'A lot of people in the Indignado movement come from a background where criticism of the EU is done on an anti-capitalist basis and the conclusion of this is the EU as instrument is unfit.' Quoted in M. Gauthier, 'EU, Indignados lost in communication'. Retrieved on 30 November 2017 from: <http://blogs.mediapart.fr/edition/les-indignes-mouvement-15m/web/211011/eu-indignados-lost-communication>.

³For this section, I occasionally borrow from: L. Corrias, 'Between Grexit and Utopia: EU Legal Theory in the Mirror of *los indignados*', (2015) 44 *Netherlands Journal of Legal Philosophy*, 3.

demand lay unmistakably at the very core of the existence of the *indignados*: the reinvention of democracy in a horizontal and inclusive guise.⁴

Regarding this topic, the protesters and the EU seemed, in the words of one commentator, to be 'lost in communication'.⁵ There simply seemed to be no common ground for a serious discussion between the two sides. What becomes evident from one rare meeting between a high official of the EU and four *indignados* is that the latter completely reject the democratic institutions of the EU, arguing that politicians do not represent them: 'Our first message from the movement is that the politicians don't represent us.'⁶ Behind this statement lies the juxtaposition between representative democracy and its institutions on the one hand and so-called real democracy and direct participation on the other.⁷ Consequently, reinforcing representative institutions will not do when 'the root of the problem lies in political representation' itself.⁸

Scholars have pointed out two aspects as the legacy of the *indignados*.⁹ First, there is the primacy of politics vis-à-vis the economy. The relationship between the two has been such that during the financial crisis it was the economy (the logic of the financial market) that directed which politics to implement (austerity measures). The *indignados* forcefully reject this and passionately plead to reinstall the primacy of politics. Second, there is the call to rethink democratic politics. Here there is, of course, the problem with representation, or in the words of one *indignado*: 'In order to create an informed society people have to talk to one another, to read a lot, to write a lot, and not to create a society that is isolated by institutions and by all these machines of this system.'¹⁰ However, apart from moving away from representation and verticality towards participation and horizontality, there is another fundamental point at stake here: What is the proper place of (democratic) politics? Again, this question is critical for the EU, since it infamously suffers from the lack of a public sphere. Taking the streets and occupying squares, the *indignados* also put into the limelight what has been called 'the *Ortlosigkeit* of EU democracy, the lack of a public stage for EU democracy'.¹¹

In sum, the protesters rejected the normal way of doing politics: they pitted themselves against party politics and the representation it depends upon. Against the verticality, representation and monism associated with party politics, the protesters put forward 'horizontality, participation and pluralism'.¹² This opens up the possibility to cast the disagreement in the appropriate terms: 'At the centre of the dispute between protesters and political elites was the meaning of the term "politics" itself.'¹³ When politics itself becomes the object of politics, this meta-level discourse is no longer one of business-as-usual and the questions being asked belong to the realm of—what in the vocabulary of Claude Lefort is called—the political, as to distinguish it from (day-to-day) politics. In his specific understanding of the term, 'the political' refers to the symbolic institution of society, something which will be developed in the next section. The *indignados* reminded us of the importance of the question central to this article: What place does power have in a democracy? This question even now haunts the EU, despite the fact that the occupation of public

⁴T. Decreus, 'Echte Democratie Nu! Over Directe Democratie en Representatie', (2012) 32 *Krisis: Journal for Contemporary Philosophy*, 32, 32–33.

⁵M. Gauthier, above, n. 2.

⁶*Ibid.*

⁷Decreus, above, n. 4, at 33–35.

⁸M. Prentoulis and L. Thomassen, 'The Legacy of the Indignados'. Retrieved on 30 November 2017 from: <http://www.opendemocracy.net/can-europe-make-it/marina-prentoulis-lasse-thomassen/legacy-of-indignados>

⁹*Ibid.*

¹⁰Quoted in M. Gauthier, above, n. 2.

¹¹R. Nickel, 'From Integration through Law to Integration through Conflict', in D. Augenstein (ed.), '*Integration through Law*' Revisited: *The Making of the European Polity* (Ashgate, 2012), 121, at 129.

¹²M. Prentoulis and L. Thomassen, 'Political Theory in the Square: Protest, Representation and Subjectification,' (2013) 12 *Contemporary Political Theory*, 166, 168.

¹³*Ibid.*, at 172.

squares seems something from a distant past.¹⁴ It lies also, as we will see, at the core of the philosophical oeuvre of Claude Lefort.

3 | POLITICAL REGIMES, POWER AND SYMBOLIZATION

Lefort has devoted his career to the question of the place of power in the regimes of Modernity. While Lefort himself has written next to nothing on democracy beyond the nation-state,¹⁵ I will bring his thoughts to bear on democracy within the EU. However, central to Lefort's own thinking is the opposition between modern democracy and totalitarianism as the two main regimes of Modernity.¹⁶ These regimes, he argues, can only be grasped fully when one understands them against the background of the pre-modern regime of absolutism. In absolutism, power was of a political-theological nature, argues Lefort. In one of his most famous texts, Lefort traces the problem back to the medieval doctrine of the two bodies of the king.¹⁷ Drawing on the work of Ernst Kantorowicz,¹⁸ Lefort explains how the king possessed both a mortal and an immortal body. In the latter sense, his body symbolized the unity of the polity. Now, the question for Lefort is what becomes of the political-theological in Modernity. His answer is a nuanced one. The reference to a theological source in order to sustain the unity of society is surely no longer necessary. Yet, the need for society to mirror itself is as acute in Modernity as it was in medieval times. The perspective of the unity of a polity is pivotal to grasp what is at stake in politics.¹⁹

What performs this function nowadays is 'the political', as distinguished from politics.²⁰ In this sense, one should understand 'the political' as the *conditio sine qua non* of politics. While politics is the subject of political science, the political denotes the founding principles which institute a society: it envisages our relationship with 'the world'—the horizon against which our acting and thinking obtain meaning. The political is a symbolic dimension: it refers to the self-representation of a society by reference to a point ('place') outside of society from which society may be represented as a whole. Only via this outside or otherness may a multitude of individuals understand itself as a bounded group ('We, the People') acting together for a common purpose ('a society'). So, only because of the political can we make sense of social (and political) relationships within one and the same society. Think here of the relationships between individuals in a society, the specific way(s) of life it makes possible and how these possibilities are instituted throughout civil societies by way of its political institutions, legal system, schools and universities, media landscape, etc.

The symbolic dimension is made up of representations.²¹ Hence, since the political is of a symbolic nature and is constitutive of politics, representation is not a contingent but a necessary feature of politics. For Lefort, representation is thus much more than what a parliament does. It is connected to the very nature of political power. Far from being a brute fact, political power is representational in a double sense: it represents and needs to be represented. This has three important implications tied to the centrality of representation in Lefort's notion of the political.²² First,

¹⁴Yet, in May 2017, the *indignados* celebrated the fifth anniversary of the movement in style, see: <https://www.euractiv.com/section/elections/news/spaniards-march-to-mark-fifth-anniversary-of-indignados-movement/> (retrieved on 30 November 2017).

¹⁵As is also noted in the secondary literature, see, e.g., R. Geenens, 'De lege plaats van de internationale macht?', (2011) 51 *Wijsserig Perspectief op Maatschappij en Wetenschap*, 30; A. Braeckman, 'The Hermeneutics of Society: On the State in Lefort's Political Theory', (2017) 24 *Constellations*, 1.

¹⁶C. Lefort, *The Political Forms of Modern Society: Bureaucracy, Democracy, Totalitarianism* (Polity, 1986); C. Lefort, *Democracy and Political Theory* (Polity, 1988).

¹⁷Lefort, *Democracy and Political Theory*, above, n. 16, at 244.

¹⁸E. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton University Press, 1957).

¹⁹B. van Roermund, *Legal Thought and Philosophy: What Legal Scholarship is About* (Edgar Elgar, 2013), at 72–78.

²⁰Lefort, *Democracy and Political Theory*, above, n. 16, at 10–11.

²¹M. Lievens, 'From Government to Governance: A Symbolic Mutation and its Repercussions for Democracy', (2015) 63 (Supplement 1) *Political Studies*, 2, 3.

²²Geenens, above, n. 15, at 31–32.

the political has an integrating function: since we are all participants in the same (political) conflict, this acts as a source of unity. This amounts to saying that the unity of the people is a symbolic (i.e., represented) unity. Second, the political expresses our freedom: it represents us as the agents of democracy, i.e. as free and equal citizens in a polity. Third, the political symbolizes the conflict by providing it with a stage where people can question specific power claims.

From this one can already discern that representation is productive in that it brings about what it represents.²³ Linked to the political, it has to do with the image or form of a society.²⁴ The form of society corresponds with the regime of the polity. Every regime, Lefort argues, has its own society based on a specific *mise en forme* which is both a *mise en sense* and a *mise en scene*.²⁵ The regime as the form of society gives meaning to social relationships and stages them. When we look at modern democracy, this entails that its specific form is a society where power belongs to everyone ('the people'), so no one in particular is *a fortiori* justified to exercise it. Note how this is in stark distinction with medieval monarchy. There, as we have seen, the king incorporated power. Modern democracy is the regime where power appears as dis-incorporated.

Nowhere does this come better to the fore than on election day.²⁶ Celebrated as the democratic moment par excellence, universal suffrage is expected to make the people present in the polity: whereas in everyday politics the people rule through their representatives, when elections take place, it is the people themselves ruling directly. In other words, at the ballot box indirect democracy gives way to direct democracy, absence appears to turn into presence. Lefort, however, argues that this is not the case: even in elections the people as a political unity remains absent. What does appear is the population, an aggregate of individuals, each anonymously casting their own vote.

This has consequences for the meaning of social relationships within a democracy. Modern democracy is characterized by the loss of the markers of certainty. There is no final claim to be made on Knowledge, or Law, or Power. Democracy is the regime of radical indeterminacy.²⁷ In the famous trope of Lefort, in modern democracy, there is thus an empty place of power.²⁸ It is important for our purposes to stress that Lefort says that it is *symbolically* empty: there is a gap between society and its self-representations, a gap between the symbolic and the real. Modern democracy is dependent on this gap because it ensures society from ever coinciding with itself, thus giving rise to a civil society which is not reducible to the state. It is a society where the conflict about society is instituted as a legitimate and necessary ritual. This involves the specific way in which modern democracy stages itself: unity is itself dependent on a public discourse in which it is represented. It is thus open to debate: constituted in a symbolic conflict.²⁹ Hence, democratic society is bound to be internally divided and it is exactly by ensuring that the struggle for power is something which is institutionalized *de jure* that it is held together.³⁰

However, modern democracy is vulnerable to the extent that when conflict is no longer symbolic (appearing on a specific stage, within an institutional setting) but becomes real and (appearing within society), it risks disrupting its symbolic unity.³¹ At such a moment, a whole new menace knocks on the door. It is exactly at this point that the danger of democracy falling into totalitarianism lurks. Crucially, Lefort analyses totalitarianism as a post-democratic regime, in the specific sense that one can only grasp totalitarianism starting from the limitations of modern democracy. More precisely, totalitarianism looms when democracy's empty place is no longer symbolic only but becomes a reality. When different factions contest not just the place of power but the very common basis of the polity itself is put into

²³Lievens, above, n. 21, at 3.

²⁴Braeckman, above, n. 15, at 5.

²⁵Lefort, *Democracy and Political Theory*, above, n. 16, at 217–219.

²⁶*Ibid.*, at 18–19.

²⁷*Ibid.*, at 19.

²⁸*Ibid.*, at 225.

²⁹*Ibid.*, at 17.

³⁰*Ibid.*, at 227.

³¹*Ibid.*, at 223.

question, the place of power is no longer symbolically but *really* empty. Whatever claim is then effectively sustained on the nature of the political lacks any broader legitimacy and appears as only at the service of some and not of others and society risks falling apart.³² This is the kind of moment at which the call for a strong leader may be heard: the call to institute a regime that puts an end to the constitutive uncertainty of democracy.

Totalitarianism may thus be understood as a reaction to the specific configuration of power in modern democracy. One can understand totalitarianism as the reoccupation of the place of power.³³ The specific *mise en forme* is one of a society in which both the division between the state and civil society and the division within society are denied.³⁴ Since there is no longer a gap between the symbolic and the real, societal relations obtain meaning through an ideology of identity. Power becomes reincorporated.³⁵ There is no stage for conflict to be played out. Institutions like the parliament only serve the ideology, and elections are not free. In Lefort's writings, the prime example of a totalitarian regime is the Soviet Union under Stalin. It operated through the myth of the One Leader, the One Party, and the One People.³⁶ The One Party, the Communist Party, put an end to the division of society and to the constant struggle for power. Something like a civil society was no longer existent. Knowledge, science and law had one single source, the communist ideology in its Stalinist version. The myth of the One People cast it as a substantial unity. Society was again thought of as a body (or as a machine).³⁷ So-called traitors of the people were to be eradicated like parasites.³⁸

Contrary to the *indignados*, Lefort puts great emphasis on representation. He does this from an analysis of power as inherently representational, since it symbolizes—shaping relationships within society. At the same time, the answer that Lefort offers to the question what place power has in a democracy is: as a symbolically empty place. This entails both that a claim to power in a democracy is always contested (power is dis-incorporated) and that this ritual of contestation ought to be instituted (conflict is given a symbolic stage). In the next two sections, I turn to the EU to understand whether and in what sense one may speak of an empty place of European power.

4 | GOVERNANCE AND THE SINGLE MARKET

The central claim that I want to develop in this section is that a fundamental shift has taken place from government to governance in the EU.³⁹ The fundamental aspect of this change entails that the place of power, to use the Lefortian vocabulary, has become emptier than it has ever been.⁴⁰ The notion of governance is best captured in contrast with government. The concept of government is closely connected to that of the nation-state. Within the nation-state, there was, more or less, one ultimate centre of power. The authority of this power was to be derived from the people in a democracy. As we have seen in the previous section, Lefort argues that the people takes this position, as the ultimate source of authority, over from the king. Importantly, whereas the king incorporated power—that is why he was said to possess two bodies—the democratic regime is characterized by a disincorporation of power. Nonetheless, the people appeared as the symbolic point outside of a society from which to understand this society as a whole. Legally, a system of government brings with it an order of norms with a more or less clear hierarchy and a

³²Lefort, *Political Forms*, above, n. 16, at 279.

³³Lefort, *Democracy and Political Theory*, above, n. 16, at 13.

³⁴Lefort, *Political Forms*, above, n. 16, at 286.

³⁵*Ibid.*, at 290.

³⁶*Ibid.*, at 282–291.

³⁷Lefort, *Democracy and Political Theory*, above, n. 16, at 14.

³⁸Lefort, *Political Forms*, above, n. 16, at 287.

³⁹There exists a vast amount of literature on this shift. For a survey, see B. Kohler-Koch and B. Rittberger, 'The "Governance Turn" in EU Studies', (2006) 44 *Journal of Common Market Studies*, 27.

⁴⁰For a study which also cast the move from government to governance in terms of a Lefortian symbolic shift, see Lievens, above, n. 21.

highest legislator (or sovereign, if one wishes). This system still neatly fitted the Kelsenian model of a legal system as a hierarchy of norms.⁴¹

A first indication that the EU does not easily fit the traditional model of government may be found in its distinctive institutional architecture. While in a nation-state one usually distinguishes between three powers and three main actors of the state (legislature, executive and judiciary), this model does not apply to the EU.⁴² First of all, there are not three but four or even five political powers: the European Commission (EC), European Parliament (EP), Council, European Council and European Court of Justice.⁴³ In itself this already entails that power is more divided than in a nation-state. This is, of course, a result of the fact that the EU is built 'on top' of its Member States and that the interests of these states needed to be represented at the EU level.⁴⁴ The picture gets even more complicated when one realizes that the competences of the EU institutions cannot easily be compared to those of their national counterparts. For example, the EP had very little power at the beginning of the integration process and, even if it has gained some over the years, it still does not possess the right to initiate legislation. Another example is the European Commission. While it has a legislative task, it also acts as the executive of the EU. Here, the committees monitoring the European Commission also play an important role in the stage of implementation.

This institutional architecture of the EU may be grasped as a peculiar *mise en forme*: the EU in its current form is best understood as a regime where the place of power has become emptier than it has ever been. Power in the EU is more divided than ever, lacking a firm symbolic basis or stage to hold society together. However, more than just being the logical result of the superimposition of the European order on the orders of its Member States, this peculiar institutional set-up also needs to be understood in light of the primary purpose or objective of European integration. Indeed, the institutions of the EU and the way in which they may act within European society are to be understood in connection with the goal of the integration process, in order to grasp the distinctive emptiness of power in the EU.

While the question of *finalité* surely remains open and several more concrete objectives are summed up in the Treaties, one end or *telos* has been stated from basically the very start of the integration process: the establishment of a single market. The single market can be understood as a space where people, goods, services and capital can circulate freely. This explains the need to abolish all obstacles to free circulation and provide a standardization of product requirements. The project of establishing a single market was, in other words, first and foremost interpreted as one of economic integration. This explains why the European citizen was thought of primarily as a *homo economicus*.⁴⁵ It also helps us connect the project of European integration to the notion of governance. For, as long as integration is being thought of as a project primarily at the service of an economic goal ("establishing a single market"), politics is perceived first and foremost as a form of problem-solving. This view of politics leads to a conception of law as merely a means to this end.⁴⁶ It is exactly such a pragmatic and instrumental view of law and politics which forms part and parcel of the concept of governance. Indeed, regulating the single market is the very incentive to speak of governance in the EU.⁴⁷

Now, what exactly is governance and how does it differ from government? Scholars usually distinguish several meanings of governance, or emphasize the ambiguity of the concept.⁴⁸ The academic literature seems to agree that

⁴¹A. Andronico, 'The Dark Side of Governance', in P. Heritier and P. Silvestri (eds.), *Good Government, Governance, Human Complexity: Luigi Einaudi's Legacy and Contemporary Societies* (Olschki, 2012), at 200.

⁴²For an analysis of the division of powers between the EU institutions, see Sonnicksen, this issue.

⁴³All named in Article 13 TEU. I leave the Court of Auditors and the European Central Bank aside for now.

⁴⁴For a sophisticated account of representation in the EU, see Scherz, this issue.

⁴⁵For a recent genealogy of the subject of free movement as *homo economicus*, see D. Kramer, 'From Worker to Self-Entrepreneur: The Transformation of *Homo Economicus* and the Freedom of Movement in the European Union', (2017) 23 *European Law Journal*, 172.

⁴⁶Andronico, above, n. 41, at 200.

⁴⁷S. Hix, 'The Study of the European Union II: the "New Governance" Agenda and Its Rival', (1998) 5 *Journal of European Public Policy*, 38, 40.

⁴⁸R. Rhodes, 'The New Governance: Governing without Government', (1996) 44 *Political Studies*, 652; W. Walters, 'Some Critical Notes on "Governance"', (2004) 73 *Studies in Political Economy*, 27, 42; Andronico, above, n. 41, at 189.

one feature central to governance consists in the move away from traditional forms of rule associated with the nation-state. For with the diminishing importance of the nation-state the notion of government became outdated. Thus, the concept of governance is often accompanied by such qualifications as 'multilevel' or 'transnational'. Even if it is not, governance still pivots around this move 'beyond the nation-state': away from verticality and hierarchy towards network and horizontality.⁴⁹ Governance captures a world where the governing is done without a central government, where things have become and continue to become increasingly complex, where interdependent organizations relate to each other in a network, where exchanges are informal and continuously flowing, non-state actors participate on equal footing as state actors thus blurring the boundaries between private and public, in a fluid process of self-governing, i.e., managing, regulating and solving problems.⁵⁰ Exemplary in this regard is 'comitology': a system in which public decisions are made by units which are found wanting both in terms of democratic legitimacy and with regard to transparency.⁵¹

The plurality of a democratic society is thus replaced by a heterogeneity of problems to be solved.⁵² In a Lefortian vocabulary, governance institutes a new symbolic order of effectiveness.⁵³ This new symbolization of power harbours, however, undemocratic and depoliticizing tendencies. Regarding the former, the language of participation is in itself already fundamentally at odds with that of (democratic) accountability,⁵⁴ let alone with the Lefortian emphasis on institutionalized conflict. With regard to the latter, governance directly leads to depoliticization: a frame of thinking politics without the political, i.e., where politics and political conflict are shrouded by a veil of interaction, exchange and integration.⁵⁵ The narrative of complexity also has this effect, since it makes politics disappear within a bigger tale of the ever more complex logic of history.⁵⁶ There is no staging of political conflict but decisions are taken rather in platforms directed at consensus.⁵⁷

With Lefort, one can thus come to understand governance as a further disincorporation of power, one in which no one seems to care for the place of power. Paradoxically, governance symbolizes power as completely stripped from its symbolic clothing, as purely immanent to society.⁵⁸ The symbolic nature of power has completely faded and any remaining symbolism of unity has shattered, giving way to multiple units of authority and sources of power. As a result, the collective endeavour of the contestation of power, as deemed essential to sustaining the place of power as symbolically empty, has been neglected. Losing its symbolic character and its stage, in governance power appears as the pursuit of particular interests only.⁵⁹ The exemplary manifestation of this nakedness can be seen in the influence of lobby groups on EU legislation. While lobby groups play a role in every polity and are not problematic in themselves, the *telos* of the EU makes it extra vulnerable to forces trying to 'buy' influence, thus pushing forward their particular interests over other ones. Nevertheless, the EU has even gone as far as giving the work of interest groups a legal basis and a formal place in the decision-making procedure.⁶⁰

⁴⁹A. Lo Giudice, *La Democrazia Infondata: Dal Contratto Sociale alla Negoziazione degli Interessi* (Carocci editore, 2012), at 126.

⁵⁰Rhodes, above, n. 48, at 660; Walters, above, n. 48, at 29–31; Hix, above, n. 47, at 39.

⁵¹Hix, above, n. 47, at 40.

⁵²Lievens, above, n. 21, at 7.

⁵³*Ibid.*, at 10.

⁵⁴Rhodes, above, n. 48, at 667; M. Dawson, 'The Legal and Political Accountability Structure of "Post-Crisis" EU Economic Governance', (2015) 53 *Journal of Common Market Studies*, 976, 990–991.

⁵⁵Walters, above, n. 48, at 33–37.

⁵⁶*Ibid.*, at 41.

⁵⁷Lievens, above, n. 21, at 14.

⁵⁸*Ibid.*, at 7.

⁵⁹Lo Giudice, above, n. 49, at 127.

⁶⁰Article 11 TEU.

Thus, the concept of a single market is proving to be too empty to hold a polity together, at least as long as it is reduced to an economic, capitalist understanding of the term.⁶¹ As a consequence, a process of depoliticization has taken place and power in EU governance is at risk of seeming nothing but the outcome of a clash of particular interests. With the move to governance, the place of power has become too empty, not just symbolically but really empty. As we have seen, Lefort warns us that at such a moment the need for certainty may be felt and the risk of totalitarianism looms large.

5 | THE THREAT OF TECHNOCRACY

Fortunately, the EU is not a totalitarian regime in any understanding of the term. Still, several scholars argue that the EU, and more specifically the Eurozone, has moved towards an authoritarian regime of its own, one in which democracy has been replaced by technocracy, or authoritarian liberalism.⁶² This move has been triggered by the Euro crisis. Most notably, in order to deal with this crisis, politicians argued, normal politics is not enough and solutions are to be sought in emergency measures, i.e., measures in tension with the original legal framework.⁶³ I submit that one may grasp technocracy as a specific regime in the Lefortian sense.⁶⁴ Thus, it brings with it a peculiar *mise en forme*, giving meaning to and staging social relationships.

Technocracy is the regime of expert rule. Now, in itself, there is nothing unusual or problematic about experts helping to make policy on technical issues (a common practice in the EU and in nation-states). However, technocracy becomes problematic from a democratic point of view at the moment that neutral experts decide issues concerning distribution.⁶⁵ Technocracy becomes a mode of authoritarianism—rule ultimately based on the arbitrary exercise of authority—as soon as safeguards which we associate with constitutional democracy are no longer met.⁶⁶ These include a lack of democratic control and reduced judicial review.⁶⁷ In giving experts—instead of the people—the final say and sidestepping judicial control, technocracy shows its ugly face based on a deep mistrust of democracy.⁶⁸ The technocratic alternative to democratic power consists in the attempt to escape politics by turning to the allegedly neutral decision-making by experts.⁶⁹ As such, technocracy enlarges and exacerbates undemocratic tendencies inherent in governance, thus leading to a regime which is genuinely anti-democratic.

While one possible way to describe the *sui generis* character of the EU is to focus on its mix between democratic and technocratic elements, lately, however, (national) democracy has been severely damaged.⁷⁰ What has brought this about? In short, the answer is the measures taken to save the Euro and uphold the European Monetary Union (EMU).

⁶¹For a critical assessment of the EU's socio-economic purpose and the way in which it was interpreted by lawyers, see C. Kaupa, *The Pluralist Character of the European Economic Constitution* (Bloomsbury, 2016).

⁶²1. Sanchez-Cuenca, 'From a Deficit of Democracy to a Technocratic Order: The Postcrisis Debate on Europe', (2017) *20 Annual Review of Political Science*, 351; M. Wilkinson, 'The Specter of Authoritarian Liberalism: Reflections on the Constitutional Crisis of the European Union', (2013) *14 German Law Journal*, 527; W. Streeck, 'Heller, Schmitt and the Euro', (2015) *21 European Law Journal*, 361; A. Somek, 'Delegation and Authority: Authoritarian Liberalism Today', (2015) *21 European Law Journal*, 340.

⁶³C. Kreuder-Sonnen, 'Beyond Integration Theory: The (Anti-)Constitutional Dimension of European Crisis Governance', (2016) *54 Journal of Common Market Studies*, 1350, 1358.

⁶⁴Interestingly, Lefort himself has occasionally addressed technocracy, warning about its anti-democratic tendencies; see C. Lefort, *Le Temps Présent: Ecrits 1945–2005* (Belin, 2007), at 394–395 and 946.

⁶⁵Sanchez-Cuenca, above, n. 62, at 361.

⁶⁶Kreuder-Sonnen, above, n. 63, at 9.

⁶⁷Dawson, above, n. 54, at 986–991.

⁶⁸Sanchez-Cuenca, above, n. 62, at 362. Interestingly, technocracy shares this mistrust of parliamentary democracy with populism; see C. Bickerton and C. Accetti, 'Populism and Technocracy: Opposites or Complements?', (2015) *20 Critical Review of International Social and Political Philosophy*, 186.

⁶⁹Sanchez-Cuenca, above, n. 62, at 362.

⁷⁰Wilkinson, above, n. 62, at 535.

Amending the existing legal framework and calling into being new institutions—the European Stability Mechanism (ESM), the Fiscal Compact, the Outright Monetary Policy (OMP) of the ECB, the important role and far-reaching powers of the ‘troika’—has triggered several challenges in terms of competences and of democracy. The competence issue takes the classical form of the *ultra vires* problem: Were the established measures within the legal mandate of the EU and/or the Member States?⁷¹ Directly related is the democracy issue: How does the exercise of these competences affect democratic rule within the EU and its Member States, both in terms of putting national competence areas under surveillance of the EU (the European Semester) and the increased role of the ‘troika’ (most notably the EC) vis-à-vis (national) parliaments regarding economic and fiscal policies of the Member States of the Eurozone?⁷²

Here, the competence issue and the democracy issue form an unholy alliance stemming from the paradoxical fact that, while the monetary policy in the Eurozone is considered an exclusive EU competence, economic policy remains largely a matter of inter-governmental politics.⁷³ With the monetary crisis, the diversity of the Member States proved untenable and, more importantly, something needed to be done to rescue weak Member States (or else the whole Eurozone would be in danger of collapse).⁷⁴ As a result of this course of action, however, we are stuck with *executive dominated federalism*: a policy framework with a strong role of the executive, a very limited role of (national) governments and principles of legal and procedural fairness, and an increased importance of technocratic authorities and ditto principles, instead.⁷⁵

From this analysis emerges, in fact, an important difference between governance on the one hand and technocratic rule on the other. Recall how governance was presented as non-hierarchical, based on informal negotiation in horizontal networks, aimed at problem-solving. In contrast, as technocrats claim power in technocratic rule; hierarchy is reinstalled. Technocracy rejects classical liberal's mantra of *laissez-faire* and instead demands a strong role of the state, at least when it comes to protecting ‘the economy’ and ‘the market’ vis-à-vis democratic demands for redistribution.⁷⁶ Setting aside issues of redistribution, national democracies become emptied while decisions are taken on a transnational level.

This tactic—the relocation of decisions regarding distribution—is at first sight much more civilized than totalitarianism. Arguably, however, it is just as anti-democratic as the latter. For decisions are now taken by experts, gifted with superior knowledge of what globalization demands, who represent international organizations rather than people.⁷⁷ This we may capture in Lefortian terms to further refine technocracy's *mise en forme*: there is an absolute primacy of the economic sphere over all others (notably politics). As a result, relationships within society are first and foremost understood as economic relations and the logic of the financial markets determines which measures to take.

No redistribution, no class struggle, no politics altogether—at least not if we understand politics as the struggle concerning the collective project of the polity. Any collective project is sacrificed on the altar of economic stability, conflict is managed, the polity is ruled by the dictates of experts based on the primacy of the economy over politics.⁷⁸ This has led to the mantra that the capitalist market and the Euro have to be saved at all costs—a narrative hammered down forcefully, if only because ‘there is no alternative’ (TINA),⁷⁹ resulting in the era of ‘integration through necessity.’⁸⁰

⁷¹Somek, above, n. 62, at 341–342.

⁷²*Ibid.*, at 343–345.

⁷³B. Crum, ‘Saving the Euro at the Cost of Democracy?’, (2013) 51 *Journal of Common Market Studies*, 614, 619.

⁷⁴*Ibid.*, at 620–621.

⁷⁵*Ibid.*, at 622.

⁷⁶Streeck, above, n. 62, at 362.

⁷⁷*Ibid.*, at 365–366.

⁷⁸Wilkinson, above n. 62, at 542.

⁷⁹*Ibid.*, at 551.

⁸⁰*Ibid.*, at 552.

Within market Europe with its strong role of the executive and expert rule, one can no longer uphold that the place of power is empty. Technocrats have reoccupied this place, giving rise to a type of rule which may be characterized as authoritarian liberalism. Within the EU, depoliticization (through governance) and casting economic liberalism as the only way forward (through technocratic rule) have made any type of political division either redundant or impossible. Recall how political division and the institutionalized struggle for power formed the hallmark of Lefort's understanding of democracy. Now, democratic contestation becomes redundant because 'democracy is elsewhere,' i.e., where decisions are not taken.⁸¹ Democratic contestation becomes impossible because at the level where decisions are actually taken, democratic procedures and principles play no (meaningful) role and decisions are taken on the basis of the scientific knowledge of and by the few.⁸²

Arguably, this has also produced a specific type of individual. Not Lefort's *homo democraticus* bearing within herself the contingency and uncertainty so typical of democratic society. No, rather the 'good European'—to use Nietzsche's expression—appears as the perfectly autonomous agent on the economic market, enjoying her completely disembodied freedoms.⁸³ Indeed, *consumo ergo sum*—this individual has herself become depoliticized, thus becoming the prime example of the victory of authoritarian liberalism.

In sum, technocratic rule with its specific *mise en forme* may be understood as a reoccupation of the place of power in the EU. In this specific sense, technocracy bears resemblance to totalitarianism—even if these regimes are unlike each other in many other respects. Nevertheless, what totalitarianism and technocracy share is a rejection of the contingency of political conflict and the indeterminacy of democratic society. Indeed, the mistrust in representative bodies and their abilities to come up with the right policies in times of crisis gives way to a completely depoliticized form of rule in the EU: the contingent outcome of a political struggle is cast aside in favour of a regime in which expert bodies have the final say on the basis of their special knowledge of what needs to be done. The division, conflict and unrest which characterize democratic society for Lefort are replaced by an authoritarian regime of stability and necessity.⁸⁴ The symbolic stage upon which the ritual of political contestation is played out is traded for the backroom where technocrats decide.

6 | EPILOGUE

This article set out to provide an answer to the question: What place does power have in a democracy, more specifically in the EU? More than others, the *indignados* have brought this question to the fore again in Europe. It is also a question that naturally leads to the work of Claude Lefort, as it is essentially about nothing more than the question of power and modern democracy. Thus, Lefort's theory of democracy as a regime marked by the empty place of power offers an important and useful conceptual lens through which to analyse the EU regime. The democratic regime is characterized by a radical indeterminacy within society regarding the origins of Power, Law and Knowledge. This means that nobody can lay an ultimate claim to power. Hence, the conflict about power is instituted *de jure*.

First, I showed how the EU as a regime of governance had strong depoliticizing tendencies, leaving the place of power too empty. Within the EU, governance is connected to the project of establishing (and maintaining) a single market. Interpreted as a project of economic integration, the single market proved perfect for what is basically a new type of regime, i.e., a peculiar *mise en forme*. Marked by horizontality, the proliferation of informal networks and the blurring of the public–private distinction, governance reduces politics to management and problem-solving. Indeed, governance may be grasped as the regime of effectiveness where power loses its symbolic character

⁸¹Streeck, above n. 62, at 366.

⁸²*Ibid.*, at 365.

⁸³A. Menéndez, 'The Existential Crisis of the European Union', (2013) 14 *German Law Journal*, 453, 483–484.

⁸⁴Wilkinson, above n. 62, at 558.

and becomes scattered between platforms directed at consensus. As a result, the place of power had not ever been so empty.

Second, I argued that technocracy may be interpreted as the reoccupation of the place of power by the establishment of an authoritarian regime of expert rule. The crisis of the Euro and the steps taken to solve it needed strong leadership and extraordinary measures, or so the argument goes. Technocracy, or authoritarian liberalism, was installed as a regime to handle this crisis. Whereas governance was characterized as horizontality and the idea of a network, technocracy reinstalls hierarchy and verticality. Yet, power is not in the hands of the people or institutions which can be held accountable but is first and foremost wielded by experts. Technocracy shows its anti-democratic face in that it replaces collective deliberation and political decisions on issues regarding distribution by the decrees of bodies of experts. Consequently, technocracy and its regime of authoritarian liberalism mean a reoccupation of the place of power.

In order to sketch the outlines of an alternative, I will return to the *indignados*. Not only did they pose the right question, I also believe that their critique provides us with a starting point for a renewal of democracy in the EU. Theirs was a strong plea for repoliticization. Explicitly questioning the primacy of the economy over politics, the *indignados* asked us, Europeans, to make clear what binds us together. What 'bonds of collectivity' do we have in the EU?⁸⁵ In the words of Lefort, I propose to speak of a renewed investment in the collective endeavour of contesting the place of power. Democracy in the EU is shaped by the project of a polity. The meaning of this polity is strongly political in the sense that citizens ought to be able to decide the destiny of the process by determining which decisions to take. The stage remains the market but surely not in a strictly economic meaning.

Any alternative to the autocratic technocracy that the EU threatens to turn into thus has to depart from the need to reinstitute the process of contestation. What binds us, Europeans, together is the collective project of contesting the empty place of our polity. What the EU needs to do in order to safeguard the viability of its democracy is to find a new symbolic language to represent itself to its citizens, Member States and the world. While the question of a European Constitution as a *document* is at least temporarily answered in the negative, the constitutional question of the EU remains open.⁸⁶ This is, I submit, the question of constituent power in the EU. Asking this question means taking European integration seriously as a political project in which the struggle for power is institutionalized in a particular way. This entails that political choices must be spelled out and opportunities for contestation must be provided.

Perhaps, one can start from what the Area of Freedom, Security and Justice (AFSJ) promises us. Indeed, combining the concepts of the AFSJ and the single market might be a fruitful beginning for a new symbolization of the place of power in the EU, a new 'symbolic marker of community'.⁸⁷ The fact that the single market has been supplemented by the AFSJ is in itself already enough reason to try and imagine freedom, security and justice as values which are neither solely nor primarily linked to the economy but to the European polity. These are thus *political* values. As such, decisions on their interpretation, concretization and application are political decisions in a twofold sense: decisions concerning the polity as a whole and to be made by the polity as a whole. The challenge would then consist in thinking freedom as the political freedom of a collective (i.e., beyond the four economic freedoms of individuals), to think security beyond border security as the availability of a polity where one can live a secure life within a sustainable environment with others, to think justice beyond cooperation in criminal matters, as the justice of a polity: the EU as a place where an effort is made to give each his due, a place of social justice and solidarity.

More room for social and environmental issues may serve as a first corrective to a reduction of the EU to a single market. Connected to a broader interpretation of the EU normative framework is a renewed understanding of citizenship. The European citizen is not a *homo economicus*, a stakeholder in a gigantic enterprise hoping for as big a profit as possible. She is, as a member of a polity, affected by, responsible for and directly involved in the collective project of

⁸⁵For more on 'bonds of collectivity' within the EU, see Beetz, this issue.

⁸⁶M. Wilkinson, 'Political Constitutionalism and the European Union', (2013) 76 *Modern Law Review*, 191, 192. There are also scholars who suggest a new constituent assembly: Menéndez, above, n. 83, at 522–524.

⁸⁷Lievens, above, n. 21, at 15.

that polity. Of course, here the literature on European democracy is rich in suggestions regarding the need for a European public sphere, media and debates. From Lefort we might take the lesson of the need to come up with symbolic representations of what holds the EU together and what the integration project is about. Yet, he has also pointed out that in a democracy this unity is always a conflictual one. Hence, a European public sphere should not be seen as the solid ground upon which a firm European identity can be built. Rather, this sphere should act as the stage upon which conflict is represented. Central remains the question of *finalité*; however, this time not guided by the pursuit of a given *telos* but rather by the political struggle over what it means to say 'We, Europeans'. The EU that dares to take up these issues as political issues and provides its citizens with the proper stage to address them might find the language to speak to their needs. These citizens, in turn, should not only criticize the EU as it is already constituted. They should also embrace the indeterminacy of European democracy as a possibility to contest that which is constituted; they should take the stage and engage the EU as a polity *to be constituted*.

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