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## **A normative empire in crisis – time for a politics of values**

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**Katarzyna Pełczyńska-Nałęcz**

Why did the entire EU hold its breath due to what appeared to be routine democratic elections in the Netherlands and France? The answer is simple: what was at stake in these cases was not the electoral success of one party or another, but the victory or defeat of European values. The fear of catastrophe, which was palpable among the pro-European elite in the case of both these elections, demonstrates they are aware that a collapse of consensus in the area of fundamental values would have grave consequences for the Union.

The worst phase of the crisis has been averted. However, the deep divisions which run both through societies and between EU member states remain. It is necessary that we are honest with ourselves in stating that despite “winning the battle”, the “ideological civil war” in the European Union is still ongoing. This ideological war casts doubt on all the aspects of integration. The common market, common currency and common foreign policy can only exist as long as the participants in the European project are in agreement on basic values. These norms form the ligaments which bind together the framework of coexistence, the principles of communication and the systemic standards. This is why it is necessary to deal with this crisis very seriously and take corrective measures as quickly as possible.

Although the problems in the area of common values have been growing for some considerable time, the EU is yet to treat them as a priority. While values have been mentioned in documents and speeches, they are not something which would lead the majority of politicians to crumple up their papers, or to derail the EU’s bureaucracy. Statements made by the new French president and also those heard

in Germany and certain other EU countries in recent weeks show that the issue of shared values is genuinely beginning to be treated seriously<sup>1</sup>.

**Very great political prudence is required to stave off the values crisis, to ensure that efforts to bolster the Community's ideological foundations does not become an opportunity to eliminate market competitors and/or morph into a war of attrition in which everyone loses. The courage to carry out a revision of current thought on the role of the EU as a normative empire is also needed.** Recognition is long overdue of the fact that promoting European values outside the EU, which has been focused on for the last fifty years, often does not bring the desired results. Nevertheless, nothing is stopping the rot of those same values in member states. Besides the cohesion, agricultural and security policies, a values policy with effective legal and financial instruments is now also essential. It is not third countries which should be at the heart of this policy, but rather EU countries and societies, since it is here that the greatest challenges for Western democracy have developed.

## A normative empire

"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail." That is how Article 2 of the Treaty on European Union defines the normative foundation of the European project.

For years, the measures which the EU has taken on the basis of this article have been guided by two assumptions. Firstly, it is assumed that in member states 'there is no turning back' from shared values, democracy, and the rule of law. EU member states have been affected by various problems (such as corruption or unequal access to civil rights) but there are certain red lines which may not be crossed, such as the intentional dismantling of the rule of law. Responsibility for implementing appropriate corrective reforms may then be passed on to the member states' governments. It has been recognised that if the EU has a problem with values, then this refers to Brussels. It is symptomatic that the term 'democratic deficit' is reserved in EU terminology to describe the problems of its own institutions, which have been accused of various abuses, of a lack of transparency, and of alienating themselves from ordinary citizens.

Secondly, there is the conviction that democracy is 'better than all the other systems', and that it can ensure stability and better lives for all the countries and societies which wish to apply it. As a 'normative empire', the EU should be actively exporting its own norms to other countries. 'Expansion of the rule of law' is the best way to provide the EU with security and stability, as well as with prosperous and receptive economic and political global partners.

As a consequence of this, the main impetus of this politics of values has been directed externally. The EU has carried out these measures in two ways: with 'bottom-up' measures, by supporting civil society and pro-democratic social organisations; and also at the state level, by encouraging governments to implement reforms, occasionally by condemning their policies, and in extreme cases by introducing

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<sup>1</sup> One example of this is the statements made by Emmanuel Macron during the EU summit in Brussels on 23rd June 2017 and one day earlier by Angela Merkel. They spoke of supporting the European Commission in launching procedures for the rule of law. <http://www.dw.com/pl/bruksela-prezydent-francji-rozmawia-z-wyszehradem/a-39390998?maca=pl-Facebook-sharing>.

sanctions, e.g. for egregious cases of human rights violations. The EU's activity has operated to some degree in a series of concentric circles; the closer a country was to the EU, the more was expected from it. The EU was most closely focused on the candidate countries. A strict policy of conditionality was applied here; only those countries which fulfilled the 'Copenhagen criteria' (a kind of 'Ten Commandments' for democratic and systemic standards) were admitted. In particular, much attention was also paid to the question of democratisation within the European Neighbourhood Policy, which was targeted at countries close to the EU's borders but which did not have membership prospects. However, due to the lack of a sufficiently attractive 'carrot', no unambiguous conditionality was applied here.

Paradoxically, the active policy of promoting EU values based on strict conditionality would end the moment a country entered the union. In this area, the European Union is equipped only with the 'nuclear option' of Article 7 which, following a long and complicated procedure requiring the consensus of member states, enables sanctions to be applied, including the suspension of voting rights in the European Council. However, the sanctions laid out in this article have never been applied in practice. As befits a 'nuclear' option, article 7 thus works better as a deterrent than for real use. However, the EU did not make any provisions for regularly monitoring the rule of law, nor does it have effective mechanisms to discipline countries transgressing against European values. Proactive measures have been introduced on a very limited scale at the level of governments and societies with the aim of fostering and strengthening EU values.

The EU financial mechanisms currently in operation are a reflection of the values-based policy as defined in this way. Any strictly 'democratising' instruments – including those intended for civil society organisations – are solely directed towards third countries<sup>2</sup>. The measures used within the union are much more modest, and furthermore deal with the questions of values and the rule of law in a selective and indirect way. They are aimed at increasing the cooperation of citizens within the framework of the EU and their impact on EU institutions, and at the piecemeal adjustment of democracy in particularly sensitive areas (such as xenophobia or women's rights), as well as at taking action in the field of the 'new generation' of civil rights, meaning those connected with technological advancements, social networks, etc.<sup>3</sup>

## Reality check

In recent years, certain events connected to the functioning of democracy within the European Union and its immediate neighbourhood have exposed the weaknesses of the EU's current policy in the area of values. This period has brought to the fore at least three difficult lessons which the EU can no longer ignore.

Above all, **the dogma that fundamental values are inviolable has been undermined** in the European Union itself. According to the Democratic Index published by the analytical section of *The Economist*<sup>4</sup>, in 2016 three EU countries were recognised as flawed democracies en route to becoming hybrid

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2 These are: the European Instrument for the Promotion of Democracy and Human Rights (budgetary instrument, €1.3bn for 2014-2020) and the non-budgetary European Fund for Democracy. A section of resources from the European Neighbourhood Policy and the pre-accession funds are also earmarked for the promotion of democracy.

3 The Programme for Rights, Equality and Citizenship (€439m for 2014-2020) is closest to the mission to support democracy. Direct action connected to the promotion of democracy can also be implemented within the framework of the Justice Programme (€378m) and Europe for Citizens (€185.5mn).

4 *The Economist Intelligence Unit's Democracy Index*, <https://infographics.economist.com/2017/DemocracyIndex/>.

regimes. Furthermore, in a report by Freedom House, two of the 15 countries which saw the greatest fall in the level of freedom last year are EU countries: Hungary and Poland. It also reported a negative trend in a further four member states<sup>5</sup>. In the case of Hungary, and increasingly also in Poland, this is not just a 'blip in the construction of democracy', but a systemic action to dismantle the pillars of the rule of law, judicial independence, attempts to curtail press freedom and the pluralism of civil society. The crisis of values does not only affect those countries where the rule of law is already being broken. Growing problems with press freedom<sup>6</sup> and the rising popularity in many EU countries of political parties disavowing the values of liberal democracy are symptoms of this. While it is true that these parties are not in power, support for them is much higher than it was a few years ago.

**Events in the EU's neighbourhood have also raised doubts concerning the belief in the universality of EU norms** such as democracy and the principle of the rule of law. The Arab Spring provided examples of how undermining a regime can lead to destabilisation and, in extreme cases, to armed conflict and to state collapse (as occurred in Syria and Libya). Furthermore, pro-democratic processes may also encounter resistance beyond those countries undergoing transformation; the leaders of authoritarian countries in their neighbourhood are afraid of the spread of the 'democratic virus' in their own backyard. In the case of Ukraine, the Kremlin's anti-democratic phobias led it to provoke armed separatism in the Donbas region. This last event in particular demonstrated how limited the EU is in its capacity to cope with the unintended consequences of 'implementing EU norms'. And when it comes to unforeseen 'complications', European governments and societies are far from enthusiastic about bearing the economic and political burden.

Finally, in recent years it has become painfully apparent that the promotion of norms does not need to run in only one direction. **In response to the policy of 'exporting the rule of law', authoritarian regimes can promote their own 'standards', force through an anti-EU and anti-liberal vision of Europe**, undermine fundamental democratic values, and support xenophobic sentiments and nationalist or populist options. Worse still is the fact that this export of 'anti-liberal' standards is landing on fertile ground in the EU. The tendency for EU politicians and societies to accept this transfer is clearly proportional to their growing scepticism or even hostility towards shared EU values. One indication of this is the flirtation by a range of European populist parties with authoritarian leaders. Marine Le Pen's visit to Russia is a prime example of this. The French presidential candidate clearly felt that meeting Putin would be an effective method to promote herself politically in her country.

## Back to basics

On the sixtieth anniversary of the European Union, the leaders of 27 member states used the first lines of their joint declaration to state that "we have constructed a unique Union with common institutions and strong values, a community of peace, freedom, democracy, human rights and the rule of law...". **But if the Union does take the values in Article 2 seriously, after sixty years of its existence, then it is time to leave behind the myth of a 'complete work of a union of common values'. It is necessary to recognise that this is an open process, which still needs particular effort from the union.**

<sup>5</sup> <https://freedomhouse.org/report/freedom-world/freedom-world-2017>.

<sup>6</sup> According to the Press Freedom Index prepared by Reporters without Borders in 2017, five member states (Greece, Italy, Croatia, Hungary, Poland) belong to the category of countries with clear problems. However, one country – Bulgaria – was ranked even lower, as a country undergoing a difficult situation in this area. See, <https://rsf.org/en/ranking/2017>.

## Firstly, an end to *Realpolitik*

In order to take shared values seriously, it is necessary to depart from the *Realpolitik* operating within the EU, that is to say from turning a blind eye to violations of the principles of the rule of law for the sake of 'peace of mind' or short-term party-political interests. An example of this is how the Hungarian government was treated; it took advantage of support from its political fellow travellers in member states, and also of the European People's Party (which Hungary's ruling party Fidesz belongs to). There is a broad consensus among observers of political life in Hungary that the changes there have gone so far that the current system can no longer be called liberal democracy<sup>7</sup>. To date, though, this has gone no further than debates in the European Parliament and reprimands from the EPP. No decisions have been taken which would commit to any tangible economic or political restrictions aimed at the Hungarian leader. The practice of turning a blind eye to Orbán's violation of EU principles not only failed to halt the progressive dismantling of democracy there; it also opened the door to analogous processes in another member state – Poland. This action demonstrates that violating democratic norms goes unpunished in the European Union, and also weakens the potential effectiveness of Article 7, which requires consensus to be applied (Warsaw and Budapest provide each other with a guarantee of impunity). It is symptomatic that Civic Platform (which was in power in Poland until 2015) took part in the defence of Viktor Orbán, but currently expects the EU to take firm action against democratic violations in its own country.

***Realpolitik* does not just mean turning a blind eye to the violation of fundamental values – it also means using the dispute over values as a pretext to supplant competition and to force through individual interests in other areas.** Macron's speech appears to be one example of this – he criticised violations of the rule of law in Poland and in the same breath also criticised the "injustice: of the mechanism of posted workers<sup>8</sup>. It is absolutely crucial to separate as much as possible the dispute over values from the remaining disputes and conflicts of interests in the EU. This is the only way to neutralise the accusations of a cynical exploitation of values in order to facilitate individual interests which have been heard from the governments and politicians violating EU norms. It is essential to highlight that these accusations have the least possible genuine justification.

## Secondly, legal instruments

Besides the political will to prosecute violations, effective instruments are needed to apply pressure on governments which violate the principles of the rule of law. Article 7 has enormous shortcomings in this area, above all because it requires consensus, which could be difficult to achieve on these issues within the EU. Besides this, real sanctions can only be applied when there have been particularly egregious violations. It is necessary to create legal instruments which facilitate early intervention. **It would be entirely reasonable to introduce a legally binding, regular mechanism to verify the status of the rule of law in all member states.** The Committee on Civil Liberties, Justice and Home Affairs of the European Parliament made this recommendation in a report<sup>9</sup>. In a resolution from Octo-

7 Dániel Hegedüs, *Freedom House Hungary Country report*, [https://freedomhouse.org/sites/default/files/NIT2016\\_Hungary\\_0.pdf](https://freedomhouse.org/sites/default/files/NIT2016_Hungary_0.pdf); C. Woodard, *Europe's New Dictator*, „Politico”, 17.06.2015, <http://www.politico.com/magazine/story/2015/06/hello-dictator-hungary-orban-viktor-119125>; S. Kauffmann, *Europe's Illiberal Democracies*, 09.03.2016, „The New York Times”; [https://www.nytimes.com/2016/03/10/opinion/europes-illiberal-democracies.html?\\_r=0](https://www.nytimes.com/2016/03/10/opinion/europes-illiberal-democracies.html?_r=0).

8 In a statement for “Voix du Nord” 27.04.2017, “We cannot tolerate a country which in the European Union plays on the differences in social costs and which breaks all the EU's principles. We cannot have a Europe in which...when we are confronted with a member state behaving like Poland or Hungary – in issues concerning university, knowledge, refugees, fundamental values – that decisions are taken to do nothing.”

9 <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2016-0283&format=XML&language=EN>.

ber 2016, the parliament committed the European Commission to prepare an appropriate proposal by September of this year. Jan-Werner Müller formulated a similar idea a few years earlier by calling for the creation of a new institution, the Copenhagen Commission<sup>10</sup>. This would serve the role of a watchdog and would raise the alarm in cases of serious democratic violations by any of the member states.

The advantage of this solution is the fact that all member states would regularly be subjected to verification, rather than selected states (as is currently the case, e.g. with the procedure of assessing the rule of law in Poland). **This would send a clear signal that there are no “equal and more equal” members and that the values policy is not a ‘witch hunt’ but merely the execution of precisely the same requirements demanded from all member states.**

### **Thirdly, more for more rather than less for less**

As part of its work on the EU budget for 2020–2027, the German government proposed the introduction of mechanisms which enable financial restrictions to be made against countries which violate EU norms<sup>11</sup>. The proposal to link EU funds (e.g. as part of cohesion policy) with the state of the rule of law seems to be justified. However, it is crucial that the EU’s reaction should be relatively fast and have the characteristics of a positive stimulus. This means that the restrictions would be introduced in response to violations but, as soon as a country adapts to EU norms, these sanctions would be rapidly withdrawn. This would enable the “perpetrators” to be punished but there would also be a responsive mechanism to reward governments pursuing policies in line with Community norms. It would certainly be counterproductive to cut funds in a future budget in response to antidemocratic decisions taken several years earlier. This would mean that the consequences of violating norms would not be borne by the government responsible for it but rather the next government, which may have an entirely different attitude to the EU and whose possible pro-European aspirations would be undermined by “delayed” EU sanctions. **The policy of sanctions must be very carefully considered in order to ensure that the emphasis is placed on “bearing the consequences” and on positive stimuli, rather than on a delayed “EU vendetta”.**

### **Fourthly, action through society**

The EU should definitely act through society. The promotion and strengthening of European values, monitoring the principles of the rule of law and condemning any transgressions in this area may be done effectively by the citizens themselves. Their involvement would enable the politics of values to be decentralised. The crisis of liberal democracy is visible practically throughout the Union. It has a different context in every country, however, and requires reactions tailored to the local situations.

However, if grassroots action is to be visible and effective, it cannot be based solely on enthusiasm. Any daydreams that a good cause can defend itself need to be summarily dispatched. In the age of commercialisation and non-stop, ubiquitous information, a large financial outlay is required to promote anything at all; and the values of the EU are no exception to this rule. The external and internal opponents of liberal democracies invest heavily in promoting their message. As is shown in the cases of Hungary and Poland, it is no coincidence that when governments violate the principles of the rule of law, they also make attempts to cut funding for civic initiatives which promote EU values and stand guard over the rule of law.

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10 <http://verfassungsblog.de/the-idea-of-democracy-protection-in-the-eu-revisited/>.

11 <http://wiadomosci.onet.pl/tylko-w-onecie/polska-moze-stracic-fundusze-unijne-za-nieprzestrzeganie-rzadow-prawa/06s6mx>.



The European Union must take action as quickly as possible to create a financial mechanism to support grassroots initiatives aimed at promoting and fostering European values in member states. A **European Values Instrument (EVI)** would cover all the countries in the Union. Funds would have to be disbursed via structures independent of governments, and should rather be given to individual countries than to transnational networks. The EVI's operation could be partly modelled on the support component for civil society which exists as part of the Norwegian Financial Mechanism directed at new member states. It is worth noting that the new edition of this component was not implemented in Poland and Hungary since the governments of those countries did not agree that a fund should have an operator who was independent of the government.

The substantive priorities of this instrument should be subject to consultation, but it is clear that they must address the challenges in relation to the crisis of EU values, while also being based in the new cultural, technological and communication reality. In this context we may mention the following directions of support:

- the promotion of dialogue and communication across divisions, countering extremism and radicalism;
- the creation of non-bureaucratic, innovative communication promoting values, including non-traditional means of communication (such as social media, films by YouTube stars, serial online content) which would contain value placement;
- increased access for EU citizens to reliable information which has not been politically or commercially manipulated;
- programmes to mobilise citizens to monitor compliance with human rights and the principles of the rule of law, including support watchdogs; that is, getting society to supervise how its governments implement Article 2.

The European Values Instrument would not only allow citizens to take effective action in defence of the principles enshrined in Article 2; it would also be a positive signal of the EU's solidarity with the societies of those countries whose governments are undermining shared values. This solidarity would be the ideal counterbalance to the disciplinary mechanisms used by governments.

It is absurd that pro-democratic organisations find it much harder to gain support from the EU budget to defend European values in their own countries than to promote those same values in Belarus and Ukraine. Fostering democracy beyond the EU's borders cannot be more crucial than taking similar action within the EU itself.

### **Fifthly, pragmatic calculations beyond the EU**

Naturally this does not mean that the EU should cease its pro-democratic activity beyond its borders. This activity must, however, be governed along different lines than the internally-directed policy of values. In the EU we assume that the cost of abandoning democracy is enormous and far outweighs the cost of maintaining it. We need to accept that this may be different outside the Union. The level of EU involvement in supporting pro-democratic forces in third countries should be directly proportional to how prepared the Union is to participate in the costs of this transformation. This is why it appears that promoting democracy outside the EU must above all be focused on those countries where, from the standpoint of EU security and stability, the challenges associated with the lack of transformation



currently outweigh the costs of implementing transformation. To be precise; pro-democratic support should currently be directed above all towards the Balkans and Ukraine.



The fact that the elections in France and the Netherlands were won by figures who recognise the primacy of EU values means that the severe normative crisis in the European Community has been averted for a while. It could be said that the EU has received another chance to 'put the fire out' while it is still at a manageable scale. If this opportunity is not taken, however, then the fire will most likely spread. This will harm not only the Union's internal cohesion, but also its international standing. Prosperous democracies in the member states are more than the foundation of the European project; they represent the mandate to act as a normative empire which we would expect other countries to wish to emulate.



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**Stefan Batory Foundation**

Sapieżyńska 10a  
00-215 Warsaw  
tel. (48-22) 536 02 00  
fax (48-22) 536 02 20  
batory@batory.org.pl  
www.batory.org.pl

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