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**'Globalization, Regionalization, Integration and Particularization:
An analysis of the EU integration project in light of
Brexit and the America First policy'**

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Turning and turning in the widening gyre
The falcon cannot hear the falconer;
Things fall apart; the centre cannot hold;
Mere anarchy is loosed upon the world,
The blood-dimmed tide is loosed, and everywhere
The ceremony of innocence is drowned;
The best lack all conviction, while the worst
Are full of passionate intensity.

William Butler Yeats, The Second Coming

April 16. Away! Away!

The spell of arms and voices: the white arms of roads, their promise of close embraces and the black arms of tall ships that sail against the moon, their tale of distant nations. They are held out to say: We are alone—come. And the voices say with them: We are your kinsmen. And the air is thick with their company as they call to me, their kinsman, making ready to go, shaking the wings of their exultant and terrible youth.

April 26. Mother is putting my new secondhand clothes in order. She prays now, she says, that I may learn in my own life and away from home and friends what the heart is and what it feels. Amen. So be it. Welcome, O life! I go to encounter for the millionth time the reality of experience and to forge in the smithy of my soul the uncreated conscience of my race.

April 27. Old father, old artificer, stand me now and ever in good stead.

James Joyce, A Portrait of the Artist as a Young Man

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Abstract

In light of Brexit and the America First policy of the current US Administration, it is sometimes contended that the EU concept of ‘ever closer union’ is doomed to failure. The instant work uses an interdisciplinary and comparative legal approach to examine this contention through a biopsychosocial constructivist lens. Placing the phenomenon of EU integration into its psychosocial, cultural and mythological context, this thesis asserts that such statements are based on an exogenic-endogenic antinomic perceptive disjunction concerning the existential significance of the EU. From the outside perspective of the Brexiteer and the Americans, the EU is fundamentally a trade block that threatens the sovereignty and hampers the realization of the potential of its Member States. Whereas, in line with the internal EU perspective, the Union is a project of regional integration which is absolutely essential in order to prevent the cultural and territorial disintegration of each and every Member State. The Union, that is, protects both sovereignty and culture, and, as such, it is required, so long as it obeys the legal principles of conferral, proportionality and subsidiarity.

Keywords: ‘Ever closer union’; biopsychosocial; conferral; proportionality; subsidiarity.

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Table of Abbreviations

ECB:	European Central Bank
ECJ:	European Court of Justice
EU:	European Union and all of its antecedents
PSPP:	Public Sector Purchasing Program (a form of quantitative easing program initiated by the ECB)
TEU:	Treaty on European Union
TFEU:	Treaty on the Functioning of the European Union
US:	United States of America or America

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Introduction

In recent times we have come to hear a lot about the “anti-globalization” movements which threaten to destroy the European integration project. Even the ECB has issued documents in which it discusses the threat to the EU represented by anti-globalization.¹ According to some, the list of anti-globalization manifestations signalling the imminent demise of the EU are many. The evident strain on the traditional US-European cooperation paradigm represented by Trump’s “America First” policy and Obama’s “pivot-East”, Brexit, the German Constitutional Court case of *Public Sector Purchasing Program of the ECB*, and the rise of right-leaning European populist movements have all been used to raise questions with regard to whether the EU will collapse. Viewed in this light, the project of “ever closer union” seems much in question.

This thesis examines the notion that Europe is threatened by an anti-globalization phenomenon. To aid in this endeavour, it develops and deploys an interdisciplinary and comparative law approach in order to seek a deeper and unified understanding of what, if anything, anti-globalisation movements and events mean for the EU. In scientific terms, it uses a limited-realist-biopsychosocial constructionist lens to look at and seek to understand certain political and cultural phenomena behind anti-EU sentiment arising from both within and without the Union itself. In so doing, it concludes that the anti-globalization rhetoric sometimes directed at the EU is misinformed and shaped by an exogenic antinomic perceptive disjunction which results in confusing the distinct concepts of globalization and regionalization.

Within this context, the paper proceeds from the well-accepted scientific position that culture, politics, and law are all products of the complicated triune biopsychosocial nature of humanity. That is to say, they emerge from a combination of the hardwired physical, conscious and unconscious psychological, and social aspects of innate human nature as it is expressed in a particular time and place. In this sense, the approach is constructionist in that it accepts that there is a dialectical relationship involved: Humanity shapes culture, just as it is shaped by culture; and it is from culture that the laws which shape society emerge within the context of history.

The paper builds upon the constructivist biopsychosocial approach by then turning to the philosophy of the famed Spanish philosopher of law and EU integration, Ortega y Gasset.

¹ See, e.g., Coeure, B. (2018). Taking Back control of globalization: Sovereignty through European Integration. *European Central Bank*. 28 March 2018. <https://www.ecb.europa.eu/press/inter/date/2018/html/ecb.in180328.en.html>. Retrieved July 9, 2020.

He lived in a time of civil and world war, and in looking at what was happening to his nation in this time period—and in surveying the developments related thereto through history—he concluded that the internal organs which had created the nation state were no longer at play in the modern world. Moreover, due to this fact, the territoriality and cultural integrity of the nation state would ultimately be overwhelmed by stronger states. Thus, to preserve the integrity of modern European nations and to give them purpose, a “United States of Europe” was absolutely essential. Only such an entity could balance the external and internal antimonious centrifugal and centripetal forces at play on the continent in the modern world.

Viewed in this light, to characterize resistance to EU integration as a form of anti-globalization is to accept a misinformed and flawed exogenic assumption. This view of integration is based on the perceptions of the Brexiteers² and the Americans. These parties were never truly part of the process, and unsurprisingly, they do not accept its goals as being necessary or legitimate. They take the position that the EU is a threat to sovereignty and global free trade, not its protector. Moreover, utilizing a patently absurd and self-serving logic, they argue that it must be stopped because it is a force of globalization: yet, they argue that they seek globalization in the form of free global trade.

But, when one takes the endogenic view of those Peoples and Member States who are part of the European integration project, the perception is entirely different. From the perception of those inside of the Union, integration is absolutely essential to save the cultures and territories of the Peoples and Member States from complete disintegration. To them, the EU phenomenon is a form of regionalization which serves to *buttress* and *reinforce* the territorial and cultural nature of Member States. It is not of the same *type* as the modern globalization project as imagined by the Brexiteers and Americans. Perhaps the two projects will end in the same place at some point, perhaps not, but, in any case EU regionalization and globalization are currently very different things.

The thesis concludes that in terms of history, social psychology and law, the America First and Brexit developments are different phenomena. Neither pose an existential threat to the EU as a coherent unit because the EU is designed, in part, to protect itself and its constituent Member States. Viewed in terms of their impact and origin, America First and Brexit are

² The phrase “Brexiteer” is used rather than “British” or “UK”. This is because Brexit is predominantly an English and Welsh phenomenon based on the results of the vote. The Scots and Northern Irish did not vote for it and their vision of themselves tends to differ from their more inward-looking neighbours. Moreover, it should also be noted that a significant portion of the English and Welsh population did not vote for Brexit, either, and it would be inaccurate to over-generalize in that regard. Regrettably, however, given the limitations of language it is sometimes necessary to generalize.

external, not internal to the EU, and although they are ostensibly anti-globalisation movements, they are driven by protagonists who consciously, or unconsciously, do not understand or mischaracterize the true nature of the EU as a regional integration phenomenon. In essence, the America First proponents and the Brexiteers do not look fondly on the EU due to the global competition consequences of a united Union.

Far from weakening the Union, however, these movements strengthen it. When exposed to pressure from outside, the EU reacts with more and not less unity. Within this context, the European Council (Art. 50) Guidelines for Brexit Negotiations are telling when they state:

The Union will approach the negotiations with unified positions, and will engage with the United Kingdom exclusively through the channels set out in these guidelines and in the negotiating directives. So as not to undercut the position of the Union, there will be no separate negotiations between Member States and the United Kingdom on matters pertaining to the withdrawal of the United Kingdom from the Union.

3. The core principles set out above should apply equally to the negotiations on an orderly withdrawal, to any preliminary and preparatory discussions on the framework for a future relationship, and to any form of transitional arrangements.³

In other words, these guidelines make it clear that the EU is an entity of unity and resolve when faced with external pressure. Indeed, this is one of the central functions of the Union according to Ortega y Gasset. It is a sovereignty and culture reinforcing and buttressing entity *vis-à-vis* its Member States. Furthermore, the complaint by Theresa May in response to the Guidelines that the EU was “lining up” to oppose the UK was itself evidence that the UK possessed an exogenic view of the EU. As Angela Merkel said at the time, “We haven’t lined up against anyone. We have made it easier for Britain, by speaking with one voice.”⁴

The utility of the EU as a Member State buttressing entity can be demonstrated by the fact that in the recent post-Brexit days even right-leaning European populist movements have begun to shy away from questioning the regionalisation and integrational aspects of the EU. They have, instead, turned their focus more and more towards external issues which are rightly aspects attributable to globalisation, such as migration from outside the EU.

³ European Council (Art. 50) guidelines for Brexit Negotiations. *Consilium.Europa*. April 29, 2017, <https://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brexit-guidelines/>. Retrieved July 15, 2020.

⁴ Brexit summit: EU accepts United Ireland declaration. *The Irish Times*. April 29, 2017. <https://www.irishtimes.com/news/world/europe/brexit-summit-eu-accepts-united-ireland-declaration-1.3066569>. Retrieved July 15, 2020.

Viewed in this light, the recent German Constitutional Court case of *Public Sector Purchasing Program of the ECB* is not problematic or reactionary. Indeed, it is fully consistent with Ortega y Gasset's endogenic view of the EU. Although the decision does seek on its face to retain a limited right for national courts to question ECJ judgments, it does so by first affording great deference to the ECJ within its rightful sphere of delegated decision-making authority. Issue is instead taken by the German Court only with the potential misperception that the treaties may have created a "federal system" of unlimited powers in violation of the notion of conferral.

In that regard, and read closely, the decision of the German Constitutional Court is merely nudging the ECJ to consider the concepts of conferral, proportionality and subsidiarity in its decisions. As such, the Germans are attempting to reinforce the role of the ECJ not to question it. The ECJ members are guardians of the EU treaties, and they have an obligation to ensure that Member State powers are balanced against EU powers in such a way that the EU reinforces Member States and does not engulf them.

Indeed, within this context, the United States can serve as a warning to the EU. In that country, one can see that such a phenomenon of encroachment has already begun to occur with significant adverse social consequences. That is to say, the subsidiarity and conferral principles in the US Constitution have slowly been ignored due to an expansive judicial reading of the Commerce Clause. Consequently, the powers retained by the States under the federal Constitution's Tenth Amendment have slowly been eroded. This has led to Member States of that federation losing their unique characteristics, and the large federal government beginning to assume the powers of a national government.

As such, within the EU context, caution is urged in terms of any tendency on the part of the ECJ to interpret European regulatory and legal power to the point that it threatens the sovereignty of the Member States. This is because, the purpose of the EU is reinforce and protect Member State sovereignty in the modern era and not to undermine it. Should EU power be interpreted overly-broadly, its core function could be undermined and the delicate balancing of centripetal and centrifugal forces thrown off balance.

Instead, should the European integration project wish to grow successfully over the long term, the ECJ must rely heavily on the concepts of conferral, proportionality, and subsidiarity. These concepts provide a pressure valve that prevents nascent national tensions and associated cultural differences from destroying the long-term EU goals of unity, peace and stability in a diverse age.

In terms of form, the instant work is divided into two parts. Part One examines the EU endogenic perspective, or the internal mythology of the EU in terms of its own existential purpose and significance. Part Two examines the exogenic perspective on the EU. It, in turn, is divided into two parts. The first part examines the US view of the EU in light of America's mythology, or the US internal view of its own role and purpose in the world. The second part analyses the Brexiteer's view of the EU in light of British mythology, and in particular, the myth of British Exceptionalism and the desire to rebuild an Empire built on seafaring and international trade, especially with the Colonies.

Part One

The EU Endogenic Perspective

Hence it is evident that the state is a creation of nature, and that man is by nature a political animal. And he who by nature and not by mere accident is without a state, is either above humanity, or below it; he is Tribeless, lawless, a hearthless one,' whom Homera denounces—the outcast who is a lover of war; he may be compared to a bird who flies alone.⁵

Man is a political animal. This deceptively simple statement by Aristotle sums up and unites modern constructivist⁶ biopsychosocial theory. Until the inherently defective and erroneous dualistic philosophy of Descartes—which artificially separated Man into body and soul—Aristotle's assertion was taken as common sense. In these days, however, common sense must sadly be reconstituted and explained in artificially learned terms.

In that regard, in the context of modern biopsychosocial theory, the human animal has three aspects, the biological, the psychological and the social.⁷ Reality, in this theory, is seen as a dialogue and a balance reached between these three aspects. When the physical world, psychological perception and social order are in harmony, the human being is healthy. When there is a disjunction between perception, reality and social order, there is a problem for the person and/or society.

Within this context, constructionism holds that, to a certain degree, humanity is capable of creating “social facts” or cultural perceptions negotiated through social intercourse.⁸ This is because social intercourse created a common set of understandings through the creation of a relational matrix. Culture, in turn, is based on these perceptions, with such cultures being found in groups, societies, nations and even regions. Similarly, group entities can and do, shape their members.⁹ As stated by Gelo *et al.*:

For social constructionists, human knowledge...is a process of meaningful and orderly construction that allows human beings to make sense of their outer and inner realities. Moreover, this construction takes place within relational transactions and is realized by means of social negotiation and legitimization. For this reason, socially constructed knowledge is both grounded in and mediated by

⁵ Aristotle (1957). *The Politics*, Book 1, Section 1253(a). Perseus.Tufts.

<http://www.perseus.tufts.edu/hopper/text?doc=Perseus:abo:tlg,0086,035:1:1253a>, Retrieved July 16, 2020.

⁶ In this paper the terms ‘constructionist’ and ‘constructivist’ are used interchangeably. Depending on the school of thought to which once subscribes, there can be minor differences. But that is not important here.

⁷ For a thorough discussion of biopsychosocial theory see McSharry, B. (2019). *Invisible Disorders and Disability Denial: A Biopsychosocial Analysis of Invisible Illness Within the Context of Ehlers Danlos Syndrome*. Doctoral Dissertation, SFU, Vienna, Austria.

⁸ Gelo, O.C.G., Ziglio, R., Armenio, S., Fattori, F. and Pozzi, M. (2016). Social Representation of Therapeutic Relationship Among Cognitive-Behavioral Psychotherapists. *Journal of Counseling Psychology*. 63(1), 42-56.

⁹ See, e.g., Sugarman, J. and Martin, J. (2011). Theorizing Relational Agency. *Journal of Constructive Psychology*. 24(4), 283-289.

the world views (i.e., the implicit basic values, assumptions, and beliefs) of specific socio-cultural groups at specific times and places¹⁰

Cultures organically establish power structures and enforce certain rules regulating the conduct of the individuals within them.¹¹ To achieve these ends cultures create and promulgate laws through civil society, which is itself the embodiment of the common understanding and will of individuals within a given culture. Society is based on the substantive values that an underlying culture has at its core, and “[o]rder, is not a pressure imposed on society from without, but an equilibrium which is set up from within”¹² Indeed, the famed American jurist Oliver Wendell Holmes published *The Common Law* in order to attempt to demythologize the notion of law based on this very notion.

In so doing, he wrote that in order to understand law we must understand culture, for law is a product of culture:

...other tools are needed besides logic. It is something to show that the consistency of a system requires a particular result, but it is not all. The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation’s development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become. We must alternately consult history and existing theories of legislation. But the most difficult labor will be to understand the combination of the two into new products at every stage. The substance of the law at any given time pretty nearly corresponds, so far as it goes, with what is then understood to be convenient; but its form and machinery, and the degree to which it is able to work out desired results depend very much on its past.¹³

Therefore, Holmes was acutely aware that “custom, beliefs or necessity” form legal rules. The law, the order in our societies, results from the belief system of the culture in which the law exists. In terms of Western Civilization, he credits the Greeks, the Jews, the Romans, and the Christians with creating the structure of European law and legal reasoning.¹⁴ Hilaire Belloc, another intellectual giant, connected the common European values to Christendom:

¹⁰ Gelo, O, Vilei, A., Maddux, J. and Gennaro, A. (2015). Pathopsychology as Social Construction: The Case of Anorexia Nervosa. *Journal of Constructivist Psychology*. 28(2), 105-125, p. 107.

¹¹ From this it can be shown that the constructionist perception of law and social regulation are inherently compatible with both the religious and philosophical schools of Natural Law. However, exposition of this point is beyond the ambit of the instant work.

¹² Hayek, F. (1960). *The Constitution of Liberty*. Chicago, IL: University of Chicago Press, p.130.

¹³ Wendell-Holmes, O (2000). *The Common Law*. *The Project Gutenberg EBook of the Common Law*.

<https://www.gutenberg.org/files/2449/2449-h/2449-h.htm>, page 1. Retrieved July 8, 2020.

¹⁴ Wendell-Holmes, O. *The Common Law*, supra, page 2.

The old ideal of unity in Christendom had been expressed through two main institutions, the Empire and the Papacy; the first obviously and explicitly political, the second belonging rather to the general transcendental scheme of Catholicism, but having its political place in the structure of the European world.

Unity through an Empire and a common Imperial idea, the ideal of all Christendom acting under one civil authority in civil matters, had been a reality at the moment when the Graeco-Roman Empire accepted the Catholic Faith.¹⁵

However, Belloc conceded that the precise genesis of the values is not overly-important within contexts such as the instant one. From a pragmatic perspective, for purposes of analysing law and culture as they currently stand, it is enough that the values are present. One need not be overly concerned where the values come from because, ultimately, they are themselves a kind of religious belief:

Some would use the word “philosophy” rather than religion. But a social philosophy, that is an attitude with regard to the universe held by great numbers of men in common for long spaces of time and throughout a whole society, is inevitably and necessarily clothed with forms; it will always and necessarily have some liturgy of its own, some ritual, some symbols, even though it does not consciously affirm any transcendental doctrines.¹⁶

In that regard, Taltavull notes that Ortega y Gasset (1883-1955) developed a similar approach to the issue of common values as expressed in the political structure of Europe. Ortega y Gasset, states Taltavull, lived in Spain in a time of internal and external turmoil. During his lifetime the Spanish Civil War and both world wars ravaged his nation. As a result, he feared that due to forces at play in Spain domestically and internationally his country could become lost in the sands of time. Consequently he came to theorize that in the modern world the European nations needed a United States of Europe so as to be able to survive. That is to say, he felt that Spain would become lost without an over-arching conception of Europe that bound it to its sister states. He “did not care [what] was Europe’s essence, if it was a Roman, Greek, or Christian construction. What really mattered to him was the political structure which had been developed as a specific European political way of life.”¹⁷

Looking at the Europe of his time, he reasoned that a modern state has two routes to travel. It can go through either a process of particularization or one of integration. In the process of particularization, nationalism begins to rise and the social group constituting a nation

¹⁵ Belloc, H. (1973). *The Crisis of Civilization*, Westport, CT: Greenwood Press, page 121.

¹⁶ Belloc, H. *The Crisis of Civilization*, *supra*, page 13.

¹⁷ Taltavull, J.B. (2017). The United States of Europe and Jose Ortega y Gasset’s political philosophy, 2017 PSA 67th Annual International Conference. Panel Session 9: Theorising Europe. https://www.psa.ac.uk/sites/default/files/conference/papers/2017/The%20United%20States%20of%20Europe%20and%20Jos%C3%A9%20Ortega%20y%20Gasset_2.pdf. Retrieved July 17, 2020.

starts to feel that its land is so differentiated from others that it does not need other states for survival or in order to increase its wealth. This, we shall see, is the route that Modern Britain has travelled.

This territorial particularization is related to a false belief that an isolated nation can be wealthier alone. Ortega y Gasset noted that territorial particularization can be separated from cultural particularization. That is to say, a people can feel that they have cultural commonalities with their neighbors, and yet such a people can refuse to cooperate with them for misinformed selfish economic motives. Territorial particularization is behind separatist movements, and at its extreme it can join with cultural particularism and become a form of ultra-nationalism which may lead to self-referentialism and even war between states.

The process of integration is the opposite of particularization. Integration occurs when states begin to form, be they new states or larger state-like entities forming from many pre-existing smaller states. Integration represents the gestational process of nation state or a supranational entity such as the EU. In this process, over time various arms of a proto-state begin to recognize a common interest and because of this they begin to cooperate in order to achieve common goals. Through this recognition, they begin to integrate for the mutual benefit of all concerned.

In viewing the nation states of his time, he further theorized that they were not in a process of integration, but a process of particularization and even complete disintegration. The old nations of Europe were not only particularizing from each other, but the internal arms which had created the nation states were also separating from one another. The Church, royal families and/or democratic understandings, governments, everything that had seemed to keep the nation state together seemed to be spinning apart. The old order was collapsing.

The only way to keep the nation states together was to give them a new identity, a new mission towards an over-arching process of integration. He proposed that this new entity should be The United States of Europe. This new project would have mythic significance. That is to say it would be imbued with meaning derived from and shared by the nation states it would protect. It would balance national and international centrifugal and centripetal forces. It would respect cultural and domestic differences. At the same time it would create a new overarching entity based on commonality. This entity and the act of creating it, would stabilize and protect the nation states. By working on a common project with their neighboring states, while still maintaining a degree of territorial and cultural particularization, they could forge a new identity and, in so doing, increase the wealth and prosperity of all in Europe.

In essence, Ortega y Gasset was creating a mythology for the EU. His mythology was constructive and integrationist insofar as it sought to unite the universal with the particular. For human beings, belief in myths and magic is something hardwired into us as a result of our biopsychosocial nature. Our nature inclines us to believe what makes us feel safe and what is convenient for us to believe. This tendency is with us from birth as individuals. Over time we bond with our family and local groups and they give our lives meaning. In times of perceived threats, uncertainty and possible death we tend to seek security. Naturally, we seek solace in our family, our friends and our nation. At times such as this, we are inclined to believe in myth the most.¹⁸

Thus, we take our individual inclination to mythologize with us and we romanticize the cultures and societies we create. This can result in an optimistic step outwards from the security of our families and nation if we fuse our identities with a universal project. By fusing ourselves with the universal, we can overcome our individual and national biases and move towards integration. However, our natures can also result in fear and pessimism, which can cause us to move towards particularization. In particularizing we can become self-referential and trapped by the myth of our own nation. As National Socialism establishes, such a development can be very dangerous, indeed.

As Peter Fitzpatrick writes in *The Mythology of Modern Law*, it is in the social bonds and mythology of our cultures that we can come to value both the greatness of humanity and the uniqueness of the individual. This mythic significance can be shared with other entities greater than the nation. Through integration the individual can be encouraged to seek the universal based on his or her love of the particular. However, the process of particularization is the opposite. It is a movement away from the universal towards a state that is self-referentially focused on the particular. Thus, particularization can be especially problematic:

Whether recent and abrupt or immemorially regressive, national histories were constructed or reconstructed which, far from pursuing fraternal connections with other people in a universal project, told rather of exclusive origins and identity, of distinct community and a unique spirit. Present limits of these particular histories are transcended in their elevation as part of, or even as a prerogative purchase on, universal progression. The operative reality thus created—the fusion of particular identity and universal project—has manifestly sustained an enormous existential commitment to the nation and generated a profound fidelity among its subjects, fidelity even unto death. No primitive or ancient mythmaker could achieve more.¹⁹

¹⁸ See, e.g., Becker, E. (1997). *The Denial of Death*. New York, NY: Free Press Paperbacks.

¹⁹ Fitzpatrick, P. (1992). *The Mythology of Modern Law*. New York, NY: Routledge, page 113.

To put this in psychological terms, just as for an individual, for a state integration represents a healthy psychological balance. Particularization, on the other hand is unhealthy, and when pathological, even narcissistic.

Fortunately, the EU is in a process of integration. Although it was initially primarily seen as being an economic organization, the Treaties have revealed another character that was hidden in the shadows: Political union. This characteristic was slowly revealed by common security and foreign policies. Curtain uses the concept of “differentiation” in order to explain the process of integration that is occurring in the EU.²⁰ In that regard, it must be emphasized that Ortega y Gasset’s concept of “particularization” is to be distinguished as being separate from Curtain’s concept of “differentiation.” The former relates to a state’s movement away from international engagement; the latter relates to the process involved in the EU’s transformation to a supranational organization.

Differentiation on the international level would appear to be analogously akin to a gestational process in which cells rely on nutrients from the mother in order to begin to differentiate and specialize, while working together in a way so as to create a new coherent whole. This is a way of understanding what Curtain means when she says that differentiation is a constructive product of “fragmentation.” Through fragmentation” old legal orders break down, and out of the fragments, new institutions and supranational ways of coping are engineered, or begin to differentiate.

Moreover, differentiation is multifaceted and pragmatic. It allows for closer cooperation between some nations on some issues for some time. The presumption, notes Curtain, is that the non-participation is temporary and allows for catch-up time. Like “soft law” it is a process of encouragement towards an inevitable goal. Differentiation has been known under several names, such as “multi-speed”, “variable geometries” and “core Europe.” Mitterrand called it a “virtual necessity” in terms of maintaining EU cohesion.

Differentiation’s first significant appearance, Curtain states, was in 1979 with the European Monetary System (EMS) which limited fluctuation rates, and the UK, in fact, did not participate in that system. Notably, the UK had also opted out of the Schengen regime (Amsterdam Treaty), the Charter of Fundamental Rights, and the 2014 Area of Freedom and Security and Justice (into which it later opt-in for Europol). The Lisbon Treaties also allow for

²⁰ Curtain, D. (2020). From a Europe of Bits and Pieces to a Union of Variegated Differentiation, EUI Working Paper RSCAS 2020/37. *Cadmus.Eui*. February, 2020.
https://cadmus.eui.eu/bitstream/handle/1814/67047/RSCAS%202020_37.pdf?sequence=1&isAllowed=y. Retrieved July 20, 2020.

differentiation in the fields of economic policy and defence, with the Eurozone being the most integrated economic form, and permanent structured cooperation in the field of defence being the most militarily unified form.

But within the EU integration does not occur in a political or legal vacuum. It is balanced by a pull towards unity, and the main guarantors of this unity are the members of the ECJ. In the case of *Van Gen den Loos*,²¹ the ECJ noted that in its creation, the EU was a new kind of thing based on the cooperation of not just the governments of Member States, but also the Peoples of Member States. In essence, the Court took Ortega y Gasset's view that this new entity was a form of integrational reality. As such, it was endowed with sovereign rights and the ability to regulate the relationship between Member States and themselves, as well as between Member States and their citizens:

The Objective of the...Treaty, which is to establish a common market, the functioning of which is of direct concern to interested parties in the Community, implies that this treaty is more than an agreement which merely creates mutual obligations between the contracting states. This view is confirmed by the Preamble to the treaty which refers not only to governments but to peoples. It is also confirmed more specifically by the establishment of institutions endowed with sovereign rights, the exercise of which affects Member States and also their citizens. Furthermore, it must be noted that the nationals of the States brought together in the Community are called upon to cooperate in the functioning of this Community...

Moreover, in the case of *Costa*,²² the Court went on to rule that the transfer of sovereignty by Member States was of unlimited duration and, in line with the Treaties, Member States were bound by EU law, which was supreme over domestic law. This supremacy also extended to issues of the interpretation of community law. Furthermore, in that context, and again pursuant to the Treaties, the ECJ's interpretation of EU law is supreme over that of any branch of government of any Member State. Citation of the decision's language in detail is required because it is of such importance and, indeed, relevance to today's issues facing the Union:

By creating a community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of Law which binds both their nationals and themselves. The integration into the laws of each Member State of provisions which derive from the Community, and more generally the terms and the spirit of the Treaty,

²¹ *Van Gend en Loos* (1963) Case 26/62. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61962CJ0026&from=EN>. Retrieved July 22, 2020.

²² *Costa v. Inel* (1964) Case 6/64. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61964CJ0006&from=EN>. Retrieved July 22, 2020.

make it impossible for the States, as a corollary, to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on a basis of reciprocity. Such a measure cannot therefore be inconsistent with that legal system. The executive force of Community law cannot vary from one State to another in deference to subsequent domestic laws, without jeopardizing the attainment of the objectives of the Treaty....

The obligations undertaken under the Treaty establishing the Community would not be unconditional but merely contingent, if they could be called in question by subsequent legislative acts of the signatories. Wherever the Treaty grants the States the right to act unilaterally, it does this by clear and precise provisions....

Applications, by Member States for authority to derogate from the Treaty are subject to a special authorization procedure... which would lose their purpose if the Member States could renounce their obligations by means of an ordinary law.

The precedence of Community law is confirmed by Article 189, whereby a regulation 'shall be binding' and 'directly applicable in all Member States.' This provision, which is subject to no reservation, would be quite meaningless if a State could unilaterally nullify its effects by means of a legislative measure which could prevail over Community law.

It follows from all these observations that the law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question.

The transfer by the States from their domestic legal system to the Community legal system of the rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail. Consequently [the Treaties are] to be applied regardless of any domestic law, whenever questions relating to the interpretation of the Treaty arise.

In this decision the Court, again, emphasizes that the Treaties create a new legal order that is directly effective *vis-à-vis* the citizens of the EU, the EU itself, and its component Member States. But, in noting this, the Court notes that the legal concept of conferral limits what the EU can properly do. Further, it acknowledges the notion of differentiation. It does this when it states that within EU law there is a process Member States can follow for seeking derogation from otherwise uniformly applicable rules. If no derogation exists, EU law prevails over Member State Law and there is a legal preference for unity and consistency throughout the Union. Nonetheless, derogations are possible. Thus, as Curtin writes:

The Court of Justice of the European Union (CJEU), often assisted by the legal services of the Commission, has traditionally insisted on maintaining that the Treaties and the legal and institutional order created by them forms an indivisible

whole. The European Court of Justice historically acts as a custodian of the uniformity of EU law. The purpose of uniformity was indeed the reason why the Court—a single judicial body having a monopoly over the supply of authoritative interpretations of EU law—and the preliminary reference mechanism were created to begin with. Besides Article 19(1) TEU, the sources of the Court’s mandate to preserve the unity and consistency of EU law are sought in Article 344 TFEU and 62 of the Statute of the Court. The uniformity and coherence of EU law are considered to be closely connected with the equality of EU citizens. The preliminary reference mechanism guarantees that citizens across the EU enjoy equal protection under EU law.²³

Within this context, however, the ECJ has been criticized for ignoring their role as guardians of the Treaties by placing too much emphasis on integration, and not enough on the concepts of conferral, subsidiarity and proportionality.²⁴ Moreover, Curtain notes that the flexibility allowed by differentiation should also be considered by the Court to allow a little more leeway in deference to the fact that derogation on large matters is possible in a greater Union context.

Indeed, long before the case of *Bundesverfassungsgericht* Judgment of May 5, 2020 in the *Public Sector Purchasing Program (PSPP) of the European Central Bank (ECB)*, academics such as Moens and Trone stated that the Court was endangering the integration process by exercising undue deference to EU actions while relegating conferral, proportionality and subsidiarity to legislative procedural, and not substantive judicial, status.²⁵ These legal principles are important. They diffuse the centrifugal and centripetal forces operative in the Union. They operate as time-buying and breathing opportunities for Member States to catch up and negotiate with one another and the larger Union as to the progress to be made as well as its pace:

The three key principles of conferral, subsidiarity and proportionality are all contained within the same Article of the Treaty on European Union [Art. 5]. The principle of conferral is defined as follows: ‘The Union shall act only within the limits of the competencies conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competencies not conferred upon the Union in the Treaties remain with the Member States.’ Proportionality is defined as follows: ‘the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.’

²³ Curtain, D. From a Europe of Bits and Pieces to a Union of Variegated Differentiation, *supra*, pp. 7-8. Retrieved July 20, 2020.

²⁴ Lopatka, R. (2019). Subsidiarity: Bridging the gap between the ideal and reality. *European View*. March 14, 2019. <https://journals.sagepub.com/doi/full/10.1177/1781685819838449>. Retrieved July 20, 2020.

²⁵ Moens, G.A. and Trone, J. (2015). The principle of subsidiarity in EU judicial and legislative practice: Panacea or Placebo. *Journal of Legislation*. Volume 41, Issue 1, Article 2 (July 29, 2015). <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1635&context=jleg>. Retrieved July 20, 2020.

Put briefly, the conferral principle asks ‘can’ the EU take a proposed measure. The subsidiarity principle asks ‘if’ the EU must defer to the Member States in relation to the proposed measure. The proportionality principle asks ‘how’ the proposed measure may be taken.

Conferral has also been summarized as being concerned with the ‘existence’ of a competence, subsidiarity with the ‘exercise’ of a concurrent competence, and proportionality with the ‘intensity’ of EU action.²⁶

In that regard, the *Bundesverfassungsgericht* Judgment of May 5, 2020 in the *Public Sector Purchasing Program (PSPP) of the European Central Bank (ECB)* case represents an interesting and new kind of warning shot over the bow of a potentially overly-aggrandizing EU. In the case involving the PSPP of the ECB, the Second Senate of the German Constitutional Court found that the German Federal Government and Bundestag violated the Basic Law by failing to question the implementation and proportionality of the ECB’s PSPP program. The PSPP is the quantitative easing program implemented by the ECB. The program was launched on 4 March 2015 in order to increase money supply and, thereby, to stimulate consumption and investment. Under the program the European Central Banks purchase government bonds and marketable debt issued by the governments of Member States.²⁷

On 11 December 2018, the ECJ had already ruled that the ECB’s actions were in accord with EU law. However, the German Constitutional Court found that the ECJ’s ruling was a violation of the principle of conferral under Art. 5(1) TEU in conjunction with Arts. 119 and 127 *et seq.* TFEU. In so doing, the Constitutional Court held that the ECJ’s decision was *ultra vires* because it was not comprehensible in that it neither assessed nor substantiated the quantitative easing program in terms of proportionality. While recognizing that under Art. 19(1)(2) TEU and Art. 267 TFEU, the ECJ had the right to interpret and apply the Treaties, the Constitutional Court nonetheless reserved the right to review such decisions on the logic that:

If any Member State could readily invoke the authority to decide through its own courts, on the validity of EU acts, this could undermine the precedence of application accorded to EU law and jeopardise its uniform application. Yet if the Member States were to completely refrain from conducting any kind of *ultra vires* review, they would grant EU organs exclusive authority over the Treaties even in cases where the EU adopts a legal interpretation that would essentially amount to a treaty amendment or an expansion of its competencies...[E]ven under the Lisbon

²⁶ Moens, G.A. and Trone, J., The principle of subsidiarity in EU judicial and legislative practice, *supra*, pp. 66-67.

²⁷ ECB Decisions on the Public Service Purchase Programme exceed EU Competencies. Press Release [of the German Federal Constitutional Court] No. 32/2020 of 05 May 2020. <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2020/bvg20-032.html>. Retrieved July 7, 2020.

Treaty, the Member States remain the ‘Masters of the Treaties’ and the EU has not evolved into a federal state...²⁸

Within this context, the Constitutional Court then goes on to hold that the ECJ’s upholding of the legitimacy of the ECB’s PSPP failed to give sufficient weight to the principles of proportionality and conferral under Art. 5 TEU. These principles separate the competencies of the EU and its Member States, and under Art. 19 TEU the ECJ is charged with ensuring that these principles are given sufficient consideration and enforced appropriately. According to the German Constitutional Court, that is, despite this duty being imposed on the ECJ, it failed to discharge its function as guardian of the treaties. When it limited itself to a “manifest error” standard of review in the context of the ECB’s PSPP actions it failed to conduct a proportionality analysis by balancing the policy objectives against the economic effects. In so doing, the ECJ violated the Treaties by failing to discharge one of its core functions.

It is no surprise that Brexiteers would hail this decision with some glee as being something which threatens to destroy the entire European order. For, as is discussed below, interpreting the decision as a power struggle between Germany and the EU—rather than a reasoned request for proportionality analysis—plays into the populist and nationalist mythology functioning behind Brexit and America First. Thus, pro-Brexit political scientist Dr. Anna Bailey has written:

The first reason why the FCC’s ruling is of such enormous political significance is that now the German Court is not only rejecting the unconditional supremacy of EU law, but for the first time explicitly claiming for itself the right to *overrule the ECJ’s interpretation of EU law*. It claims this right on the basis that ‘*even under the Lisbon Treaty, the Member States remain the “Masters of the Treaties” and the EU has not evolved into a federal state.*’

The irony of this is huge, for it replicates the judicial power grant that the fledgling ECJ itself performed some six decades ago. The supremacy of European law over national law was not provided for in the Treaty of Rome: rather, the ECJ seized this power for itself in what can only be described as a judicial coup. In a series of judgements starting with *Costa v. ENEL* (1964), the ECJ simply asserted that legal supremacy was implied by the fact that the Member States had chosen to create the (then) Community, and made itself some law accordingly. Even now, there is no reference in the EU Treaties to the supremacy of EU law over Member States’ national laws, although a reference to the case law establishing the principle was contained in a ‘Declaration’ accompanying the Lisbon Treaty. In granting itself the right to overrule the ECJ on matters of EU law the Federal Constitutional Court has taken the ECJ’s original judicial coup, and played it at its own game.²⁹

²⁸ ECB Decisions on the Public Service Purchase Programme exceed EU Competencies. Press Release No. 32/2020 of 05 May 2020, *supra*.

²⁹ The clock is ticking for the EU’s legal order. *Briefings for Britain*. May 21, 2020. <https://briefingsforbritain.co.uk/clock-ticking-eu-legal-order/>. Retrieved July 7, 2020.

Leaving aside the fact that clarification of the law is the role of courts, and that the EU did, indeed, ratify the reasoning of Costa in The Lisbon Treaty—regardless as to whether this occurred in an annex or otherwise—the German Constitutional Court’s decision represents something utterly different from that which Dr. Bailey sees through her Brexit goggles. Moreover, there is no irony in the decision. If there was a power grad—and there was not—either the ECJ illegitimately seized it in Costa, or the German Court seized it in the PSPP case: the rule of mutual exclusion dictates that it cannot be both.

In fact, as we have seen, the PSPP case is a strong reminder of the importance of adhering to the foundational principles of the EU. Moreover, it is a wise reminder based on comparative law lessons from none other than the American experience. In that regard, the limitations placed on the US federal government were very similar to the limits placed on the EU by the concepts of conferral, subsidiarity and proportionality. In the Federalist Papers, for example, Madison argued that the Constitution³⁰ drew a balance between federal powers and state powers. In creating the federal system, its powers were of limited character, and the states ceded only a small part of their sovereignty. Here we see conferral and subsidiarity. Thus, under the Constitution, the federal and state governments had legitimate and discrete spheres of activity and one should not, and could not, encroach on the other.

The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State. The operations of the federal government will be most extensive and important in times of war and danger; those of the State governments, in times of peace and security. As the former periods will probably bear a small proportion to the latter, the State governments will here enjoy another advantage over the federal government.³¹

Upon ratification in 1791 the Tenth Amendment to the Constitution restated that the “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”³² It was within this spirit that the US Constitution’s Commerce Clause gave Congress the power “to regulate Commerce with foreign Nations, and among the several States...”³³ This power was designed by the Constitution to be limited to those federal actions which were “Necessary and Proper.”³⁴ Here

³⁰ The Constitution of the United States of America. https://www.senate.gov/civics/resources/pdf/US_Constitution-Senate_Publication_103-21.pdf. Retrieved July 24, 2020.

³¹ Madison, J. The Federalist Papers: Number 45. https://avalon.law.yale.edu/18th_century/fed45.asp, Retrieved July 16, 2020.

³² Tenth Amendment to the Constitution of the United States of America.

³³ The Constitution of the United States of America, Article 1, Section 8, Clause 3.

³⁴ The Constitution of the United States of America, Article 1, Section 8,

we see the third EU concept of proportionality in the US context. The federal power, even when existing, was to be limited to that which is both required and appropriate.

In the case of *Marbury v. Madison*³⁵ the US Supreme Court noted that its interpretation of the federal Constitution was supreme to all others and no entity—state or federal, not even the federal Congress—had the power to violate the Constitution as interpreted by the Court. In *Marbury v. Madison*, we see *Van Gen den Loos* and *Costa*, and a little bit more. Specifically, we see the Court taking its role as guardian of the Constitutional order very seriously. This is something currently lacking in ECJ jurisprudence.

That having been said, due to political and cultural exigencies, as Oliver Wendell Holmes noted, the Federal Supreme Court opted for an expansive interpretation of the powers of the Federal Government. This occurred in the FDR era, when large public works projects were required to ease the Great Depression, and when industrialists had bought state legislatures and corrupted them against the citizens.

In expanding the powers of the federal government in this way, however, the Court effectively read the principles limited government and state's rights (conferral, proportionality and subsidiarity) out of the Constitution. In the case of *McCulloch v. Maryland*,³⁶ for example, the Court ruled that the Commerce Clause read in conjunction with the Necessary and Proper Clause gives to the federal government the power to do all things it desires so long as they are not forbidden by the Constitution.

The *coup de grace* to conferral, subsidiarity and proportionality in the American context was rendered in the case of *US v. Darby Lumber Co.*³⁷ In that case, the Court ruled that the federal government had the authority under the Commerce Clause to set up a federal agency with the ability to tell states what employment rules they should have. In the decision, the Court dismissed the Tenth Amendment as “but a truism.” Thus, practically all limits on federal power under the Commerce Clause were obliterated, and the federal government was free to legislate as it wished.

According to Cass Sunstein of Harvard Law, in allowing the creation of large federal administrative agencies the Court effectively removed the traditional common law protections from people. The “checks and balances” of State sovereignty on federal power were removed

³⁵ *Marbury v. Madison*, 5 U.S. 137 (1803). <https://supreme.justia.com/cases/federal/us/5/137/>. Retrieved July 22, 2020.

³⁶ *McCulloch v. Maryland*, 17 (4 Wheat.) 316 (1819). <https://casetext.com/case/mcculloch-v-maryland>. Retrieved July 22, 2020

³⁷ *US v. Darby Lumber Co.*, 312 US 100 (1941). <https://casetext.com/case/united-states-v-darby-2>. Retrieved July 22, 2020.

and large federal administrative agencies were given almost free reign. These agencies were theoretically answerable to the President, but the President was never supposed to have such legislative power under the original Constitutional framework. Thus, not only was the concept of “checks and balances” forever altered and diminished, but so too was the concept of “separation of powers.”³⁸ Indeed, the power of the Presidency was substantially enlarged due to the fact that administrative agencies were, in large part, viewed as being a part of the Executive Branch of government. This led to the birth of the Imperial Presidency—as the post-New Deal Presidency has come to be called—and this is the reason that American Presidential elections have grown in importance since the FDR era.

Unsurprisingly, therefore, certain segments of the populace would view these developments as constituting major threats to their liberty, since the Constitutional scheme itself was designed to protect liberty and accountability. Once the Constitutional scheme was altered, conspiracy theories were bound to grow. Moreover, as the economy weakened after the post-World War II boom, the federal government “elites” became the focus of much resentment and even paranoia among certain segments of the populace. Ultimately this led to the rise of the “right” and the election of President Trump.

When we look at the American experience in this way, we can see that it is this concern which drives the *Bundesverfassungsgericht* Judgment of May 5, 2020 in the *Public Sector Purchasing Program (PSPP) of the European Central Bank*. The integration project is delicate, and delicacies and suspicions should not be allowed to fester. In its history, the EU has seen its fair share of movements rebelling against globalisation and placing emphasis on the importance on the re-emergence of the nation state. Such movements are not the exclusive ambit of Britain and the United States.

Indeed, in Europe the cast of players is long. To name but a few there are the former Front National, now the Rassemblement National in France, the Sweden Democrats, Denmark’s People’s Party, the Finn Party, the Jobbik’s in Hungary, Pegida, Lega Nord and AfD. In one way or another, they style themselves as representing the “little guy” in his fight to “take his country back,” be that from the consequences of perceived uncontrolled

³⁸ Sunstein, C.R. (1987). Constitutionalism after the New Deal. 101 *Harvard Law Review* 421, https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=12236&context=journal_articles. Retrieved July 21, 2020.

immigration and/or the demeaning effects of globalization.³⁹ As such, they share a lot in common with the America First and Brexit movements.

But, having said that, in recent years these parties have all recently toned down their anti-EU rhetoric. The remaining EU 27 have seen what disintegration of the EU project will mean for them and their nations, and they have decided against EUroicide:

Listen to the words the populists use to explain their u-turn: they speak about withdrawal being “unrealistic” (True Finns), “not feasible” (Lega) and “premature” (Denmark’s People’s Party). In other words, public opinion is against it. Surveys show that, across the bloc, support for EU membership is at the highest levels in decades. Some 61 per cent of Europeans believe membership is “a good thing” according to a Eurobarometre poll in March. Le Pen, Salvini and their allies have not become Euro-federalists... But it’s telling that they feel compelled to moderate their language. Three years after the UK’s referendum, Brexit looks less like a harbinger of the EU’s disintegration than a cautionary tale for the rest of the continent.⁴⁰

Based on opinion polls, far right sentiment on the continent is in retreat and the desire is to reform the EU, not destroy it:

Opinion surveys conducted at this time suggested that the EU had become extremely unpopular among citizens in many other member states and that, if they had also staged referendums on whether to leave the EU, the outcomes in some of them—notably in two of the biggest pioneer states, France and Italy—would have been very close.

Three and a half years on, these fears have proved to be unfounded. Rather, as the citizens of the remaining 27 states have observed the destabilising impact that the referendum has had on British politics, they have been inoculated against the desire to secede from the EU. Outside the UK, national-populist parties have moderated their anti-EU rhetoric and nowadays profess to want to change the EU from within instead of destroying it.⁴¹

It would be a mistake to give these sentiments fuel for the fire, and the EU must continue to be limited by the principles of conferral, subsidiarity and proportionality. Accordingly, the ECJ must be prepared to discharge its duty to ensure that these concepts are adhered to in a way similar to the old American *Marbury v. Madison* way. In order to be true to the EU’s founding principles, the EU cannot be allowed to become the behemoth of almost unlimited

³⁹ The Real Danger Isn’t Brexit: It’s EU Break-Up. *The Guardian*. May 26, 2016. <https://www.theguardian.com/commentisfree/2016/may/26/danger-brexite-break-up-eu-europe-russia>. Retrieved July 3, 2020.

⁴⁰ How the UK killed Euroscepticism across Europe. *The Irish Times*. June 1, 2019. <https://www.irishtimes.com/opinion/how-the-uk-killed-euroscepticism-across-europe-1.3910882>. Retrieved July 6, 2020.

⁴¹ Why Brexit has not and will not trigger EU disintegration. *TheConversation.com*. January 31, 2020. <https://theconversation.com/why-brexite-has-not-and-will-not-trigger-eu-disintegration-130719>. Retrieved July 23, 2020.

power that the US federal government has become. To allow such a development would ultimately be counterproductive and dangerous.

As Ortega y Gasset noted they would, Europeans have come to realise—consciously or otherwise—that the EU is a project of mythic significance intimately connected with the sovereignty of its Member States. Europe is a project of regional integration and not a project of globalisation at all. It is a project based on an over-arching common history and a common culture which has been hoped-for for hundreds if not thousands of years. By realising this project, Europeans recognize that they are securing benefits of security and prosperity long-hoped for by their ancestors. To achieve this aim, they are willing to compromise with one another, but this compromise also requires that the legal concepts of conferral, subsidiarity and proportionality are respected procedurally and substantively. The notion of differentiation should also give the Court a little leeway when examining Member State deviations from non-significant EU rules.

As Professor Curtain states:

Differentiation—crucially—does not necessarily mean either fragmentation or disintegration. At least on paper, the Union has long followed an ideal of diversity in unity – indeed, ‘united in diversity’ has been its official motto since the year 2000. Diversity may exist without unity being compromised. * * * In fact the EU legal system has been progressively accommodating and internalising differentiation, adapting to new integration needs. * * * What is key is that differing positions and variable participation in integration goals do not endanger the coherence of the integration project as a whole.⁴²

In light of this endogenic reality. The sky is not falling on the EU project, no matter how much that would be desired by certain people, and it is error to confuse hopes with realities, primary process thinking tendencies notwithstanding. August 5, 2020 will come and go and the European legal order will stay in place, based on the Treaties, reason and compromise.

⁴² Curtain, D., From a Europe of Bits and Pieces to a Union of Variegated Differentiation, *supra*, page 20

Part Two

Subpart I

The US-EU Exogenic Perspective

In terms of the US understanding of the EU, it is important to first consider the US understanding of itself and its place in the world. In that regard, the America First policy is not reactionary from the internal domestic perspective. Indeed, Americans have historically sought to dissociate themselves from Europe. As Sticachtis notes:

In his “Farewell Message”, President George Washington in 1796 counseled against foreign entanglements: “Europe has a set of primary interests, which to us have none, or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence therefore it must be unwise in us to implicate ourselves, by artificial ties, in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships, or enmities. Our detached and distant situation invites and enables us to pursue a different course.” Washington’s argument reflected the traditional wish of the European settlers to disengage strategically both from individual European powers and the European system itself. No surprise therefore that Washington’s point of view eventually became the foundation of U.S. policy under the Monroe Doctrine.⁴³

This desire may come from the American mythological past. But, that mythological past has its roots in their desire to keep the continent they won in the Revolutionary War to themselves. That having been said, foundational US mythology is nonetheless worth knowing as there is much to be learned from it. In the American foundation myth, America was settled by the Pilgrims, who sailed there in search of religious freedom. It is, therefore, a nation where individualism and freedom of conscience are protected, and where hard work is rewarded. It is a capitalist meritocracy, and *ipso facto* the possession of wealth signifies that one has worked hard, has demonstrated superiority, and is entitled to privilege.⁴⁴

It makes no difference to the myth that the Pilgrims—or Puritans—were actually expelled from England due to their cruel persecutions of other religions when they were ascendant during the Glorious Revolution, nor does it matter that Cromwell and his Pilgrims

⁴³ Stivachtis, J. (2012). American Perceptions of the European Union and its Role in World Affairs. *Review of European Studies*. Vol. 4. No. 3 (July 2012), page 6 (citations omitted).
https://www.researchgate.net/publication/268392907_American_Perceptions_of_the_European_Union_and_Its_Role_in_World_Affairs/link/54f5f12c0cf21d8b8a5bc888/download. Retrieved July 20, 2020.

⁴⁴ Griffis, W.E. (1921). What the Pilgrim Fathers Accomplished. *The North American Review*. Vol. 213, 782 (January 1921), pp. 44-51 (in which the Puritanical virtues of the Pilgrims are extolled in mythical fashion).
https://www.jstor.org/stable/25120655?seq=1#metadata_info_tab_contents. Retrieved July 21, 2020.

notably engaged in what many would classify as genocide against the Irish.⁴⁵ Similarly, the notion that American wealth was founded on hard work is not affected by the treatment afforded the indigenous peoples, African slaves and indentured servants:

With its expansive claim to exclusive rationality, with its arrogation of a universal and uniform knowledge of the world, and with its affirmation of universal freedom and equality, the Enlightenment sets a fateful dimension. Being of humanity and being unfree were incompatible. The all-too-obvious contradiction between Enlightenment thought and practice is mythically resolved by the invention of racism.⁴⁶

Bertrand Russell once reportedly stated that it is the fate of the conquered to become mythologized. If this is the case, then the obverse is equally true: it is the fate of the conquerors to become mythologizers. In the context of colonialism and crimes, myth prevails and washes the collective consciousness free of the guilt associated with murder and the accumulation of riches. The psychological rationalization is driven by the Protestant ethic and the spirit of capitalism, and in accord with this the actions involved are imbued with religious and mythic purpose.⁴⁷ All else pales in comparison. The Manifest Destiny of the nation has become what Gomez calls ‘political theology’.⁴⁸

This theology is especially operative in America’s foreign policy, where the US claims the right to bring its version of democracy and capitalism to the world.⁴⁹ To believe anything contrary is to commit heresy against God, capitalism and freedom. It is within the context of this mythological construction that it must be considered that while the US is undoubtedly a trading nation, it views trade as a competition, and it wishes to win and to win big in this competition. For, behind its desire to trade is the belief that by so doing it can justify itself in religious terms.⁵⁰

However, ever since the Great Depression the American system had been in trouble. As has been discussed, beginning with FDR’s New Deal the balance between federal powers and state powers had been redrawn, and the Constitutional principles of conferral,

⁴⁵ Mcveigh, R. (2008). The Balance of Cruelty: Ireland, Britain and the logic of genocide. *Journal of Genocide Research*. Vol. 10. Issue 4 (2008). <https://www.tandfonline.com/doi/abs/10.1080/14623520802447792>. Retrieved July 21, 2020.

⁴⁶ Fitzpatrick, P. (1992). *The Mythology of Modern Law*. New York, NY: Routledge, page 65.

⁴⁷ Weber, M. (2005). *The Protestant Ethic and The Spirit of Capitalism*. New York, N.Y.: Routledge (2005).

⁴⁸ Gomez, A. (2012). Deus Vult, John L. O’Sullivan, Manifest Destiny and American Democratic Messianism. *American Political Thought*. Vol. 1, No. 2 (September 2012), pp. 236-262.

⁴⁹ Gomez, A., Deus Vult, John L. O’Sullivan, Manifest Destiny and American Democratic Messianism, *supra*. <https://www.jstor.org/stable/10.1086/667616>. Retrieved July 20, 2020.

⁵⁰ Weber, M., *The Protestant Ethic and The Spirit of Capitalism*. *supra*.

proportionality and subsidiarity had been to a large extent discarded. This nationalizing project was accepted initially because it allowed the federal government to engage in large scale rebuilding and public works projects. However, in light of growing American inequality, the mindset that federal “elites” had violated the Constitution and stolen power from the people in order to benefit from a new globalized order was fostered, festered and grew.

After FDR’s New Deal was implemented and World War II was won, America experienced an economic boom. Benefitting from the complete devastation of European and Japanese heavy industry, the American workers felt the benefit of no genuine competition. However, things slowly turned, and American workers began to suffer as foreign industries in question were rebuilt. Growing poverty, unemployment and inequality began fostering division, and it was only a question of time before resentment bubbled to the top.

Inevitably, the US claims of meritocracy were questioned and social unrest resulted. As one UN Report puts it, social mobility in the US was limited to people from lower economic backgrounds due to the “opportunity hoarding” of the wealthy:

Social mobility is lower in the United States than in many other countries. Relative mobility has been stagnant for decades and absolute mobility has decreased substantially for those born in 1980 or after. Close to four in 10 children born to parents in the top quintile of the income distribution remain in the top quintile. This is roughly twice the probability that a child of middle-quintile parents will rise to the top quintile. A contributing factor to the decline in mobility is opportunity hoarding by people in the top quintile. Through their economic and political influence, the wealthy can preserve access to important opportunities for their children, while effectively preventing less-advantaged groups from competing for them.⁵¹

Moreover, among the “elites” who drove and reinforced this inequality were the universities, especially the private ones, which practiced what has been called “affirmative action for the rich”:

Opportunity hoarding also factors into university admissions processes. While tertiary education is critical for upward mobility, its cost is higher in the United States than anywhere else in the world. Students from high-income households are far more likely to have a family member pay than students from low-income households, who require loans. In recent years, the number of for-profit universities has increased rapidly. Most of these universities target low-income communities, even though tuition is higher in for-profit schools than in public universities. Yet students in these establishments have worse labour market outcomes and are more likely to default on their loans. Many of the top universities in the United States also continue the tradition of legacy admissions – that is, they give preference to

⁵¹ Inequality in a Rapidly Changing World. United Nations Department of Economic and Social Affairs. World Social Report 2020. *UN.org*. <https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2020/01/World-Social-Report-2020-FullReport.pdf>. Retrieved July 21, 2020, page 49.

certain applicants based on their familial ties to alumni from that university – in what has been termed “affirmative action for the rich.”⁵²

Despite this fact, the response of the Progressive branch of the Democratic Party was one of contempt and derision towards those who were suffering. “They get bitter, they cling to guns, or religion or antipathy to people who aren’t like them or anti-immigrant sentiment or anti-trade sentiment as a way to explain their frustrations,” said Obama in 2008.⁵³ Hillary Clinton refined this contempt for the masses when in 2016, while running for the Presidency, she stated:

You know, to just be grossly generalistic, you could put half of Trump's supporters into what I call the *basket of deplorables*. Right?

They're racist, sexist, homophobic, xenophobic – Islamophobic – you name it. And unfortunately, there are people like that. And he has lifted them up. He has given voice to their websites that used to only have 11,000 people – now have 11 million. He tweets and retweets their offensive hateful mean-spirited rhetoric. Now, some of those folks – they are irredeemable, but thankfully, they are not America.⁵⁴

When the “elites” were viewed as separating themselves from the people they sought to serve in this manner, it was only a question of time before they were identified as being the source of American pain. Moreover, the international order they represented and the trade agreements they signed were also tarred with causing American suffering. NAFTA, for example, was characterized as being responsible for the loss of American jobs, suppressing American wages, exploiting Mexican workers, and having detrimental effects on the environment.⁵⁵

These foreign trade agreements executed by the federal elites became synonymous with the contempt average people felt directed towards them and their way of being, and the trade agreements became scapegoats for domestic inequality and injustice: Enter Trump to Make America Great Again with his America First policy. There should have been no surprise that Trump was elected, and there should have been no surprise that under him the US-EU relationship would degenerate.⁵⁶ Trump may be “an incompetent mounteback, a buffoon,” as

⁵² United Nations Department of Economic and Social Affairs, World Social Report 2020, Inequality in a Rapidly Changing World, *supra*.

⁵³ Obama angers midwest voters with guns and religion remark. *The Guardian*. April 14, 2008. <https://www.theguardian.com/world/2008/apr/14/barackobama.uselections2008>. Retrieved July 4, 2020.

⁵⁴ Hillary Clinton says half of Trump’s supporters are in a ‘basket of deplorables.’ *YouTube*. September 10, 2016. <https://www.youtube.com/watch?v=PCHJVE9trSM>. Retrieved July 2, 2020.

⁵⁵ Six Problems with NAFTA. *Thebalance.com*. February 14, 2020. <https://www.thebalance.com/disadvantages-of-nafta-3306273>. Retrieved July 16, 2020.

⁵⁶ Cracks in the Trump-Europe Relationship are turning into a chasm. *CNN International*. July 4, 2020. <https://edition.cnn.com/2020/07/04/europe/trump-europe-relationship-intl/index.html>. Retrieved July 4, 2020.

Peter Savodnik notes, but he is a man of his times and place.⁵⁷ He is a creation of a progressive politics that was perceived as demonstrating little concern for the citizens it was supposed to represent and the governmental constraints those citizens had expected to be obeyed.

On the international front, like many of his supporters, he cares nothing about the mythical or existential significance of the EU from an endogenic perspective. Instead, he sees only effective competition and a trade block that in his opinion exists solely to compete with the US.⁵⁸ The benefits of the unprecedented stability in the European region and the savings associated with not having to intervene in European wars plays no part in his calculations.

From the US exogenic perspective, the EU is an unintended effect of an otherwise useful trade relationship between Germany and France which was designed to stabilize the European theatre and serve as a useful pawn against the Russians during the Cold War. It was never supposed to be a culturally unified whole capable of standing toe to toe with the US on the world stage:

The EU has played a vital role in the post-1945 U.S. foreign policy and the two sides have held diplomatic relations since 1953. During the Cold War the project and process of European integration was vital to the interests of the U.S. for two reasons: first, the economic development of Western Europe could prevent the extension of Soviet influence on the European continent; and second, the process of integration could prevent the re-emergence of historical hostilities in Western Europe – especially between France and Germany – which could destabilize the region and provide the Soviet Union with opportunities to extend its influence westwards. After the end of the Cold War, the U.S. saw the EU as a means to integrate the states of Eastern Europe but also other states of vital importance, such as Turkey. Because of their historical ties, their adherence to common international norms, and their common political and economic belief systems, the U.S. saw Western Europe/EU as a political partner and ally in the world arena. However, neither during the Cold War nor in its aftermath was the U.S. willing to accept an equal partnership. Following the collapse of the Soviet Union, the U.S. wanted the EU to play a more active role in world affairs – mainly in support of U.S. policies and military operations - as well as increase its burden sharing in the military sector but never to the point that it could challenge the primacy of the United States.⁵⁹

Thus, Trump was not the first US President to undervalue the importance of a US-EU relationship. It had been undervalued from the beginning. Moreover, Obama referred to himself as “the first Pacific President” and his Administration emphasized a “pivot East” towards Asia. When this happened it was widely criticized in diplomatic and trade circles

⁵⁷ Savodnik, P. (2020). Woke America Is a Russian Novel. *Tablet*. July 15, 2020.

<https://www.tabletmag.com/sections/news/articles/woke-america-russian-novel>. Retrieved July 16, 2020.

⁵⁸ Langlois, L. (2018). Trump, Brexit and the Transatlantic Relationship: The new paradigms of the Trump era. *Revue LISA*. Vol. XVI-n°2 (2018). <https://journals.openedition.org/lisa/10235?lang=en>. Retrieved July 2, 2020.

⁵⁹ Stivachtis, J. American Perceptions of the European Union and its Role in World Affairs, *supra*. Retrieved July 20, 2020.

because it neglected the emergence of the EU as an important unified ally. It simultaneously potentially encouraged Russian adventurism in the region.⁶⁰ But, Europeans at the time did not grasp the full nature of the EU-US exogenic-endogenic antimony.

When Trump was elected, he merely decided to emphasize that the long-desired era of America First had arrived. This new policy, however, is not about giving up the American myth of the US Manifest Destiny. Indeed, Trump has repeatedly referenced Manifest Destiny political theology.⁶¹ It is, instead, an insistence that other countries pay to underwrite it. America has overstretched its capabilities in terms of military engagements and spending. Thus, Trump's policy seeks to end US military engagement in all parts of the globe that are not in the national interest of the US, while ensuring that the rest of the West pays its share of the cost of the American quest for dominance:

Posen captures the logic well: 'The United States has grown incapable of moderating its ambitions', choosing to pursue a globally expansive grand strategy 'which is unnecessary, counterproductive, costly, and wasteful'. He argues that America should, instead, forgo any ambitions that are not directly related to immediate national interests. In explaining why the United States has become the underwriter for global regimes, Posen traces US ambitions back to a domestic ideology of liberal internationalist globalism that seeks to fashion a world order in America's own image and spread free-market democracy around the globe using its overwhelming military primacy. From this perspective, US intervention and global engagement is a choice driven not by national security need but by a (mistaken) globalist ideology that has seen it militarily overcommit, make itself a target of global ire and neglect pressing domestic concerns.⁶²

From the US exogenic perspective, therefore, the EU was always a means to an end. It never had this same mythic and existential significance that those within the EU have of the endeavour. It was, instead, viewed as being a trade pact between France and Germany in order to stabilize the European region for trade purposes. As it slowly grew, the EU was considered to be a useful pawn to limit Russian expansion. And, in latter days, it could even be considered

⁶⁰ The Pivot to Asia was Obama's Biggest Mistake. *The Diplomat*. January 21, 2017. <https://thediplomat.com/2017/01/the-pivot-to-asia-was-obamas-biggest-mistake/>. Retrieved July 4, 2020.

⁶¹ See, e.g., Trump tweets about Manifest Destiny. *Moyers on Democracy*. July 8, 2020. <https://billmoyers.com/story/trumps-manifest-destiny/>. Retrieved July 21, 2020; Remarks by President Trump at South Dakota's 2020 at Mount Rushmore Fireworks Celebration. July 4, 2020. *White House Press Release*. July 4, 2020. <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-south-dakotas-2020-mount-rushmore-fireworks-celebration-keystone-south-dakota/>. Retrieved July 21, 2020; and, Donald Trump's Full 2020 State of the Union speech. *US News*. February 4, 2020. <https://www.usnews.com/news/politics/articles/2020-02-04/read-donald-trumps-full-2020-state-of-the-union-speech>. Retrieved July 21, 2020.

⁶² Stokes, D. (2018). Trump, American hegemony and the future of the liberal international order. *International Affairs*. 94: 1 (2018), pp.133–150 (citations omitted). https://www.chathamhouse.org/sites/default/files/images/ia/INTA94_1_8_238_Stokes.pdf. Retrieved July 21, 2020.

as being an ally capable of underwriting the expansionist policies behind the US myth of Manifest Destiny. What it was never considered to be was a peer capable of competing with the US on its own terms and forming its own international understandings. Once this occurred, the America First policy of encouraging the splitting up of the EU arose. One of its main efforts in that regard is Brexit, which superficially is driven by factors closely related to the issues that drove the implementation of the America First policy.

That having been said, the US and Brexiteer exogenic view of the EU are in actuality two different things entirely. The America First policy is based on disenfranchised Americans who see the EU as a trade block. It is not a reactionary move from the internal US domestic perspective. It is in keeping with long-established American foreign policy as shown by George Washington's farewell address. To be sure, Brexit was encouraged by Trump on the grounds that it was an anti-globalization movement that sought to protect British sovereignty and culture. But, looked at closely these were opportunistic words. From the EU perspective, there is little similarity between Brexit and America First.

In Brexit Trump found temporary allies abroad who were fighting against 'globalization,' and he could take these allies and their message with him to the United States where he could buttress his own appeal to the disenfranchised:

Trump supported Brexit in so far as it provided a resounding echo with his own campaign themes and could therefore sustain his "politics of anger." The pro-Brexit and the pro-Trump votes rest on the same dynamics: they are both angry votes against the elite, against immigration, against globalisation. It is no surprise then that Nigel Farage and Donald Trump are so close: as the embodiments of the rage against the system and the two populist voices in the anglosphere, they had common ideas, common targets and common objectives. And to reinforce this community of ideas, Trump invited Nigel Farage to one of his rallies in Jackson, Mississippi, on 24 August 2016. During his short address Farage said that "[the UKIP] made 23 June our Independence Day when we smashed the Establishment." He also added: "If the little people, if the real people, if the ordinary decent people are prepared to stand up and fight for what they believe in, we can overcome the big banks, we can overcome the multinationals." The strategy is transparent here: to appeal to the most vulnerable and destitute people who feel left aside by globalisation... This strategy is well-known and overused, yet it paid off as the two men were victorious.⁶³

In addition to buttressing his America First policy internally, Trump was opportunistically using Brexit as a wedge to attempt to split the EU. From the US exogenic perspective at the time, that was quite possible. It was also desirable, as the US simply does not understand the function of the EU as an entity that protects the culture and sovereignty of

⁶³ Langlois, L. Trump, Brexit and the Transatlantic Relationship: The new paradigms of the Trump era, *supra*.

its Member States from factors in the modern-day world militating in favour of their dissolution.

Instead, the EU is an efficient trade block from the American perspective, and if characterizing it as a destroyer of cultures is an efficient way of splitting up the block, then so be it. All is fair in love and business. As Laetitia Langlois writes:

[Trump] insisted that Brexit would cause the collapse of the European Union:

‘I think people want their own identity, so if you ask me, others, I believe others will leave [...] But I do think keeping it together is not gonna be easy as a lot of people think. And I think this, if refugees keep pouring into different parts of Europe, I think its gonna be very hard to keep it together cause people are angry about it [...] Personally, I don’t think it matters much for the United States. I never thought it mattered. Look, the EU was formed, partially, to beat the United States on trade, OK? So, I don’t really care whether it’s separate or together, to me it doesn’t matter.’⁶⁴

Here thinly veiled antagonism is cloaked as ambivalence. But, Trump and the America First policy are very pragmatic. Undoubtedly the hope that the EU breaks up will continue, and a trade deal may be agreed with Britain. But in light of the failure of Brexit to break up the EU, it seems ironic that the decision to leave the EU has begun to work against Britain within US foreign policy and trade circles. This is because Britain’s withdrawal from the EU has reduced its usefulness to the US *vis-à-vis* Brussels.⁶⁵ If one is no longer a member of the country club, one can no longer introduce people to one another over drinks and dinner there.

It should not be forgotten that despite the fact that the British frequently speak of a ‘special relationship’ with the US, every year on July 4 Americans celebrate gaining independence from Britain with fireworks and flags. America, as always, is pragmatic and opportunistic, and the shifting sands supporting the America First policy swallow allies and enemies alike.

⁶⁴ Langlois, L. Trump, Brexit and the Transatlantic Relationship, *supra*.

⁶⁵ Brexit brings ‘special relationship’ down to size. *Axios*. February 11, 2020. <https://www.axios.com/brexit-brings-special-relationship-down-to-size-e04b5f3d-cfe2-4cbc-bdd8-06575c1e9f76.html>. Retrieved July 13, 2020.

Subpart II

The Brexiteer-EU Exogenic Perspective

As will be recalled, Ortega y Gasset theorized that due to the pressures of the modern world, every European state was being torn apart by centripetal and centrifugal forces that were not in balance with one another. A state in this situation can react positively or negatively, constructively or destructively, to these challenges. The process of integration is the positive step he saw for the European nation. By integrating into a United States of Europe, the Federal system could operate so as to protect the constituent states through mutual cooperation.

The negative step that can be taken by a European state in the face of these forces is to engage in particularization, a form of separatism from one's neighboring states based on the foolish notion that one can be better off as a free agent. When territorial particularization joins with cultural particularization it can result in a form of disintegrative ultra-nationalism and, as Fitzpatrick noted, destruction of fraternal bonds and the universal project.⁶⁶

Thus we can see that the US was not based on particularization. It was always exterior to the EU and it always culturally sought to distance itself from the rest of the world unless absolutely necessary to enforce the Monroe Doctrine regarding its dominance of the Western Hemisphere⁶⁷ or otherwise ultimately fulfil its Manifest Destiny of bringing its version of democratic capitalism to the world. Its connection to the wider world was always and is currently, trade based. In trade it has always sought advantage. When that advantage is seen as diminishing, then a retrenchment is considered and strategically implemented, if appropriate.

Brexit, however, is different. In Brexit, unlike in America First, we can see cultural and territorial particularization in action. Brexit is not just disenfranchised voters getting angry and demanding more in a materialist society. What is really going on underneath Brexit is, as Fintan O'Toole says, about myth and nation. It is about a pathological cultural identity-split resulting from alternating states of defeatism and delusions of grandeur.

It is not quite possible to say that Brexit was a foregone conclusion from the moment Britain entered the EU. Just as it is not possible to say that Brexit is forever. What is possible to say is that the English, as a people, were always conflicted by membership in the EU. Thus, when the initial discussions for The Treaty of Rome were underway, the six countries of the Iron and Steel Community met in Messina on November 5, 1955. Britain was asked to join

⁶⁶ Fitzpatrick, P. (1992). *The Mythology of Modern Law*. Routledge, New York: NY, page 113.

⁶⁷ See, e.g., Sexton, J. (2012). *The Monroe Doctrine*. Hill & Wang, New York: NY.

them, and a “minor official,” Russel Bretherton was asked to join them. He said nothing during the meeting, and at its conclusion, he rose and stated:

The future treaty which you are discussing has no chance of being agreed; if it was agreed it has no chance of being ratified; and if it were ratified it would have no chance of being applied. And if it was applied, it would be totally unacceptable to Britain. You speak of agriculture which we don't like, of power over customs, which we take exception to, and institutions which frighten us. *Monsieur le president, messieurs, au revoir et bonne chance.*⁶⁸

That is to say, the English never really embraced the EU. They had, in large part, an initial exogenic desire to limit the EU in totality. When this failed, they supported the EU, but as an ally outside of the union, and when they realized that would fail, they joined the Union but sought to limit it to a trade block. And, ultimately, when they did consider joining, there were opponents with better ideas. In 1971 the historian Robert Conquest wrote:

The direction in which Britain should seek closer ties is within its own tradition of language, law, and politics; that is with the United States, Canada, Australia, New Zealand, and the Caribbean Commonwealth countries... I would also argue that a United Europe without us would be stronger and safer under the protection of a much larger and more powerful ‘Anglo Saxon’ than if further increased in size and power itself and so more liable to...dangerous delusions.⁶⁹

In terms of joining the EU, the English vacillated between a “sense of grandiosity and a sense of abjection” writes Fintan O’Toole:

Delusions of themselves are not necessarily neurotic. The trouble comes when you keep shifting between two opposing frames of mind. For side by side with the grandiosity there was a sense of abjection. A common theme in the early 1970s is that Britain is such a failure that it has no choice but to join the Europeans. The image is not that of a fabulous dynastic union but, rather, of a grumpy old bachelor settling for a bad marriage because the alternative is a slow death in miserable loneliness.⁷⁰

In contemplating joining the EU, therefore, Britain found itself torn. It had to choose between an imaginary new Empire built on trade, and a fantasy-driven special role within the EU. However, even after joining, the idea of the Empire resurgent never fully left the imagination of the British body politic. It was imagined to be a glorious time of plenty that was surrendered after the War. This surrender had brought with it sadness and economic decline. As Foreign Policy magazine would note in 2019, however, the myth of the Empire would always linger:

⁶⁸ O’Toole, F. (2012). *Heroic Failure: Brexit and the Politics of Pain*. Apollo, New York: NY, page 18.

⁶⁹ O’Toole, F., *Heroic Failure: Brexit and the Politics of Pain, supra*, page 22.

⁷⁰ O’Toole, F., *supra*, page 23.

Historical reversals are hard to swallow, especially when a magnificent past is suddenly swapped with an ordinary present. To some extent, the psychodrama at the heart of Brexit reflects the inability on the part of the British establishment to come to terms with the diminished global role associated with the loss of the British Empire. Hardcore Brexiteers like Prime Minister Boris Johnson anchor their expectations for a bright future away from the European Union to a revival of the imperial past. They speculate about the emergence of an Anglosphere, centered on the United Kingdom and linked to the United States and Britain's other former colonies.⁷¹

One can surmise that this flip-flopping tendency was why De Gaulle initially frustrated Britain's attempt to join the Union some time after Mr. Bretherton spoke in Messina. As *The Atlantic* puts it, the ambivalence of the English towards the EU is much deeper than mere aversion to cultural union:

In fact, the roots of our European ambivalence go even deeper. We often hear now how the European Union is *the* guarantor of peace on the Continent, a necessary construct to prevent a descent into barbarity. Yet the postwar generation of British political leaders didn't quite see things like that. Winston Churchill supported a United States of Europe, albeit with Britain an ally outside it. * * * Charles de Gaulle was scarred by his bitter wartime rows with Winston Churchill, when he was told by the British prime minister, "You must know that when we have to choose between Europe and the open seas, we will always be with the open seas." Therein lies the heart of Brexit. When Britain sought to join the European Community, a precursor to the EU, in 1963, de Gaulle vetoed its application. Perhaps he was ultimately right to doubt Britain's commitment.⁷²

At the Tory Convention in 2011 David Cameron noted that the EU was holding back British business with nonsense regulations:

Unlocking growth and rebalancing our economy also requires change in Brussels. The EU is the biggest single market in the world - but it's not working properly. Almost every day, I see pointless new regulation coming our way. A couple of weeks ago I was up in the flat, going through some work before the start of the day and I saw this EU directive. Do you know what it was about? Whether people with diabetes should be allowed to drive. What's that got to do with the single market? Do you suppose anyone in China is thinking: I know how we'll grow our economy - let's get those diabetics off our roads. Europe has to wake up - and the EU growth plan we've published, backed by eight countries, which I want us to push at every meeting, every council, every summit, is the alarm call that Brussels needs.⁷³

⁷¹ A Diminished Nation in Search of an Empire. *Foreign Policy*. October 24, 2019.

<https://foreignpolicy.com/2019/10/24/boris-johnson-dreams-anglosphere-european-union-empire-colonialism/>. Retrieved July 23, 2020.

⁷² The EU's one-sided love affair with Britain. *The Atlantic*. April 11, 2019.

<https://www.theatlantic.com/international/archive/2019/04/brexit-inevitable-britain-europe/586888/>. Retrieved July 13, 2020.

⁷³ David Cameron's Tory Convention Speech. *New Statesman*. October 5, 2011.

<https://www.newstatesman.com/uk-politics/2011/10/world-economy-work-leadership>. Retrieved July 22, 2020.

In these words we see the latent ambivalence about not having an Empire and being in the EU. Britain was not doing as well as it ought to be, and this was, clearly, the fault of the EU and its meaningless rules. The EU rules, that is, were holding Britain back from engaging in an Empire built on trade. Something had to be done. The only question was what.

In 2015 Cameron sought to renegotiate the Treaties so that the phrase “ever closer union” did not apply to Britain. The English ambivalence was still there. In light of the potential for Britain to reinforce conferral limitations, subsidiarity and proportionality, as well as to emphasize the potential to foster differentiation, Cameron’s efforts were nothing more than a shibboleth.⁷⁴ But, they were of symbolic and mythic significance to the Brexiteers who, by now, had a simmering resentment against the EU because England had not prospered in the way they thought it ought to in terms of EU membership.

This was closely linked to the myth of British Exceptionalism. In essence, the Brexiteers felt that they were exceptional people and entitled to more than other nations in terms of the EU. This affected how they acted while within the EU and while leaving the EU:

[W]hile the causes of the Brexit vote were complex, the causes of the catastrophic handling of the Brexit process might be familiar to anyone versed in imperial and postimperial history.

They stem from what appears to be a belief in British exceptionalism: the idea that Britain is inherently different from, and superior to, other nations and empires. Margaret Thatcher asserted British exceptionalism with regard to the EU in a 1988 speech, and each of the past three prime ministers has approached the EU from that standpoint—believing that Britain deserves preferential treatment and more-than-equal status.⁷⁵

“We didn’t win two World Wars to be pushed around by a kraut!” read one poster circulated on Twitter by the Leave.EU campaign. On it was a picture of Angela Merkel with her right hand in the air, as if giving a Nazi salute.⁷⁶ As Fintan O’Toole notes, because the English mythologize themselves as having won the Wars—an idea that many Americans scoff at: there is a difference between delaying defeat until America intervened and winning—they felt entitled to get more out of Europe than any other nation.

⁷⁴ Never Closer Union. *The Economist*. October 24, 2015.

<https://www.economist.com/britain/2015/10/24/never-closer-union>. Retrieved July 13, 2020.

⁷⁵ The Imperial Myths Driving Brexit. *The Atlantic*. August 12, 2019.

<https://www.theatlantic.com/international/archive/2019/08/imperial-myths-behind-brexiteers/595813/>. Retrieved July 23, 2020.

⁷⁶ Offensive poster branding Angela Merkel a ‘kraut’ sparks row between Brexiteers. *The Telegraph*. October 9, 2019. <https://www.telegraph.co.uk/politics/2019/10/09/offensive-poster-branding-angela-merkel-kraut-sparks-row-brexiteers/>. Retrieved July 23, 2020.

They especially did not expect or want to see Germany thriving in the way it did after the War and in connection with its EU membership. Thus, when England was treated just like any other nation, grief-fuelled resentment grew:

Herbert Spencer in *The Principles of Psychology* puzzled over the emotion he variously called ‘pleasurably-painful-sentiment’, ‘the luxury of grief’, and ‘self-pity’:

It is possible that this sentiment, which makes a sufferer wish to be alone with his grief, and makes him resist all distraction from it, may arise on dwelling on the contrast between his own worth as he estimates it and the treatment he has received... If he feels that he has deserved much while he has received little, and still more if instead of good there has come evil, the consciousness of this evil is qualified by the consciousness of worth, made pleasurably dominant by the contrast. One who contemplates his own affliction as undeserved necessarily contemplates his own merit... there is an idea of much withheld and a feeling of implied superiority to those who withhold it.⁷⁷

Thus, when in 2015 Cameron sought to renegotiate the Treaties, it was, in essence, an attempt by the tail of a European island to wag the dog of the continent in light of a mythological sense of superiority and a desire to have both an Empire and EU membership. It was, in essence, no different from, and no less futile than, Mr. Bretherton’s Messina soliloquy, which was itself nothing more than a dirge seeking resurrection of the dead. England had become Gretta from James Joyce’s *The Dead*, a pathetic long-since-married woman pining for a former long-dead lover, Michael Furey. England’s Michael Furey was the Empire, and her *Lass of Aghrim* was *Rule Britannia*.

Moreover, in this we can see what prompted Nigel Farage to criticize the EU because, he said, they were building an EU empire.⁷⁸ As Nietzsche noted, morality can be fuelled by resentment. In such imaginings of the past and resentment of what is occurring in the present is the negative particularization spoken of by Ortega y Gasset. The Brexiteers sought to retreat from the EU in a hopeless effort to make England Great Again. Thus, when the English came to vote on the issue of Brexit, mythical references were made to reify the nation, the fleet, and the Empire.

Reputed Churchill biographer, Boris Johnson, began walking slightly stooped with his hands clasped behind his back, as if possessed by the spirit of the old leader. He told his fellow

⁷⁷ O’Toole, F., *Heroic Failure*, *supra*, page 16.

⁷⁸ Nigel Farage: They are building a European Empire. *Daily Express*. September 17, 2019. <https://www.express.co.uk/news/uk/1178957/Brexit-News-Nigel-Farage-latest-LBC-EU-Andrew-Adonis-Twitter-Guy-Verhofstadt>. Retrieved July 23, 2020.

Britons that they should vote for Brexit so as not to become a “vassal state.”⁷⁹ Similarly, Nigel Farage encouraged voters to break free of the EU “shackles.”⁸⁰ The clear intent was activate old biases and compare the EU to not much more than a wing of Nazi Germany.

In the Brexit campaign, EU rules designed to increase energy-efficiency and set international trade standards were mischaracterized as being antidemocratic. The EU was so out of touch with the people, they said, that it dictated how powerful vacuum cleaners ought to be, and how curved bananas could be.⁸¹ Such over-reaching by the imperialist and anti-democratic European government was clear evidence, as Johnson said, that “the EU want[ed] a superstate, just as Hitler did.”⁸² Thus, the only solution to the suction-limitation and straight-banana crisis would be for Britain to “take back control” and leave the EU and its rule of Brussels bureaucrats.

EU Immigrants were also targeted. “You’ve seen quite a lot of people coming in from the whole of the EU—580 million population—able to treat the UK as though it’s basically part of their own country and the problem with that is there has been no control at all and I don’t think that is democratically accountable,” said Boris Johnson.⁸³ The elite had undoubtedly become concerned that their “rightful place” at the top of the British class-structure was being threatened by Europeans in their country, as the Europeans cared little for such things. The needed to demonize these people as subtracting from the economy, so that the working class voters could have an enemy to vote against. Indeed, Nigel Farage stated that the immigration issue was crucial in winning the Brexit referendum:

Farage, however, accepted that it was not the constitution or sovereignty that ensured the Brexit vote was delivered, but the issue of immigration.

He said: “I knew that if the issue of sovereignty, in relation to the European Union, could be seen directly linked to immigration and open borders, this is what would change the whole national debate, and when George Osborne says in the

⁷⁹ Boris Johnson breaks ranks with ‘vassal state’ warning. *The Guardian*. December 17, 2017. <https://www.theguardian.com/politics/2017/dec/17/boris-johnson-breaks-ranks-with-brexit-vassal-state-warning>. Retrieved July 2, 2020.

⁸⁰ Nigel Farage urges Britain to free itself from EU ‘shackles’—No Deal is Independence. *Daily Express*. April 17, 2019. <https://www.express.co.uk/news/uk/1115547/brexit-news-latest-nigel-farage-new-party-no-deal-poll-leave-date-today-video-uk-eu>. Retrieved July 2, 2020.

⁸¹ Is the EU really dictating the shape of your bananas? *The Guardian*. May 11, 2016. <https://www.theguardian.com/politics/2016/may/11/boris-johnson-launches-the-vote-leave-battlebus-in-cornwall>. Retrieved July 2, 2020.

⁸² Boris Johnson: The EU wants a superstate, just as Hitler did. *The Telegraph*. May 14, 2016. <https://www.telegraph.co.uk/news/2016/05/14/boris-johnson-the-eu-wants-a-superstate-just-as-hitler-did/>. Retrieved July 2, 2020.

⁸³ Campaigners attack Boris Johnson for EU nationals remark. *The Guardian*. December 9, 2019. <https://www.theguardian.com/world/2019/dec/09/campaigners-attack-boris-johnson-for-eu-nationals-remarks>. Retrieved July 23, 2020.

referendum that issue was ‘lethal’ he is absolutely right, and that’s precisely Mr Osborne what I set out to do in 2004.”

Farage added: “I don’t think the Leave side could have won just on the sovereignty argument. I think it was actually the immigration argument that meant the turn out went up to a historically high 73%.”⁸⁴

Despite the fact that they promised to limit freedom of movement for EU citizens, the Brexiteers assured the voters that Britain would be able to remain part of the single market and that British people would have the right to move freely in the EU.

Many will bristle at the memory of several high-profile Brexiteers reassuring the public prior to June 2016 that the UK’s place in the single market (and therefore freedom of movement) was not in question. Even more will seethe at the fact that in the years since, the government has needlessly and recklessly pursued a harder version of Brexit on the basis of a knife-edge referendum result, the legitimacy of which remains questionable in the eyes of many.⁸⁵

Cultural and territorial particularization were, therefore, very much in play in the context of Brexit. In a similar vein, it was fuelled by the belief that without the involvement of Britain, the EU would collapse. Without Britain supporting them, and because of British exceptionalism, the EU Member States would fall like dominoes and once this occurred, the British could again trade with Europe and the entire world. It could have its Empire and Europe, too. This hope and goal was encouraged by the America First policy.

In accord with this myth, there were even calls to rebuild the “fleet.” This move has been characterized by David Dodwell in the *South China Morning Post* as being akin to “Little Englanders” nostalgic behaviour which is “at best a deep embarrassment, and at worst a potentially destabilizing move here in Asia.”⁸⁶ But the possibility of rebuilding the mythical Empire through domination of the sea and trade with allies was fantasy. Yes, the British Empire did engage in trade with its colonies, but the romanticized view of this “trade” was in no way accurate and there is no way that it can occur again in the modern world:

Half a century after the end of empire, politicians of all persuasions still feel called upon to remember our imperial past with respect. Yet few pause to notice that the descendants of the empire-builders and of their formerly subject peoples now share the small island whose inhabitants once sailed away to change the face of the world.

⁸⁴ Farage: ‘We would not have won without the immigration argument.’ *The New European*. November 1, 2018. <https://www.theneweuropean.co.uk/top-stories/nigel-farage-discusses-george-osborne-brexiteer-comments-on-bbc-newsnight-1-5760680>. Retrieved July 23, 2020.

⁸⁵ Freedom of movement is now the most important fight in the Brexit battleground. *The Independent*. January 6, 2020. <https://www.independent.co.uk/voices/brexit-boris-johnson-freedom-of-movement-eu-a9271951.html>. Retrieved July 23, 2020.

⁸⁶ Britain’s naval ambitions to once again rule the waves are laughable at best and make no sense at all. *South China Morning Post*. January 6, 2019. <https://www.scmp.com/business/article/2180878/britains-naval-ambitions-once-again-rule-waves-are-laughable-best-and-make>. Retrieved July 6, 2020.

Considerations of empire today must take account of two imperial traditions: that of the conquered as well as the conquerors. Traditionally, that first tradition has been conspicuous by its absence.

...The creation of the British empire caused large portions of the global map to be tinted a rich vermilion, and the colour turned out to be peculiarly appropriate. Britain's empire was established, and maintained for more than two centuries, through bloodshed, violence, brutality, conquest and war. Not a year went by without large numbers of its inhabitants being obliged to suffer for their involuntary participation in the colonial experience. Slavery, famine, prison, battle, murder, extermination – these were their various fates.⁸⁷

Colonists, indigenous peoples and even the British people themselves suffered greatly under the brutality of the Empire. The descendants of most colonists and indigenous peoples do not have especially fond feelings towards the Empire as evidenced by their having declared independence, among other things. But, for the Brexiteers the Empire was glorious, and seafaring was essential. The fact that the UK relies on the EU in order to sell the majority of its fish stock was ignored.⁸⁸

Here, again, we have cultural and mythic images of the past being used to stir a people to destroy the present and move back to the past, a past people were told that was safer and better. Indeed, psychologically speaking, overemphasizing the desire to live in the safety and security of the past can reveal a neurosis, a form of fixation. All other things being equal, the past is always safer and better than the present, because the past brings with it no unpredictability. But, one simply cannot live in the past. Thus, even the ex-UK ambassador to the EU complained that Brexit was something foisted on the UK by know-nothing elites.⁸⁹

Much akin to the times of Churchill, the English people were told that in the times of Brexit, the relationship with the US would be especially important. If the Commonwealth Empire failed, there was, as Linda Colley said “a persistent inclination to pursue empire vicariously by clambering like a mouse on the American eagle’s head.”⁹⁰ Of course, the America First policy promised the prospect of a free trade deal. Not just any free trade deal, this one would be variously a “massive”, “fantastic”, “enormous” and “magnificent” trade deal according to Trump and Johnson.

⁸⁷ Let's end the myths of Britain's imperial past. *The Guardian*. October 19, 2011.

<https://www.theguardian.com/books/2011/oct/19/end-myths-britains-imperial-past>. Retrieved July 23, 2020.

⁸⁸ Brexit: UK fishermen 'to face trading friction with EU.' BBC.com. March 4, 2020.

<https://www.bbc.com/news/uk-politics-51737626>. Retrieved July 6, 2020.

⁸⁹ UK led towards no-deal Brexit by untruthful elite, says ex—EU envoy. *The Guardian*. June 18, 2019.

<https://www.theguardian.com/politics/2019/jun/18/uk-led-towards-no-deal-brexiteer-by-untruthful-elite-says-ex-eu-envoy-ivan-rogers>. Retrieved July 6, 2020.

⁹⁰ O'Toole, F. *Heroic Failure*, *supra*, page 22.

According to the New York Times on March 2, 2020, however, such a trade deal had not yet been signed as it was not likely to be signed in the near future. The British decision to allow Huawei to provide 5G technology had upset President Trump.⁹¹ But, on July 18, 2020, The Observer reported that the British had made an about-face, deciding that Huawei could not be used after all. This was allegedly due to security concerns. However, reports are that the British government told the Chinese that its decision not to use Huawei was as a result of “geopolitical reasons following huge pressure from President Donald Trump.”⁹² Vassalage to the US is not as unpalatable as vassalage to the EU.

It was also foreseen that the EU would collapse and Britain could trade individually with each Member State of Europe.⁹³ To pursue this matter, in July 2016, Theresa May visited German Chancellor Angela Merkel, Francois Hollande, Matteo Renzi, Robert Fico, Beata Szydlo, and Mark Rutte in rapid succession.⁹⁴ But, then came the European Council (Art. 50) Guidelines for Brexit Negotiations, which stated that:

The Union will approach the negotiations with unified positions, and will engage with the United Kingdom exclusively through the channels set out in these guidelines and in the negotiating directives. So as not to undercut the position of the Union, there will be no separate negotiations between Member States and the United Kingdom on matters pertaining to the withdrawal of the United Kingdom from the Union.

3. The core principles set out above should apply equally to the negotiations on an orderly withdrawal, to any preliminary and preparatory discussions on the framework for a future relationship, and to any form of transitional arrangements.⁹⁵

The Council reacted with immediate resolve in order to discharge the fundamental duty of the EU to keep its states united against outside interference. In response, Theresa May complained that the EU was “lining up” to oppose the UK. But, Angela Merkel made it clear: “We haven’t lined up against anyone. We have made it easier for Britain, by speaking with one

⁹¹ About that Much –Vaunted U.S.-U.K. Trade Deal? Maybe Not Now. *The New York Times*. March 2, 2020. <https://www.nytimes.com/2020/03/02/world/europe/uk-us-trade-deal.html>. Retrieved July 3, 2020.

⁹² Pressure from Trump led to 5G ban, Britain tells Huawei. *The Guardian*. July 18, 2020. <https://www.theguardian.com/technology/2020/jul/18/pressure-from-trump-led-to-5g-ban-britain-tells-huawei>. Retrieved July 21, 2020.

⁹³ UK realising that EU is dominant power in Europe and Brexit will be on its terms. UK will be accommodated but never prioritised above collective interests of EU. *The Irish Times*. March 8, 2019. <https://www.irishtimes.com/opinion/uk-realising-eu-is-dominant-power-in-europe-and-brex-it-will-be-on-its-terms-1.3818132>. Retrieved July 2, 2020.

⁹⁴ List of Prime ministerial trips made by Theresa May, https://en.wikipedia.org/wiki/List_of_international_prime_ministerial_trips_made_by_Theresa_May#cite_note-1, Retrieved July 23, 2020.

⁹⁵ European Council (Art. 50) guidelines for Brexit Negotiations. *Consilium.Europa*. April 29, 2017, <https://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brex-it-guidelines/>. Retrieved July 15, 2020.

voice.”⁹⁶ Notably, however, Britain was not part of the “we” who were speaking with “one voice.” It may not have been isolated, but as they say in these times of Covid, it was seen as “self-isolating.”

Of course, the EU did not want to be obstructive. It repeatedly stated that it wanted to help Britain in its quest to get a Brexit deal. The problem was, however, that Britain did not know what it wanted. It wanted to be in the EU, and not yet be in it. As stated in a piece titled Theresa May’s Brexit desperation tour:

Nothing in The Hague. Nothing in Berlin. Nothing in Brussels. At each stop, Theresa May came up empty.

On the day she had hoped the House of Commons would vote to ratify her Brexit Deal, the UK prime minister instead scrambled to meet EU leaders after postponing the vote to avoid certain defeat.

But her counterparts on the Continent had nothing to offer her except warm words, sympathy and “clarifications”—certainly nothing that would immediately change the minds of her sceptical backbenchers or ease her awful political predicament. First at breakfast with Dutch Prime Minister Mark Rutte, then with German Chancellor Angela Merkel—where, adding insult to injury, May was briefly locked in her car—and finally at the European institutions with Council President Donald Tusk and Commission President Jean-Claude Juncker, May was told the deal cannot be renegotiated.

* * *

Meanwhile, EU exasperation with Brexit is becoming more vocal. Manfred Weber, the German MEP who heads the European People’s Party group in the European Parliament, said in a speech in Strasbourg Tuesday that he believed enough time had been spent on the [UK’s] departure and he wanted to focus on the bloc’s future instead.

“We are negotiating now for one and a half years on the Brexit treaty,” Weber said, making no effort to hide his frustration. “We negotiated more among the different British camps than between the EU and Great Britain. And then we have a final agreement on the table accepted by the British government and also accepted by the 27 EU governments. And now? And now we see again a reopening a try of renegotiating the whole thing. I think we lost already too much time discussing Brexit.”

“We don’t play this game,” he said.⁹⁷

⁹⁶ Brexit summit: EU accepts United Ireland declaration. *The Irish Times*. April 29, 2017. <https://www.irishtimes.com/news/world/europe/brexit-summit-eu-accepts-united-ireland-declaration-1.3066569>. Retrieved July 15, 2020.

⁹⁷ Theresa May’s Brexit desperation tour. *Politico*. December 12, 2018 <https://www.politico.eu/article/theresa-may-brexit-deal-desperation-tour/>. Retrieved July 23, 2020.

As can be seen, Britain's withdrawal from the EU was like its membership in the EU: ambivalent. Its membership was never wholehearted; its departure equally fickle. The combination of its mythic sense of greatness and its disappointment-driven resentfulness made it incapable of deciding to fully commit itself to anything, even the most existentially pressing of matters.

In its process of particularization, nationalism rose and the people were convinced that they did not need other states for survival or in order to increase their wealth, territorially or culturally. In doing so, it chose to sail the open seas of its imagination rather than become a vassal state of a spectre EU. Whether Britain returns from this odyssey in the long-run remains to be seen, but in the short-run, the ship of state seems to be as seaworthy as the Titanic on its maiden voyage.

It sounds like war. The thud of the falling pound greeted the prime minister's tub-thumping speech: it suggested his "great voyage" was destined for the rocks of the hardest of Brexits. Days after proclaiming we would leave with peace, prosperity and friendship, he set out to do battle with those he called our friends and neighbours. Now our ersatz Winston Churchill proclaims he will fight them on our fisheries, fight them on aviation, but above all fight off their filthy regulations. There will be no level playing field on his battleground.⁹⁸

In the end, in face of its ambivalence, all we can do is wait and say "I think we already lost too much time discussing Brexit. We don't play this game."

⁹⁸ Why is Boris Johnson waging war on the EU? To distract from his cuts. *The Guardian*. February 3, 2020. <https://www.theguardian.com/commentisfree/2020/feb/03/boris-johnson-eu-cuts-brexite-damage>. Retrieved July 23, 2020.

Conclusion

Mark Twain once reputedly telegraphed a newspaper editor who published his obituary in order to inform him that rumours of his death had been grossly exaggerated. Similarly, the existential threat that “anti-globalization” movements pose to the European Union have been overstated. Indeed, the EU is a *sui generis* form of regional integration and not a form of globalization, at all.

The EU and its legal system is the result of a pre-existing cultural unity which seeks to regulate its own internal order. It is not something imposed from without, but something which is springing forth from within. It is still prenatal, but it is involved in what Deirdre Curtin calls differentiation, a concept which recognizes that a nascent thing grows through specialization and at different speeds, in different stages and in different ways.

As Ortega y Gasset noted, from the endogenic perspective this new growth is essential to balance the external and internal antimonious centrifugal and centripetal forces at play in Europe in the modern world. This new entity protects the sovereignty and cultural heritage of the Member States and engages them in a universal and constructive project, which mutually enriches and protects all Member States. To characterize it as a form of anti-globalization is miss its real nature, because of misinformed and flawed exogenic assumptions of those such as Trump’s America Firsters and the Brexiteers.

In these post-Brexit times, even right-leaning European populist movements have been affected. Public opinion shows that EU citizens have found new-found appreciation for the Union while evaluating the aftereffects of Brexit. People have, instead, decided to redouble their efforts to find constructive solutions as to how best to maximize the effectiveness of the EU and its organs.

Seen this way, the German Constitutional Court case of *Public Sector Purchasing Program of the ECB* is simply a corrective measure to remind the ECJ that the ECJ is charged by the Treaties with ensuring that the principles of conferral, subsidiarity and proportionality are adhered to. Undue deference should not be shown to the EU when it encroaches on these concepts, because the EU is not a “federal system” of unlimited powers in the same way that the United States has become since the FDR era.

Instead, the purpose of the EU is reinforce and protect Member State sovereignty and culture in the modern era and not to undermine it. Should the ECJ ignore this, the EU’s core function could be undermined and the delicate balancing of centripetal and centrifugal forces thrown off balance. Should this happen, the entire integration project would undoubtedly fail and the far right would rise. Conferral, proportionality, and subsidiarity provide a pressure

valve that prevents cultural differences and nascent national tensions from destroying the long-term EU goals of unity, peace and stability in a diverse age.

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APPENDIX:
ABSTRACT AUF DEUTSCH

Abstract

Aufgrund Brexit und Amerikas First Policy der derzeitigen US-Regierung wird manchmal behauptet, dass das EU-Konzept einer „immer engeren Union“ zum Scheitern verurteilt ist. Diese Masterarbeit basiert auf einem interdisziplinären und vergleichenden rechtlichen Ansatz, um diese Behauptung durch eine biopsychosoziale konstruktivistische Linse zu untersuchen. Des Weiteren stellt sie das Phänomen der EU-Integration in ihren psychosozialen, kulturellen und mythologischen Kontext und behauptet, dass solche Aussagen auf einer exogenen und endogenen antinomischen Wahrnehmungsdisjunktion hinsichtlich der existenziellen Bedeutung der EU beruhen. Aus der Sicht von Brexiteers und Amerikanern ist die EU grundsätzlich ein Handelsblock, der die Souveränität bedroht und die Realisierung des Potenzials ihrer Mitgliedstaaten beeinträchtigt. Aus EU-interner Sicht ist die Union ein Integrations- und Regionalisierungsprojekt, das notwendig ist, um den kulturellen und territorialen Zerfall jedes einzelnen Mitgliedstaats zu verhindern. Die Union schützt also sowohl die Souveränität als auch die Kultur und ist als solche erforderlich, solange sie die rechtlichen Grundsätze der begrenzten Einzelermächtigung, Verhältnismäßigkeit und Subsidiarität einhält.