

# The Cosmopolitical Epiphany

*by Nicolas Leron*

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**Jean-Marc Ferry tries to determine the conditions for the implementation of Europe's philosophical principle: the realization of the cosmopolitical hypothesis. But the well-ordered co-sovereignty that results from it struggles to convince us of its ability to resolve contradictions and make political Europe a reality.**

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Reviewed: Jean-Marc Ferry, *Comment peut-on être européen ? Éléments pour une philosophie de l'Europe*. Calmann-Lévy, 2020, 324 p., €19.50.

For almost 30 years, Jean-Marc Ferry has been developing one of the most fruitful ways of thinking about European integration, and undoubtedly the most important in the French language. It is remarkable to see the longevity of his early intuitions, which he has continued to refine through his numerous works. For (almost) everything could already be found in his first articles for the journal *Esprit* in the early 1990s and his masterful discussion with Paul Thibaud at the time of the Maastricht controversy<sup>1</sup>. Jean-Marc Ferry has become a classic author of European political theory whom we must read and study seriously if we hope to engage in a dialogue and in turn produce original thought on a political subject as elusive as the European Union (EU).

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<sup>1</sup> Jean-Marc Ferry, "Qu'est-ce qu'une identité postnationale?", *Esprit*, 1990, n° 7, pp. 80-90; Jean-Marc Ferry, "Pertinence du postnational", *Esprit*, 1991, n° 11, pp. 80-93; Jean-Marc Ferry, "Une philosophie de la Communauté", in Jean-Marc Ferry and Paul Thibaud, *Discussion sur l'Europe*, Calmann-Lévy, 1992. For a presentation of Jean-Marc Ferry's European thought, see: Arnauld Leclerc, "Prendre l'Europe au sérieux. Penser philosophiquement un objet politique non identifié", in Quentin Landenne (ed.), *La philosophie reconstructive en discussions. Dialogues avec Jean-Marc Ferry*, Le Bord de l'eau, 2014.

*Comment peut-on être européen ? Éléments pour une philosophie de l'Europe* ("How to be European? Elements for a philosophy of Europe"), published by Calmann-Lévy in the collection "Liberté de l'esprit", is thus in line with this long-term reflection, which is still alive and enriched by the crises that Europe is experiencing. In this respect, the decade of 2010-2020 was particularly conducive to moving back and forth between the empirical and the theoretical. The Syrian refugee crisis, Brexit, the election of Donald Trump, Russian aggression, Turkey's new regional ambitions, the acknowledgment of China as a systemic rival, the rise to power of illiberal forces in some Member States, the spread of populist movements everywhere else, the changes in the growth regime, the major ecological challenges that have emerged, and the Covid-19 pandemic all constitute exogenous and endogenous shocks that continue to shed new light on the mystery of European integration. These most recent layers of European history have been carefully observed and reflected upon by Jean-Marc Ferry in the framework of the numerous seminars organized by his Chair of European Philosophy at the University of Nantes<sup>2</sup>, the contributions to which are reproduced in this essay.

## **Europe and the collapse of the neoliberal deception**

An anxiety runs through his words. The looming implosion of the "neoliberal deception"<sup>3</sup> could well, in the ensuing blast, take with it the European project and, more broadly, political liberalism, on account of its conflation with globalized capitalism. Far from being a bulwark, the EU in its current configuration catalyzes the dynamics of the "privatization of the world", in other words the transfer of regulatory power to the financial markets and to the large private groups that appropriate the means required for the material and cultural reproduction of societies (means of production: capital, labor; means of exchange: money, credit; means of communication: media, networks). The State's functions as a transformative force, by which the people self-govern, are progressively losing all their structuring capacity. It is the very flesh of democracy that is withering. However, thanks to a Polanyian

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<sup>2</sup> The website of the Chair of European Philosophy: <https://alliance-europa.eu/en/the-chair-of-philosophy-of-europe/>. Although the project ended in 2018, the work continues as part of the Telos Ethos Nomos Europa Chair held by Arnauld Leclerc (<https://alliance-europa.eu/en/telos-ethos-nomos-of-europe-chair/>).

<sup>3</sup> Phrases in quotation marks are quotes from Jean-Marc Ferry's essay, unless otherwise specified.

counter-movement<sup>4</sup>, the "all-private" could well become an "all-public" and establish the "democratization" of the people-ethnos: the tyranny of the threatened majorities, to use Ivan Krastev's words<sup>5</sup>.

In the face of these perils, Europe itself is confronted with a triple crisis: a technical crisis of macroeconomic coordination, an ethical crisis of solidarity and political co-responsibility, and a historical crisis of legitimization of the European project. It is essentially a crisis of politics, with politics replaced by 'policing': governance through rules in the hands of independent institutions (starting with the European Commission and the European Central Bank), where "the will of the people is just another systemic constraint among others." (p. 207).

Despite the clarity of his analysis, Ferry does not resign himself to this depressing future. He tries to organize a global proposal by combining the conclusions of his many works, which go beyond the strict framework of European studies: European parliamentary system, cooperative governance of the euro zone, well-ordered co-sovereignty, European social base, development of the quaternary sector, universal income, reconstructive justice, etc. The Europe-solution should not be sought through "more Europe", but rather through increased responsibility based on solidarity and sharing among European nations: intelligence focused on coordination.

## **The cosmopolitical hypothesis**

The whole of Jean-Marc Ferry's European work rests on a fundamental pillar: the cosmopolitical hypothesis, which draws on Kantian sources of perpetual peace. According to this hypothesis, sovereignty, the nation-state and democracy, which political modernity has tried to seal in a single consubstantiality, offer the chance to establish a reconfiguration on a scale other than that of the nation-state. Ferry does not preach the death of the State, but rather its overcoming – in other words its repositioning within a new constellation that encompasses it. European integration then appears as both the empirical demonstration of the validity of the cosmopolitical hypothesis and its theoretical potentiality. In addition to national law (*ius civitatis*),

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<sup>4</sup> Without explicitly referring to it, Ferry's analysis on this point directly echoes Karl Polanyi's concept of double movement. See <https://laviedesidees.fr/Discussing-Karl-Polanyi-Understanding-the-Current-Crisis.html>.

<sup>5</sup> Ivan Krastev, *After Europe*, University of Pennsylvania Press, 2017.

which governs the relations between the State and its subjects, and international law (*ius gentium*), which governs relations between States, there is cosmopolitical law (*ius cosmopoliticum*), which deals with the relations between a State and the foreign nationals that reside on its territory and are therefore subject to its jurisdiction. Cosmopolitical law seeks to open a breach in the internal/external dichotomy that separates and connects national and international law on a vertical axis. It establishes a new horizontal – or oblique – dimension in the space of the juridico-political: the transnational.

For Jean-Marc Ferry, however, the cosmopolitical hypothesis refers more fundamentally to the philosophical meaning of Europe itself: its normative horizon as well as its historical and civilizational truth. Since the original justification for the project no longer applies – that of continental peace after the atrocities of the 20th century – the *telos* of European integration, its purpose, is now a "cosmopolitical union" (or "transnational union") that fully participates in the geo-strategic and geo-economic order of the 21st century, as opposed to the scenarios of a collective entrenchment within a fortress Europe, of a general dilution within a vast market without shores, or even of a sovereigntist withdrawal into national self-reliance. The European *telos* cannot therefore be a simple question of adapting to the 'economy-world' (or rejecting it by means of an illusory policy of economic autarky), but rather a "political catch-up" with globalization: the "political reconquest of an eco-financial metapower".

As for the European *nomos*, the fundamental law or basic structure of the Union, the author does not establish a hypothetical European sovereignty. On the contrary, Ferry reiterates that "the Member States remain sovereign". Consequently, "it is of the utmost importance that our constitutional courts should be able to take up the European treaties and, if necessary, negate the enforceability of their provisions. In our political cultures, *the unity of fundamental individual rights and popular sovereignty remains sacred. Their separation would lead to their downfall*" (pp. 81-82, Ferry's italics). The *nomos* of European integration refers precisely to the three levels of law: domestic law, international law and cosmopolitical law. Ferry notes that cosmopolitical law does not lead to an absolute right of residence, but rather refers more to a right of free movement that must respect the unique political and economic syntheses developed by each of the Member States. The regime of European citizenship thus seems quite close to the idea of a cosmopolitical right.

Finally, the European *ethos* manifests itself through a structured public space that mediates the tension between the republican pole of civic autonomy (the common pole) and the liberal pole of political justice (the universal pole). Thanks to the legacy of the civilizational principles of civility, legality and publicity, it is possible to imagine the crystallization of a truly deliberative European public space, based on a common political culture and a shared historical memory. This is undoubtedly the philosophical heart of Europe and its secret hope: the realization of a recognition of oneself in the other, the institutionalization of a reconstructive ethic that is nothing other than an ethic of mutual comprehension. This resonates strongly with the Ricœurian triptych of translation, cross-narration and forgiveness<sup>6</sup>: the emergence of the "European-being" bearing an "identity whose principle consists in opening itself up to other identities."

## **The limitations of well-ordered co-sovereignty**

The cosmopolitical hypothesis leads Ferry to oppose the supranational-vertical mode of integration with a transnational-horizontal mode of integration. Indeed, the perspective of a European superstate, a replication of nation-states on a continental scale, was rejected by Ferry very early on. In his book *La Question de l'État européen*, published in 2000, he shows the dead end of methodological nationalism applied to the European construction. The nation-state will long continue to retain its primary functions of social integration, civic participation and cultural reproduction, guaranteed by its pillars of military, educational and fiscal obligation. It remains the space of a monopoly of legitimate violence as well as of legitimate education. The path towards a European state provokes a rejection by the people, with the risk that they will take refuge in populist forces and trigger a process of European disintegration.

Ferry then offers a third way between the two pitfalls of "supranational federalism" and national sovereignty: that of "well-ordered co-sovereignty". This is the logical institutional culmination of his cosmopolitical matrix. The juridical-political architecture that Ferry conceives is indeed organized around the principles of cooperation and coordination of sovereign nations that mutually recognize each other. Both external realities (the new geostrategic and geo-economic order) and internal

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<sup>6</sup> Paul Ricœur, "Quel *ethos* nouveau pour l'Europe ?", in Peter Koslowski, *Imaginer l'Europe. Le marché européen comme tâche culturelle et économique*, éd. du Cerf, 1992.

realities (the sub-optimality and structural imbalance of the eurozone) call for a rearrangement of greatly diminished state public powers. The transnational-cosmopolitical prism then imposes the end of the need for "a system that *is always horizontal* and that organizes, among the Member States, the coordination of national budgetary policies, giving the nations the role of stabilization and recovery, *in the spirit of an expanded, decentralized Keynesianism*" (p. 98. Ferry's italics)

And yet the principle of coordination fundamentally contradicts the democratic principle of self-legislation. Transnational horizontality 'crushes' national democratic verticality. In a sense, Ferry substitutes Keynesian economism for the ordoliberal economism of the Brussels *doxa* – which, it must be said, has evolved significantly as a result of Covid-19. Europe is still struggling with depoliticization through economics and governance. The democratic principle stipulates that the Germans and the Dutch have the right to opt for a policy of budgetary austerity or to reject coronabonds, even if these decisions show a lack of cooperation with other Member States. The functional imperative of coordination reduces the democratic freedom of the people. The vertical subordination of Member States within a supranational union is replaced by their horizontal subordination within a transnational union. The people of Europe are still confused.

On the conceptual level there is an even more problematic issue. Ferry, who wants to preserve state sovereignty while envisioning a cosmopolitical union, draws a distinction between the negative sovereignty of the Member States, which can ultimately refuse to have certain decisions imposed on them by the EU, and the positive sovereignty (or well-ordered co-sovereignty) of the Union, which alone can act effectively in a growing number of key areas. But this confuses the notion of sovereignty, which is a jurisdiction of last resort (*ultima ratio*), with that of public authority, which is a capacity for collective action. These two notions are never entirely separate: there is no proven jurisdiction of last resort without an effective capacity to act in strategic areas. (The German Constitutional Court rightly recalls in its decisions that the democratic principle of the German people requires that they retain some control over the main levers of public action). But they cannot be measured against each other: the order of jurisdiction and the order of capacity are developing on different planes.

Well-ordered co-sovereignty is part of the recurrent theme of the last three decades of a shared or multi-level sovereignty. It echoes the discourse of European sovereignty endorsed by Emmanuel Macron, who, in astonishing confusion, sees

"Europe as a gathering of our sovereignty by and with an even greater sovereignty."<sup>7</sup> The history of American political law sufficiently demonstrates that it is impossible to stabilize a dual sovereignty, both in theory and in practice. For the ontology of sovereignty and its geometry of last resort lead inexorably back to the question – with very real consequences – of who has the last word. And the last word cannot be shared. The Emperor and the Pope, in their time, experienced the bitter truth of this. Ferry's cosmopolitical path is invariably lost in the shifting sands of shared sovereignty and its aporetic oxymorons.

It can only survive and delay the fatal outcome: to lend substance to well-ordered co-sovereignty, it calls on a "legitimate and visible coordinating authority" which in turn inevitably raises the question of the source of its legitimacy and its compatibility with the national democratic principle<sup>8</sup>. This authority – "in a nutshell, a real president of the EU", clarifies Ferry – also has the weakness of becoming over-involved in institutional affairs, at the risk of becoming entangled in them. Hence the procedure for electing this president: "(...) some thirty States (a round number) of the Union would each assemble their parliamentary congress. Each national parliamentary congress would nominate its candidate. Of the thirty candidates, the European Parliament would select ten; of these ten, the European Council would appoint one..." (p. 120). On this basis, is the current procedure for appointing the President of the European Commission not ultimately more legitimate and parliamentary?

More fundamentally, the impasse of the cosmopolitical path can be explained by the underlying Habermasian matrix of communicative action. It attempts an inter-subjective and relational approach to sovereignty that vainly seeks to de-substantiate it in order to 'deabsolutise' it. But sovereignty is an irreducible subjectivism that breaks the relationship off at the last moment.

Certainly, in a great effort of thought, we can imagine that in the theoretical space-time of the juridico-political there is a peak where the subjectivities touch each other without cancelling each other out yet. A unique point where the acknowledgment of the other's last word is still, for a moment, the affirmation of their last resort: the existence of a synchronicity which alone then makes possible an inter-

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<sup>7</sup> Emmanuel Macron, speech to the European Parliament, April 17, 2018.

<sup>8</sup> On the critique of European sovereignty, please see our article: Nicolas Leron, "L'éclipse du souverain. Elements for a European democracy", *Le Grand Continent*, May 2020.

subjective sovereignty. It seems to us that this is the epiphany that Ferry has been seeking for so many years through the cosmopolitical path.

But this, much like the "ever closer union between the peoples of Europe"<sup>9</sup> of the supranationalist path that he rightly condemns, is also an "infinite task". Ferry's proposal to the people of Europe is nothing more than a cosmopolitical heroism that stretches all of the ethical forces towards an unreachable horizon. In the long run, however, it is very likely that the people will eventually tire of so much effort.

## **The invention of a European public space as a framework for the expression of an authentic European democracy**

While Jean Marc Ferry's reflections do not, in the end, seem to bring out the European political substance, they are nonetheless extremely fruitful in paving the way for its discovery and cultivating its fruits. For Ferry argues essentially in terms of public space rather than public power. This is the limitation of his enterprise, but also its contribution. Politics is not born of the public space, but it lives through it. Although it does not constitute the authority in which an authentically European democracy is produced, the European public space is its necessary soil – or, more precisely, its ether.

The materiality of a European democracy, produced through a European public power, in other words a genuine European parliamentary budgetary authority (and therefore a European budget based on its own fiscal resources), would fall apart were it not fixed in a European space for communication and deliberation capable of arousing and then channeling a democratic register of open confrontations, immeasurable with the register of diplomatic negotiation. Moreover, the very link between a European public power and the national public powers requires the construction of a decompartmentalized transnational public space capable of positively linking these two levels (which today are encircled by a web of negative interdependencies) and of creating a European commonality.

In our opinion, it is here that Ferry outlines one of the most promising avenues of institutional reflection in the debate on the future of the Union: the idea of a European parliamentary system linking national parliaments and the European Parliament, which, in accordance with the cosmopolitical idea, reconciles the

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<sup>9</sup> Preamble of the Treaty on European Union.



democratic sovereignty of the Member States and the existence of a political Union. Although the outcome of each parliamentary election in Europe, whether national or European, has a direct influence on the others, the parliaments are still relatively unconnected. The proliferation of committees dealing with European affairs in national parliamentary assemblies does not compensate for this deficiency. In this respect, the proposal of Thomas Piketty and his TDEM<sup>10</sup> colleagues for a European Parliament (or a European Assembly of the Eurozone) partly made up of double-hatted deputies – both European and national – seems to us to be one of the key conditions for an effective European parliamentary system. But there is also a need for parliamentary networking among the national parliaments themselves, on a strictly transnational level, following the example of the national supreme courts, which have been organized in associations for the past 15 years with the purpose of cementing a jurisdictional community by focusing on comparative law and the systematic dialogue of national jurisprudence.

In conclusion, Jean-Marc Ferry's quest along the Kantian cosmopolitical path shows a unique richness. It avoids the pitfall of supranationalism that gradually buries the European project. However, by exploring the horizontality of mutual recognition, it overlooks the immeasurable verticality of politics.

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<sup>10</sup> [Manifesto for the Democratization of Europe](#).