

# A Differentiated “Dual Track” European Union as a Remedy in Times of Crisis? Debating Habermas, Arendt, and the Theoretical Foundations of Graduated European Integration

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## Abstract

This EU IDEA paper engages with ideational origins and normative political theories of European differentiated integration. Specifically, it examines a “graduated” policy of integration backed by European-wide referenda in light of the work of Jürgen Habermas and Hannah Arendt – two theorists who are strong advocates of European political integration and constitutionalisation. The paper illuminates justifications, advantages, dilemmas and problems of such differentiated integration with regard to its democratic legitimacy and normative as well as political-theoretical plausibility. While Habermas has proposed and refined this model, Arendt’s radically pro-European ideas can work as a cautioning corrective alerting to the risks and potentially disintegrating effects of differentiated solidarity and integration on the European project. While she would arguably see the democratic legitimisation benefits of a European-wide constitutional referendum as suggested by Habermas, her work also points to the risks of further fragmenting or even dismantling the EU altogether.

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# 1. Introduction: Rethinking European politics in a time of crisis

Since the first years of the new century, Jürgen Habermas has started to call for a differentiated approach to the future of the European Union. The arguably most prominent political philosopher of our time proposed what he called a “graduated integration or different speeds of unification” (Habermas 2006, 2012: 116). Habermas argued that such a new approach, recruiting old and long-contested ideas dividing the European political systems into a dedicated core and a periphery allegedly not yet ready for further political integration or power allocation shifts to a European polity, was needed to address both internal and external obstacles to democratic European integration – and ultimately to prevent the EU from turning into a fully “faltering project” (Habermas 2009). In ever more elaborate forms of argument and justification, Habermas has contended that only such a differentiated or graduated model of a two-speed or two-tier EU with a pace-setting “core Europe” (Habermas 2006: 51) would allow for the further political and social integration of the European Union. It would enable the European project to reverse its creeping stagnation or impasse, and in the end secure the very survival of this post-national polity he still deemed necessary – and indeed more so than ever.

Habermas’ turn was remarkable in its own right. Among European political theorists, he has all along been one of the staunchest defenders of a “post-national” Europe, and of the project of European integration in particular. To assign those national governments and nation-states which seem unprepared to endorse deepened political integration a second-order status signified a kind of departure from the inclusive Habermas of *The Post-National Constellation* (2001) – though a departure, as we shall see below, that could build on previous reflections on Europe and elements of Habermasian democratic thought. Habermas’ argument unmistakably responded to a sense of crisis, or a long-lingering crisis consciousness in relation to European integration that had culminated in the failure of the EU’s Constitutional Treaty, rejected by referendums in the Netherlands and France and then abandoned. Yet what he already viewed as a “European crisis” or “crisis of integration” was about to be significantly accelerated and deepened by new and ever more dramatic crises he could not foresee at the time. Habermas diagnosed a crisis of integration requiring a new, “graduated” political model against the backdrop of, first, neo-liberal centrifugal economic forces increasing socio-economic and budget disparities within Europe; second, a much lamented, structural and ongoing democratic deficit when it comes to European public will-formation and political participation, reinforced by the failure to bring about a political constitution anchored in democratic principles and trans-national public self-understandings; and, third, the inability to respond to the mounting European and global challenges of the twenty-first century that could not be adequately addressed on the level of the nation-state and national policy, from environmental and energy crises to spreading international terrorism, human rights abuses, widening economic disparities, or migration.

At this time, to be sure, the EU was yet to face the full impact of the “big bang” enlargement of 2004 and the full force of the “Great Recession” of 2007–2009 alongside the sovereign debt crisis that shook the very foundations of the political and economic Union. And, furthermore, the depth and scope of ensuing “crises” requiring a robust, different and possibly new political response on the European level that would be capable of overcoming

structural insufficiencies, stalemates and failures in terms of both input as well as output legitimacy (and arguably, with Vivien A. Schmidt, “throughput legitimacy”) in view of new and lasting challenges, has certainly not abated since Habermas’ initial interventions. Since then, the European Union had to cope with many more severe shocks. Among them we can cite the European migration and refugee crisis beginning in 2015; the “Brexit” referendum of 2016, initiating the first exit of a formerly ever-expanding EU; and now the coronavirus crisis, a large-scale global public health and economic crisis.

This paper takes Habermas’ interventions both as a starting point and as a key element for reinvigorating the debate on differentiated integration from the perspective of political theory. In addition to Habermas it engages with the writings of Hannah Arendt on European integration, dating back to the end of World War II – at the moment of Europe’s biggest crisis in history – and preceding the beginnings of political integration in Europe. In turning to Habermas and Arendt, two of the most significant political theorists of the twentieth and twenty-first century, this paper takes stock of their reflections on European integration – its conditions, legitimation and justification – in relation to models of differentiated integration. At different junctures of their writings, they engage with or propose, implicitly or explicitly, such models. Arendt’s ideas, developed at a juncture critical for the future Europe, at the end of World War II and after the Holocaust, share much common ground with the reasoning of Habermas. This includes first and foremost, a forceful and thoroughly argued plea for a politically potent, truly post-national and constitutionalised Europe in response to the structural crisis of European nation-states and their failures to cope with challenges beyond their scope. Yet Arendt also provides critical resources for self-reflection on the limits, possible problems, and risks of differentiated European integration as a model for a politically constitutionalised Europe.

There are, to be sure, different ways of understanding differentiation in relation to European integration (including, for instance, varied integration with regard to policy fields, vertical supra-national authority vis-à-vis the nation-states, etc.). The focus of this paper, however, is on normative arguments and underpinnings concerning the rationale, democratic legitimisation and justification of internally differentiated or “graduated” integration, understood as a *territorially divided dual-track* or “*different speed*” *European Union*.

The overall goal of this endeavour is to raise questions, expand the theoretical debate and advance general theoretical arguments about the democratic legitimacy and procedural conditions, as well as normative/political justifications, of European post-national democratic integration and differentiation. Reconstructing the work of Habermas and Arendt and their main theoretical arguments, the paper is driven by three major and interrelated research questions: First, what key normative and theoretical models justify differentiated integration as opposed to non-differentiated integration? Second, what theoretical, democratic and normative problems, dilemmas, limits and advantages can we detect in models of differentiated integration? And third, how could critical models of differentiated integration as a dual track be transferred into institutional practice, policies and a European polity in light of current challenges, without deepening intra-European divisions that could undermine the

European project altogether – or do political costs likely outweigh the costs from the perspective of normative and democratic post-national political theory?

The paper proceeds in four steps. First, it reconstructs central theoretical justifications and proposals for differentiated democratic integration in the work of Jürgen Habermas. These include the idea for a European-wide constitutional referendum preceded by public democratic deliberation. Second, critical normative and theoretical counter-arguments testing Habermas' case for differentiation and his respective model are developed by way of immanent critique and by employing Arendt's arguments justifying democratic post-national integration in Europe at a time of the continent's most dramatic crisis. The juxtaposition of Habermas and Arendt is then, third, transferred into a critical conversation between the two thinkers with regard to specific political, institutional and procedural implications – and their feasibility and legitimacy – in view of today's EU and its challenges. Fourth, by way of conclusion this theoretical debate is situated in the contemporary context and linking it to the current discussion about differentiated integration, as well as the idea of European-wide referendum on political constitutionalisation in times of today's crisis (or crises) of the European Union.

## 2. A dual-track EU anchored in democratic deliberation and public will-formation? Habermas' rationale for “graduated” European integration

Normative democratic theory on European integration inevitably copes not only with ideal models but also with the problems, contradictions and dilemmas facing the possibility of a democratically legitimated European unification or polity. It is an integral part of such theorising to reflect on the translation of normative ideals into feasible policy seeking to bridge the normative democratic claims with the empirical world of politics. Both Arendt and Habermas are, in their own ways and at different times of “European crises”, deeply engaged with both the normative justification and legitimation of a post-national European integration they view as necessary, on the one hand, and, on the other hand, the ways political practice and policy can actually be shaped by what appears to be justified and legitimate in a complex and contradictory political world.

An interesting and important assumption shared by both theorists is, however, that to a considerable extent the normative and the empirical merge when it comes to the point of departure of European democracy. They both recognise the *empirical necessity and democratic legitimacy* of the European project. It is not the idea and feasibility of a post-national European polity that seems illusionary to them. Rather, it is the idea of a return to the classical, culturally exclusive and allegedly “sovereign” nation-state model they view as outdated. This model is grounded in

fantasies detached from modern empirical reality and entirely inadequate to address the challenges of the twentieth and twenty-first century (Rensmann 2013, 2019). With both Arendt and Habermas, we can thus ask which path can save, revive and consolidate the European project undoubtedly facing many pressures and crises today – many of which neither Arendt nor Habermas could anticipate, and some of which are arguably of the EU's own making.

In addition to interviews, Habermas has argued for a differentiated or “graduated” integration in two books, *Europe. A Faltering Project* (with a new afterword, 2009, originally published in German as “Ach, Europa” in 2008), and *The Crisis of the European Union. A Response* (2012, originally published in German as “Zur Verfassung Europas: Ein Essay” in 2011). In both cases, the most extensive reflections justifying the call for differentiated integration are dedicated to the challenges the EU is facing; and which, Habermas argues, can only be addressed by profoundly shifting the approach to European integration grounded in and procedurally facilitated by European-wide democratic referenda that presumably lead to a dual or differentiated track of integration. This, Habermas argues, would enable the EU to further advance towards political constitutionalisation that is based in two constitution-making subjects granting the EU democratic legitimacy: the national “peoples” and European “citizen”-states (Habermas 2012: 54, Eriksen 2016: 197). In Habermas’ view, it would also render the EU more democratic, less elite-centred, and simultaneously capable of more audaciously tackling pressing globalised challenges and respective expanded policy fields.

## 2.1 The EU and the post-national constellation in the twenty-first century: Diagnosing globalised dilemmas, crises and challenges

For the kind of applied normative democratic theorising Habermas pursues in view of the “European project” the key precondition is a “correct diagnosis” of the current global, post-national constellation (Habermas 2001, 2009: 101) – and of what is or went wrong so far with the European project aiming to master this constellation, its challenges and its current crises. Before we extensively reconstruct Habermas’ critical analysis of his understanding of the “home-made” political failures in European decision- and policy-making, we will first explore the challenging current environment in which the European project needs to operate, as well as the policy challenges the EU would have to urgently address according to Habermas. This includes an in-depth understanding of structural conditions, normative dilemmas and global crises in what Habermas describes as the post-national constellation. As Habermas has argued for more than two decades, the EU has the political and normative responsibility to become both a sufficiently democratically legitimated and effective actor that enables and pursues crucial steps towards the development of nothing less than a “world domestic policy” (Habermas 1998). Three features of this post-national constellation are most striking and are currently actualised and reinforced:



First, Habermas consistently makes a historically informed normative argument about the post-national constellation and the conditions of democracy in the twentieth and the twenty-first century. In view of twentieth-century history, for Habermas the European nation-state, even in its democratic form, has always had a *Janus-faced nature*: while its national particularism paved the way for systemic exclusion and aggressive nationalism, it has also provided a circumscribed framework for a modern lawful state enabling democratic forms of social integration and civic solidarity. Ultimately, he argues, the idea of the nation

in its populist version led to devastating acts of exclusion, to the expulsion of enemies of the state – and to the annihilation of Jews. But in its culturalistic version, the idea of the nation also contributed to the creation of a mode of solidarity between persons who had until then remained strangers to one another. (Habermas 2001: 18)

While nationally circumscribed *constitutional democratic republics*, or “liberal democracies”, tend to engender non-belligerent conduct in relations with one another (as argued in the democratic peace theory that can be traced back to Kant), national(ist) forms of social integration and civic solidarity, even democratically constituted ones, have the tendency to undermine the universalistic or cosmopolitan underpinnings of constitutional rights within nation-states; rights that extend beyond the citizenry. Following Arendt, Habermas recognises not only the force of aggressive nationalism that is inscribed in the very idea of sovereign European nation states – most specifically, conceptions of a ‘sovereign’ political community that are anchored in ethnic notions of citizenship – and has motivated modern mass atrocities in the twentieth century. Moreover, the normative shortcomings of the European nation-state model also affect more inclusive, multi-cultural or “culturalistic” (Habermas) nation-states grounded in “constitutional patriotism” (Habermas 2006: 53, Müller 2007): the crimes of the twentieth century have proven that nation-states are normatively as well as empirically incapable to deal with global challenges such as human rights and crimes against humanity beyond the nation-state’s territorial confines. Reflective of the nation-state model’s structural normative dilemmas, this implies a straightforward argument for a post-national form of democratic social integration beyond national boundaries and borders.

Second, the observation about the structural normative shortcomings of the nation-state model as either culpable or indifferent to problems transcending its national boundaries leads Habermas to analyse the enormous scope and substance of current systemic challenges and crises. In his writings over the years, Habermas provides, reiterates and recently adds to and actualises genuinely post-national challenges of a globalised, interdependent age that have contributed to crises of democracy. These challenges have outsized the nation-states, rendering the latter organisationally and structurally incapable to address them. Any form of democracy will have to face these global challenges, willingly or not, if it is not to erode the trust of its citizens in problem-solving capacities and output legitimacy – in addition to violating the universalistic or cosmopolitan norms which, according to Habermas, are an integral if often implicit part of modern constitutional democracies. Habermas diagnoses several major global, interdependent empirical and normative challenges to the democratic

prerogatives of nationally circumscribed states – and thus also to the conventional fusion of human rights and popular sovereignty in the democratic nation-state. They feature (a) a significant *structural decline of the nation-state's political, economic and redistributive capabilities* (Habermas 2009: 90); in fact, nation-states have “lost a considerable part of their controlling and steering capabilities” (Habermas 2009: 91); (b) the recognition that the global community is increasingly a *community of shared risks and shared policy challenges that cannot be solved nationally*, including “the global spread of epidemics” (Habermas 2009: 91); (c) a strikingly *disintegrated and stratified world society as well as drastic global injustices* undermining social security and the legitimation of democratic rule (Habermas 2009: 93); (d) the inability to nationally secure or adequately address universal *human rights claims* and related *international security ramifications*; (e) pressing *environmental planetary challenges* that are part of the external costs of contemporary capitalism (Habermas 2009: 90, 2012); and (f) a *series of crises of European democracies* that have resulted in a “crisis consciousness” and, in Habermas’ phrasing, “crisis narratives” engendering “nationalist short-termism” (Habermas 2018).<sup>1</sup>

Third, and intimately linked to the first two features, the post-national constellation features a structural gap between the global character of key trans-national problems and the normative constraints and political capabilities of the nation-state model – but also a lack of democratically legitimated and effective global or European post-national institutions that could fill this gap. In light of the aforementioned normative and empirical conditions, the return or regress to the Westphalian nation-state model as the ultimate source of political authority and public law is neither “realistic”, feasible nor normatively desirable, argues Habermas, because “national procedures of democratic will formation and control are much too weak to meet the need for legitimation generated by the local impacts of international regulations” (Habermas 2009: 91-92). The European nation-states, for that matter, would have little chance to ever influence global political developments. Their “only remaining hope” of promoting their own interests, which can overlap with the global interest to stop climate change, for example, is “by pursuing them jointly” (Habermas 2009: 90). Moreover, when the national institutional frameworks of democratic decision-making processes no longer include those who are affected by this decision-making process (on the environment, economic regulations, global risks, etc.), it follows from Habermas that there is a normative imperative to expand democratic deliberation beyond the national context to counter an uncontrolled, “*postpolitical world*” of global corporations and illegitimate rule by force (Habermas 1998: 125).

Conceding that the global public sphere offers only very weak links to serve as a legitimising, deliberative-democratic foundation for global public law, and that any

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1 In a Habermasian lens, though, these crises do point to increasing deficits in democratic legitimation, which arise whenever those involved in making decisions fail to coincide with those affected by them (Habermas 2001). Democratic legitimation of law, in his view, *presupposes* that the conditions of rational discourse be established: Free discourse among equals (a rational discourse which also presupposes the existence of equals or bearers of equal rights) is dependent on enabling conditions, hence it needs to be grounded by a dual track of institutional democratic procedures and a free public sphere granted by civil rights. The presumptions of legitimation *and* reasonability, then, rest on the conditions under which free discourse is enabled and legally institutionalised.



type of world government is currently “unrealistic”, Habermas focuses on regional post-national organisations and most prominently the European Union as a new political force shaping the required, normatively desirable “cosmopolitan solidarity” and “world domestic policy” (Habermas 2001). A democratically – and sufficiently – legitimated and accountable global domestic policy, Habermas suggests, “has no chance in a divided, multicultural, yet differentiated world society unless the small and medium-sized nation-states unite to form regional regimes like the EU, which are capable of acting and negotiating on the global stage” (Habermas 2009: 90). Regional post-national regimes such as the EU could hereby legitimately and effectively advance the public use of reason and generate forms of political and legal authority fulfilling demanding conditions of democratic legitimacy (Habermas 2001, 2012). Indeed, Habermas suggests that only large-scale “regional regimes which are both representative and capable of implementing decisions and policies” could make global public domestic policy and “representative trans-national negotiation system” possible (Habermas 2009: 99). Against this backdrop, Habermas keeps insisting over a span of two decades on the need for a “politically effective Europe” (Habermas 2018) grounded in a “European constitutional patriotism” (Habermas 2006: 53, Müller 2007: 93-139) that entails robust political constitution-making. However, while there are signs of nascent trans-national European publics, so far they have been insufficiently strong in creating the common, “pan-European political public sphere and culture” needed for a politically constituted EU (Habermas 2006: 53). Neither has civic solidarity been generated within the robust political framework that is needed for the European project to overcome its democratic deficit and be politically effective. In Europe, to be sure, according to Habermas a much “thinner” solidarity would be sufficient compared to the national versions that formed over centuries, but “this kind of civic sense of belonging together is nevertheless necessary” (Habermas 2006: 55).

Thus, there are many long-term European and global risks and challenges to which the EU and European democracies need to respond, willingly or not. Habermas argues that graduated, differentiated constitutional integration based on European-wide democratic referenda could be a bold remedy to overcome diagnosed gaps. But before we turn to his model of differentiated integration, we need to examine Habermas’ understanding of the European project’s own shortcomings in the context of the post-national constellation. What are the “home-made” reasons, according to Habermas, for the EU’s democratic deficit and presumed failure to politically constitutionalise into an effective community grounded in a common political culture?

## 2.2 Europe, faltering from the inside? On “home-made” political problems and self-inflicted failures of the project of European democratic integration

To fulfil its function for the evolution of the needed world domestic policy (Habermas 2001, 2009, Ingram 2010: 285ff), Habermas depicts three key interrelated politico-cultural conditions for meaningful European political integration in the present age. First, he insists on the demanding condition of a political constitution emerging against the background of mass deliberations and backed by public referenda. Such constitution serves as a robust, non-elitist political framework and accords to the EU the status of a politico-constitutional *finalité*. Second, and enabled by the first condition, Habermas says robust institutions are required to become more democratically accountable. However, mass-scale, publicly inclusive and transparent deliberative democracy also needs to be part of the *path towards* such a democratic European political constitution and the nature of its content. Thus third, trans-national public spheres deliberating European issues and advancing embedded European thinking, or a common political culture, are a condition *sine qua non* for democratic and effective European decision-making – which includes political and media actors reinforcing emerging trans-national publics and post-national self-understandings (Habermas 2009, 2012). Mass deliberations on the content and nature of the constitution supported by European actors could help foster the “opening and interpenetration of national public spheres” (Grewal 2019: 20). Such shared public debates are in Habermas’ view a key to developing mutual trust, civic solidarity and societal integration in a post-national European political culture. Until issues are Europeanised and the spectrum of opinions and their agents become trans-nationally anchored on the European level “and until the public spheres become responsive to one another, the citizens derive no benefit from a formally strengthened status of the Parliament [as part of the Lisbon Treaty]” (Habermas 2009: 81). Such a common political culture entails elements of a civil society encompassing interest associations, NGOs, citizens’ movements, etc., and a party system appropriate to a European arena (Habermas 1998: 160).

But the European political elites and national governments, Habermas criticises, have done little to advance this path towards a robustly constitutionalised EU and common political culture. He observes two key failures in the reluctant attempt to constitutionalise the EU in the 2000s by proposing the “Constitutional Treaty”. First, the document and ultimately the Lisbon Treaty emerging from it continue to avoid *any vision for a finalité of the EU*. This leaves the Union in continuous limbo about its direction and status, leaving constitutive dilemmas about the EU’s authority and legitimacy unresolved. Second, the proposal and its failed ratification process indicate the missed opportunity to change the (so far, says Habermas, largely elitist, non-democratic, and market-oriented) *way of conducting politics at the European level*. The draft constitution was deeply problematic in procedural and substantive terms: procedurally, because it was not the result of public and democratic deliberation



that included or encouraged political participation of European citizens, and in so doing substantively, because the elite-centred, technocratic and undemocratic constitutional treaty was a free-market-oriented, lengthy, bureaucratic, unreadable document – rather than anything resembling a genuine political constitution. The market-centred, elite-driven draft constitution, which looked more like an economic constitution, epitomises the EU’s failure to create a “political constitution [that] was supposed to create European citizens out of bearers of mauve-coloured passports” (Habermas 2009: 80, 101). This resulted in two failed national referenda on the Constitutional Treaty in 2005 and a failed referendum on the Lisbon Treaty in Ireland in 2008 – despite general European-wide levels of support for EU membership, integration and even European (constitutional) authority: “Because the unification process has until now been promoted by political elites, the two unsuccessful referenda have reinforced the view that the European constitutional project failed because of popular opposition” (Habermas 2009: 101). The Lisbon Treaty, then, which followed after the Constitutional Treaty’s ratification failure, is for Habermas a “slimmed-down treaty” that has set a seal on “the elitist character of a political process which is remote from the populations” (Habermas 2009: 81).

The EU, Habermas suggests, has been largely reduced to the “incremental creation of a common zone” (Habermas 2009: 80) and has failed to foster trans-national trust among European citizens as well as a sense of a European demos grounded in a European public sphere enabling democratic will-formation across borders, which serves as a “functional requirement for the democratic process” (Habermas 2012: 22).<sup>2</sup> Yet despite the EU’s two major political-legal innovations, the subordination of the sovereign states to the supremacy of EU law *and* the shared sovereignty between the member states (Genna and Wilson 2016b: 3), for Habermas the EU falls dramatically short on the necessary condition of a trans-national public sphere for democratic legitimation. Due to this lack of interpenetrated European public spheres – in combination with technocratic elite governance and the continuous pursuit of national interest policies – the EU falls short on creating the elements of a shared political culture and active deliberation among European citizens necessary for robustly moving beyond an “empty shell” of European citizenship and generating “mutual trust among European peoples [that] will give rise to a transnational, though attenuated, form of civic solidarity among the citizens of the Union” (Habermas 2012: 29).

The EU thereby stagnates as it “continues to operate with the democratic deficits resulting from the essentially intergovernmental and bureaucratic character of the legislative process” reinforcing “the fearful decoupling of the European project from the formation of opinion and will by the citizens” (Habermas 2009: 80, 81). From a *democratic input legitimacy* viewpoint this failure also leads to reinforced output legitimacy problems in the face of mounting challenges, that is, policy-making

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2 Habermas views such a trans-nationally interpenetrated and interspersed public sphere, as one of three building blocks for a democratic political community, national or post-national – in addition to the process of mutual legal inclusion and recognition through association in a territorial space by “granting each other rights which guarantee everyone equal and civic autonomy” and “the distribution of powers within an organization which secures the collective decision-making power of the association of citizens by administrative means” (Habermas 2012: 21).

incapable to rigorously address pressing European domestic as well as global issues (including human rights, migration, climate change and social inequality).

To the contrary, Habermas recognises that the EU is too often part of the problem rather than the solution; the dominant elite-centred EU belief in unrestricted pro-market, neo-liberal deregulation measures has proven to be environmentally destructive and a key factor in creating exploitative socio-economic conditions supported by national policies – as currently shown by the meat factories in the heart of Europe, which can be characterised as “modern slave labour” and are reminiscent of unregulated nineteenth-century “Manchester capitalism”.<sup>3</sup> A rules-based system does exist, but for Habermas it is tilted towards the powerful: “*Without creating compensatory competences*”, this system is an “arrangement to the advantage of the economically stronger members” (Habermas 2018; emphasis Habermas).

Habermas therefore saw the EU at a crossroads well before the current crisis. His acute observations about a technocratic EU complemented by particular(istic) national governments disinterested in promoting deepened political integration beyond the management of a free joint market are no less valid today than they were ten years ago. This is all the more so since the powerful populist-nationalist backlash in recent years, which was only in its nascent stage back then and has by now gained full force with populist electoral victories, governments and the Brexit referendum results. They are part of a broad “sovereigntist” attack against a supra-national EU governance and political integration, trans-national trust and solidarity (and the cosmopolitan norms supporting them) that has polarised as well as further eroded European democracy and its prospects – and pits national sovereigntists more bluntly than ever against supporters of political Europeanisation.

## 2.3 Engaging and emboldening a European demos? Habermas and a policy of graduated integration

In order to address its political stagnation and current policy challenges, in Habermas’ lens the EU thus needs to change its way of conducting politics by engendering political participation alongside promoting cross-national public mass deliberations on key European issues and integration that are capable of generating post-national civic solidarity and identity. It is also necessary to advance a democratic decision on a functional, legitimate and effective multi-level EU. This requires a final political (constitutional) form providing a robust shared “federal” framework enabling post-national European democracy and the evolution of an emboldened trans-national European demos in the future. While the EU could still be a “model for forms of ‘government beyond the nation-state’” (Habermas 2006: 54), these demanding conditions for an inclusive European democracy have been difficult to achieve given the challenges, crises and internal EU failures outlined above. Habermas thus

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3 On contemporary “modern slave labour” in the European Union, and specifically in its most powerful member state Germany, see for instance, Soric (2020).



suggests, and this ever more forcefully, a dual-track, differentiated model of European integration. The model he envisions serves as an alternative to overcome stagnation and recent sovereigntist backlashes. European trans-national democracy, or “more Europe”, is still “necessary and possible” but requires a new approach to be able to foster a shared political culture, publics, political trust and civic solidarity beyond the nation-states (Habermas 2009, 2012, 2018), able to generate and strengthen at least a “thin” European demos. For Habermas, this seems the best path to respond to the “troubling question of whether democratic opinion- and will-formation could ever achieve a binding force that extends beyond the level of the nation-state” (Habermas 1998: 127).

First, Habermas supports a *model of two constitution-making subjects*. A democratically legitimate EU is now envisioned as a “federation” (rather than a federal polity) of shared sovereignty grounded in two sources: “the ‘citizens’ and the ‘peoples’ as the constitution-founding subjects” (Habermas 2012: 54), rather than the “unity of law directly emanating from an empowered parliament and basic rights” (Eriksen 2016: 197). Here, the EU’s idea of “double legitimacy” resonates, pointing to both European and national democratic elections and conditions reflected in the EU’s decision-making architecture. It entails the inclusion of representatives of constitutional member states and a bicameral structure of decision-making (Genna and Wilson 2016b: 3). In principle, moreover, Habermas endorses the EU’s existing innovations of the supremacy of EU law that is adopted by member states as their “own laws”, on the one hand, and on the other hand the shared or “pooling” sovereignty between the member states in various policy areas requiring joint decision-making and preventing unilateral actions (Genna and Wilson 2016b: 3). Yet the supremacy of EU law needs constitutionalised democratic backing by European citizens. Citizens would legitimise needed institutional reforms empowering EU decisions and authority. Among the reforms Habermas suggests is, in addition to a further emboldened Commission and Parliament, a “strong, authoritative council (incorporating the councils of ministers)” that should “acquire a high public profile in order to provide an arena which can serve as a substitute for the provincial theatres of the national actors” (Habermas 2009: 103).

Second, as indicated, Habermas argues that there is no alternative to a political constitution to increase the EU’s democratic legitimacy and public trust. And to achieve the normative democratic input legitimation required for such a political constitution-making on the European level, for Habermas there is ultimately no alternative to *legitimizing such a political constitution by European-wide democratic referenda that follow extensive substantive public deliberations across European publics* (Habermas 2009, 2012). Habermas insists that legal principles have to be legitimated and justified from the inside rather than being pre-political, and that “only through the deliberation of its publics might Europe’s constitution be legitimated” (Grewal 2019: 21).<sup>4</sup>

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4 Social and political integration requires a “politically socializing *communicative context* [...] but not a collective identity that is *independent of the democratic process itself* and, as such, exists prior to that process” (Habermas 1998: 159; emphasis Habermas).

Even after the rejection of the Lisbon Treaty in the Irish referendum of 2008, Habermas continued to “campaign for the legitimation of Europe’s constitutional order” (Grewal 2019: 21) and for a European-wide referendum securing such legitimation. Contrary to common perceptions that suggest the EU-friendliness of governments and political elites allegedly facing EU-skepticism among European populations, Habermas argues that the “governments are the stumbling block, not their populations. The governments shy away from a constructive debate over the future of Europe” (Habermas 2009: 102) – and from European-wide rather than national referenda. Habermas thereby persuasively points to “stable levels of approval among the citizens for the EU membership of their respective countries”, as well as “clear majorities” that support “a joint European foreign and security policy” and at times vast constitutional majorities (66 per cent in 2007) of European citizens supporting a European constitution (Habermas 2009: 101). Taking note of considerable cross-national variation and lower levels of approval in Scandinavian countries, the UK and parts of Central Eastern Europe, apart from these few exceptions Habermas observes robustly “Europe-friendly” majorities among citizens of the member states who have not been given the option to actively engage in a constitution-making process, or to signal their political support of the European project. Habermas disputes the widespread but empirically invalid notion that there is a popular majority in Europe against European integration. Indeed, he argues that even many who opposed the Constitutional Treaty opposed neither European integration nor the step towards a more robust, more comprehensively integrated and a post-national, democratically constituted European Union (Habermas 2009: 101).

But more than polls based on standardised questionnaires reducing the complexity of views and the process of public will-formation, Habermas grounds his argument (and optimism) about the European population’s pro-European and “rational” outlook in a European-wide referendum in empirical experiments confirming Habermasian conceptions of deliberative democracy. Habermas mentions a European-wide experiment with representative citizens from all member states based on small discussion groups exchanging arguments and a “before and after” design that allows for assessing the process of opinion formation.<sup>5</sup> The experiment validated “the desire of the participants for a stronger role of the EU in foreign policy [as having] increased from 55 to 63 percent”, with “a convergence of opinion among the old and new member states” (Habermas 2009: 102).

For Habermas there is thus “only one way” to overcome the impasse and to advance and deepen the necessary European integration process, reinforcing and legitimating the currently “faltering” EU: a general European referendum that would allow the EU to emerge as a strengthened, democratically strongly legitimated and capable political player in global domestic politics. “The governments have to bite the bullet and give their citizens the opportunity to participate in a referendum to be held concurrently in each of the member states, under the same electoral law” (Habermas 2009: 103). The question such a democratic referendum would have to address is if there is support for a “politically constituted Europe with a directly elected president, its own

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5 See the website of the Centre for the Study of Political Change (CIRCaP): *EuroPolis: A Deliberative Polity-Making Project*, <https://www.circap.org/europolis.html>.

foreign minister, a stronger harmonization of tax policy, and an alignment of their respective social policies” (Habermas 2009: 103). The constitution proposal would have to be the product and reflection of broad and in-depth democratic deliberations across nations by which it would have to be preceded. It would be “binding only on those member states in which a majority of citizens voted for [it].” But among these states it would be “deemed acceptable”, Habermas suggests, “if it succeeded in winning a ‘double majority’ of the states and of the votes of the citizens” (Habermas 2009: 103).

The referendum on a political constitution that Habermas envisions has therefore implications for the third, most important aspect of his argument about the condition of possibility of advancing political integration towards a robustly democratically legitimated, effective EU: in addition to the two internal constitutionalisation levels and constitution-making subjects, it is likely to lead to a *process of “graduated” or territorially differentiated European integration, a two-tier Europe with a “core” and a “periphery”*. This would most likely imply a constitutionalised yet differentiated, dual-track European Union. Those populations not interested in fully joining the European project and taking part in political constitution-making should no longer stop this from happening but simply opt out. However, in Habermas’ view this is not an exclusion of these countries, including some of the new democracies in Eastern Europe (Habermas 2006: 54), because even “in a Europe of core and periphery, the countries which initially prefer to remain on the sidelines would, of course, have the option of joining the centre at any time” (Habermas 2009: 103).

Habermas has long argued that, as the Eurozone and opt-out clauses show, there “is already a Europe of different speeds” and so far the “tempo of European unification has always been determined by the agreement between France and Germany to keep the process moving forward” (Habermas 2006: 52).<sup>6</sup> Habermas has also been a long-time skeptic with regard to territorial expansion of the EU without deepening political integration of authority and policy fields. Despite considerable and stable support for EU membership among populations of Central and Eastern Europe, Habermas suggests that the major Eastern accession “big bang enlargement” of 2004 was premature due to their reluctance to endorse stronger European authority – partly due to their distinct historical legacies and only recently regained popular sovereignty (Habermas 2009).<sup>7</sup> An even further territorial expansion of the EU, then, offers in his view certainly no way out of the EU’s current challenges, dilemmas and crises. It would reinforce the EU’s legitimacy and capability problems and weaken the EU’s political power rather than providing a road to the, according to Habermas, ultimately needed “world domestic policy”.

Substantively, Habermas criticizes that the minority of national governments with opt-out clauses or supporting “sovereignist” claims have been reluctant to endorse any steps to further pool sovereignty or support European authority. Their documented

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6 One may add the recent agreement between France and Germany on an EU coronavirus recovery fund. See Didili (2020).

7 Habermas argues that scepticism towards powerful post-sovereign, post-national authority may be more widespread in member states in Central and Eastern Europe due to the legacy of USSR subjugation and their only recently regained national sovereignty.

Euro-scepticism has undermined advances of European integration. Simultaneously, he suggests, these nation-states often tend to be particularly susceptible to neo-liberal privatisation economics and view the European project primarily as a market. In practice, these member states have in his view turned out to slow down or obstruct decisions, if not to be *de facto* anti-EU forces as veto players. Combined with the view of Europe as an economic free market zone, the support for political sovereigntism fixated on the decision-making power of the nation-state leaves little room for engendering the need for European civic solidarity. This mix also prevents policies addressing problems that are post-national in nature, including a common foreign and environmental policy, tax harmonisation and increased European fiscal authority, and other market-cushioning and regulative policies. In substantive matters, those not willing to join political integration harm the capabilities and policies of the European political community as a whole. Habermas' model seeks to turn the table: instead of obstructionist governments using threats of leaving the EU to put pressure on the EU not to further politically constitutionalise and absorb more decision-making power, the EU would pressure those governments unwilling to comply and take part by excluding them – at least temporarily – from the “core”. In a way, this power struggle currently plays out in the EU–UK fights over Brexit. This would allow the European project to move forward with building democratically legitimised European institutions in order to address pressing policy issues. It would allow the EU, for instance, to tackle climate change and have institutions capable of pursuing redistributive European policies; institutions “powerful enough to make market-correcting decisions for a positive integration, and can thus carry out redistributive regulations” (Habermas 2001: 97).<sup>8</sup> Recognising that social rights are a prerequisite of a meaningful democracy (Grewal 2019: 21), avoidance of tackling the trans-nationally radicalised socio-economic disparities threatens the very survival of European democracies, just as environmental challenges do. A pace-making core Europe could lead by example, in Habermas' take, and address these issues.

Moreover, this model would in Habermas' view allow the EU to shift the debate away from “less” to “more” integration and re-engage the European public(s) about the future of the status and role of the project in shaping the continent's destiny. The “one-track” EU has been weakened by member states advancing resurgent but illusory sovereigntist claims in addition to a technocratic, neo-liberal deregulatory EU regime – and the lack of a functioning European public sphere capable of democratically deliberating about, and thus actively, shaping a European democracy and its policies. This is why Habermas sees differentiated integration as the only feasible option to save the EU – for which a trans-nationalised European public sphere and a political constitution with democratically accountable European institutions may well be, in

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8 In this context, Habermas lauds, for instance, reforms proposed by the French president Emmanuel Macron: on the one hand, “progress towards safeguarding the euro with the aid of the well-known proposals for a banking union, a corresponding insolvency regime, a common deposit guarantee for savings and a European Monetary Fund democratically controlled at the EU level [... and] on the other hand [...] proposing the establishment of a eurozone budget and – under the heading ‘European minister of finance’ – the creation of democratically-controlled competences for political action at the same level. For the European Union could gain political prowess and renewed popular support only by creating competences and a budget for implementing democratically legitimised programmes against further economic and social drifting apart among the member states” (Habermas 2018).

the long run, indispensable and mutually interrelated preconditions.

### 3. Differentiation as disintegration? Problematising graduated integration with Hannah Arendt

Before we further explore the normative and political implications of Habermas' model and its justifications, we turn briefly to Hannah Arendt's reflections on European integration, which preceded not just Habermas but also the very inception of the EU. Arendt provides an interesting ideational resource to contemplate Habermas' model of differentiated integration precisely because her plea for European integration, though partly grounded in a different justificatory emerging against the backdrop of a different historical context at the end of World War II, is similarly forceful (Rensmann 2019). Yet, even though territorial differentiation is arguably not entirely at odds with her (European) political theorising, her work also alerts us to several potential problems and risks with Habermas' two-tiered, "graduated" policy of integration. Most prominently, Arendtian notions of European democracy point to disintegrating risks of relegating several member states to a second tier in a process of constitutionalised graduated integration – although there are some political and normative advantages of such a step. In Arendt's lens differentiated integration may negatively affect the European promises, pledges and democratic legitimacy. This could ultimately have the unintended countereffect of turning differentiation into a process of European *disintegration*, even though widespread support for EU constitutionalisation expressed through European-wide referenda could strengthen the EU's democratic authority, legitimacy and accountability.

Interestingly, Arendt shares a lot of common ground with Habermas in her claims about European democracy and its legitimacy, in particular with regard to three key presuppositions: first, the recognition of the pressing need for the European project as a *politically constituted* project; second, the *possibility and feasibility of a post-national and post-sovereign republic*, which is not preconditioned by pre-political notions of political community but can be grounded in new forms of civic solidarity; and third, that such a post-national, politically constituted European project is only going to work if it meets the *demanding conditions of a solidified trans-national public sphere, political/civic solidarity and functioning democratic will-formation*. Below we consider each of these three key areas in turn.

First, like Habermas Arendt sees the pressing need for a politically constituted and integrated Europe. For Arendt, this need is grounded in the recognition that the concept of national sovereignty has lost its legitimacy in several ways. Even before World War II ended, Arendt viewed the classical national sovereignty model, which is recently enjoying renewed popularity in the wake of populist discourses and mobilisations, as an "outdated" and a "politically exhausted" framework for hosting democracy (Arendt 2018: 256-257). By democracy, she broadly means "the

active participation of the people in decisions on public affairs”, in addition to “the protection of certain basic rights” (Arendt 2018: 256). For Arendt, like Habermas, the “sovereignist” European nation-state model is grounded in fantasies detached from modern empirical reality, and entirely inadequate to address the challenges of the twentieth and twenty-first centuries. Historically, the European nation-state had collapsed internally, paving the way for totalitarianism and the demise of democracy. The central contradiction governing this trajectory was a European nation-state that was committed simultaneously to democracy and to national sovereignty but could not sustain both principles within a stable polity – in the name of national sovereignty, constitutional democracy was eroded and overcome – often, to be sure, by initially democratic means. The marriage into which the nation-state and democracy had entered in the eighteenth and nineteenth centuries

looked very promising at the start, at the end of the eighteenth century; but then, as we know, it met a very dismal end. [...] The nation, that is, the people who owed their political emancipation to the nation-state, soon began to show an ill-fated tendency to yield their sovereignty to dictators and leaders of every stripe. (Arendt 2018: 255)

And if we mean by democracy a “government of the people” and the right for all people to appear in the public realm and participate in political decision-making, “even historically, democracy in the nation-state has never been in particularly good shape” (Arendt 2018: 260; see also Rensmann 2019: 224). Since the early twentieth century, Arendt thinks, the European nation-state has been in a dramatic chronic crisis, no longer able to effectively function or to feasibly provide democratic social integration – that is, to feasibly represent its members and residents, guarantee the freedom of its citizens, and facilitate justice and just relations with non-members. The nation-state, Arendt suggests, no longer enables citizens to fully participate in public affairs in view of European and global challenges as well as the trans-national conditions of power and politics.

Fully in line with Habermas but many years before him, Arendt diagnoses the nation-state’s political incapability and normative contradictions or deficiencies fully playing out in a globalised or “post-national” constellation. In a world of “global politics” and modern globalised power conditions, “national sovereignty [becomes] a mockery except for giant states” (Arendt 1951: 269). This dramatic loss of power of the nation-state to manage its affairs in any “sovereign” fashion has turned the temporary advantages of the democratic nation-state into “things of the past” (Arendt 2018: 261). A new global interdependence, which creates an unprecedented lack of distance (Arendt 1998: 250), calls into question national territorial confines of political agency. Challenges, events and effects that are linked to political actions transcend borders. A state organisation exclusively grounded in a national community, Arendt argues, has proven to be profoundly unstable and likely to erode its own foundations: it has an inherent tendency to become undemocratic and unfree.

This is why Arendt supports new, post-national forms of authority and considers them to be urgently needed. In particular, she points to new forms of European democracy no longer confined to the limitations of the nation-state. Like Habermas,



Arendt thus emphasises the “political desirability” of a post-nationally constituted Europe because in her view a “world-wide organization” without which “there can be no lasting peace” and thus a world domestic policy could only realistically be achieved through “regional organizations” (Arendt 1994b: 156).

Second, Arendt then strongly advocates for a democracy in a European political space and argues that “the long-wished-for European federation is a definite political possibility” (Arendt 1994c: 222). Arendt hereby endorses the idea of overlapping political memberships linking the local, grassroots levels of participatory democracy to post-national constitutional republican frameworks. This understanding of a federation of republics based on multiple institutional and public spaces could theoretically also open up to a two-track territorial model of European political integration as proposed by Habermas. The compromised nation-states could thereby surrender parts of their claimed “sovereignty” to a higher federal European authority and new forms of political organisation. Arendt’s anti-sovereign republican principle of politics, anchored in different, dispersed and differentiated public spaces, is not limited to any single bounded public space and citizenship. In fact, Arendt strictly opposes the idea of a politics that is molded into any unified collective sovereign will or undivided sovereign rule. The critique of sovereignty is at the heart of Arendt’s political theory. For Arendt, freedom is always non-sovereign. This idea overlaps with her conception of power as a non-hierarchical relationship which always exists in, and depends on, humans in the plural. Sovereignty’s “uncompromising self-sufficiency”, Arendt maintains, is “contradictory to the very concept of plurality” (Arendt 1998: 234). Republicanism for her implies multiple divisions and diffusions of power preventing a tyranny of the majority (see Rensmann 2019: 226). For Arendt, then, the act of democratic constitution-making is grounded in public acts in which members of the public get and act together and are capable of making binding agreements. The constitution binding the political community and its continuous renewal through public speech and acts are political and therefore realised beyond pre-existing cultural or pre-political confines. It can always happen in the space in-between diverse humans and by “virtue of the making and the keeping of promises, which, in the realm of politics, may well be the highest human faculty” (Arendt 2006: 175). But to secure the spaces, or the housing of freedom, even a compound European democracy needs to be politically constitutionalised.

Third, and in full accordance with Habermas, Arendt also implies that for such European democracy to work legitimately demanding conditions have to be met – technocratic rule systems and indirect forms of democratic legitimation will not suffice. In Arendt’s lens, the initial public act of getting together legitimises a democratic constitution (Arendt 1969: 151). Such political constitution creates, on some level, a *European demos*. It may include various layers of authority, national and supra-national checks and balances, and different types of solidarity and allegiances among European citizens. None the less, the democratic legitimacy and feasibility of a European political authority, and its possible post-national constitutionalisation, also require mutual promises and commitments, growing out of a sense of solidarity among citizens within a shared public realm (Rensmann 2019, Verovšek 2017). These commitments may be capable of generating a shared (European) political identity within defined borders and boundaries. In Arendt’s lens, a functioning

political community requires a “community of interest with the oppressed and exploited” deliberately established out of solidarity (Arendt 2006: 88).<sup>9</sup> More than seven decades ago, Arendt detects such a required and legitimating “new feeling of European solidarity” (Arendt 1994a: 117). However, how strong this detected feeling of European solidarity is today – how it has evolved and translated into a European public sphere and shared political identity in the absence of a genuine “initial act of getting together” – remains subject to debate. Arguably, the minimal conditions of a solidified European public sphere and the political solidarity underpinning public support for a common political constitution and robust democratic will-formation have never sufficiently materialised.

Despite this common ground between Habermas and Arendt, there is the question of how she would respond to Habermas’ model of internal differentiation, and what this model means with regard to Arendt’s understanding of the legitimacy conditions of European political integration. Arendt’s theory and reasoning point to several flaws in Habermas’ model of differentiated integration. Three problems should be considered for further debate in this light. They are epitomised in the concepts of political stability and solidarity in relation to Habermas’ graduated model and its meaning for democratic legitimacy of the EU.

First, Arendt’s approach to European democracy raises flags with regard to the impact of graduated integration on the European project’s internal political stability and cohesion – especially because she is aware of the messy nature of politics. While differentiated integration was not an option she ever considered (or could foresee at the time when she envisioned a politically constituted Europe), it can be argued that Arendt opposed different types or speeds of membership in a political community. She would arguably fear that this could generate two, hierarchical classes of members and reinforce differences of political leverage (or even make them involuntarily permanent). This may, in turn, destabilise the European project as a whole because such hierarchical differentiated integration could undermine the *political* equality needed for a republican order.

Against this background, any major political restructuring entails significant risks. To be sure, Arendt’s political thinking is certainly not averse to the risk and audacity of bold political action, as well as the human capacity to build a polity based on binding promises and agreements, which also play an important role in democratic or republican renewal. And Habermas’ proposal for a European-wide constitution referendum that will likely, in consequence, reinforce a European political divide would certainly qualify as bold political action. Moreover, in view of her work on European political integration, Arendt would likely support the idea of a thorough public

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9 Arendt generally conceives “solidarity” as distinct from pity, which she sees as the “perversion of compassion”. Solidarity is, in Arendt’s view, rational and public. It serves as the motivating driving force to found and sustain a political community: “It is out of pity that men are ‘attracted toward *les hommes faibles* [weak men]’, but it is out of solidarity that they establish deliberately and, as it were, dispassionately a community of interest with the oppressed and exploited. The common interest would then be [...] the dignity of man. For solidarity, because it partakes of reason, and hence of generality, is able to comprehend a multitude conceptually, not only of a class or a nation or a people, but eventually all mankind” (Arendt 2006: 88-89).



deliberation that itself would serve as a legitimising force if a referendum were to be preceded by such a debate, as Habermas suggests. In so doing, the constitutional proposal igniting a broad previous referendum debate could function as a powerful vehicle to foster a more robust European public sphere that both Habermas and Arendt see as the precondition for European democracy – on condition that this time, as proposed by Habermas, there is an actual political constitution on the table and the referendum is European-wide. Furthermore, with Arendt a genuinely European-wide referendum could be understood as the “act of getting together” as the still-missing precondition for a democratically constituted European integration.

Yet Arendt is also conscious of the role of a stable political framework when it comes to the “housing of freedom.” While a referendum could incentivise trans-national debate and ignite the European agora, a binding referendum initiated by the EU with territorially mixed results could destabilise and even imply the collapse of the European project altogether. Against the backdrop of the French and Dutch experience fifteen years ago, it could also lead to an *unstable patchwork Europe*, with several politically integrated member states of “core Europe” side by side with a European “periphery” in the heart of Europe (even beyond the UK, Scandinavian countries and some newer member states in the East and Southeast, as predicted by Habermas). Habermas’ trust in a non-distorted public deliberation on European integration preceding the referendum is grounded in an idealised notion of political discourse yielding rational results, which can be contrasted to Arendt’s understanding of the rough and tumble, messy nature of politics and political debate – especially in times of an emotionalised, polarised political climate shaped by resurgent national populism. Indeed, the rise of national populism and the departure of the UK have shown that the European project and citizens’ unqualified support are still, seventy years onwards, fragile and could be further destabilised. In fact, in light of recent crises it seems to be considerably more fragile than it appeared just a decade ago.

Accordingly, there is the great risk that the dual-track or two-speed model dramatically reinforces existing political and socio-economic divisions in Europe, and thus could have a massively destabilising effect on the idea of European integration as a whole – at odds with Arendt’s idea of a “unified Europe.” In addition, while Arendt’s republican democratic theory could endorse different layers of authority, it also aims at a stable polity consistently enabling political freedom. And a radical institutional polyarchy could endanger defined political accountability and participation in decision-making processes. As Eriksen argues: “Internal and external differentiation – with a plurality of access structures decoupled from the decision-making, legislative structure – is [...] inherently unstable” (Eriksen 2019: 87). Likewise, Arendt’s democratic and republican theorising is sceptical of the logic of majoritarianism that is expressed in a binding referendum (especially if, as in the Brexit referendum, no constitutional two-thirds majority is required). In Arendt’s understanding, majoritarianism tends to lead to over-simplified political decision-making, subjugates minority opinions and potentially risks evolving into a “tyranny of the majority” pushing through against minority will and endangering republican checks and balances – and altogether a stable framework for democratic European politics.

Second, in an Arendtian lens there is the risk of a structural exclusion that, even if legitimated by a referendum, may undermine the very conditions of political solidarity and mutual trust among European citizens (and in European institutions). Although Habermas says there is no such risk because member state populations which do not endorse a European political constitution and are unwilling to join “core Europe” in a referendum can decide to join at any time, a two-speed EU could have a damaging effect on public trust and solidarity. While no member state can be forced to take part in a deepened and democratised EU, the feelings of political solidarity across Europe that Arendt initially observed may have also been weakened in some cases (especially in Southern and Central Eastern Europe) due to widespread sentiments of being relegated to a second-class status over the years. Historical legacies matter here. They not only tell the particular story of a recent liberation from external subjugation thirty years ago in Eastern Europe that may embolden skepticism towards a transfer of authority to the EU; there is also the legacy of political denigration by Western Europe that plays a role and is still all too present.

In addition, the perception of “common interests”, which are according to Arendt necessary for a robust European democracy, has been undermined by structural economic inequalities to which the EU has arguably contributed due its support of neo-liberal pro-market policies and privatisation. Arendt, to be sure, distinguishes between political solidarity and economic redistribution policies. Yet she is also aware that economic disparities are harmful to a political community and threaten political equality and solidarity (Klein 2014). Despite considerable and continuous financial transfers to the poorer parts of Europe, which are a key reason why the right-wing populist governments of Hungary and Poland are keen to stay in the EU, there is the noteworthy risk that Eastern European citizens may not feel like equals within the EU economic and power structure – and this has been reinforced by public opinion and agenda-setters in the national public realm. While part of the second-class position may be a matter of national public framing, there are also legitimate concerns that especially the lauded pacesetters of integration in Northern Europe have, contrary to Habermas’ argument, created neo-liberal economic rules and a currency union that are not in the interest of all (Eriksen 2019: 251). The existing rules are also both an expression and a reinforcement of power inequalities; they are often skewed in favour of the economically stronger nations and punish the poorer ones (Eriksen 2019: 251). This has contributed to the lack of public trust in the European system lamented by Habermas. The Dutch tax haven economy, for instance, has strongly benefitted from EU membership and free market economics, as did the “export nation” Germany – and thus powerful member states may have helped erode an initially strong sense of political solidarity in Eastern and Southern Europe. Civic solidarity across European political communities is a functional must for EU democracy but it will not emerge simply because it is needed (Eriksen 2019: 251). Neither does it seem normatively consistent and practical to seek for solidarity by way of punishing those citizens who oppose further political integration – because for now they expect, with some plausibility, that equal citizenship will not be realised anytime soon. This inequality could be solidified if those member states were to formally turn into the “periphery” of a differentiated Europe – potentially to the point of no return, of complete disintegration.

## 4. Debating Arendt and Habermas: Normative and policy implications

Before we move to linking the discussion of the work of Habermas and Arendt on differentiated integration to contemporary debates, let us highlight some additional dilemmas and trade-offs of the differentiation model in view of contemporary policy implications. Unquestionably, the idea of a “graduated policy” of integration, conceived as a result of European-wide deliberations and referenda in relation to a political constitution, puts the normative question of democratic legitimacy squarely into the centre (Eriksen 2019: 34). That alone may be a major virtue of a normative theory of differentiated integration, which exposes itself to public critique and may continue to ignite critical public debates about gains and problems of differentiated member state integration.

Even though neither Habermas nor Arendt argues for “thick” conceptions of cultural identity as preconditions for political bonding, they do insist on relatively demanding conditions for robust European democratic legitimacy, including significant levels of political solidarity and common political interests beyond nationality; forms of mutual recognition of and trust in politically equal European citizens; support for a shared political constitution and European decision-making authority; and a vivid trans-national public sphere on European political issues with actors that are not limited to national publics. But is a policy of “graduated” integration normatively persuasive and politically feasible path towards realising the undoubtedly desired political constitutionalisation? Or does the model, in procedural and substantive terms, generate risks and problems that could outweigh the expected benefits? Three aspects should be taken into consideration: the risk of segmentation; the problem of “differentiated solidarity”; and the issue of referenda as a source of democratic legitimation.

First, models of differentiated integration may increase democratic input and output legitimacy, thereby increasing citizens’ attachments and making popular support among core member states potentially more robust. Yet they also risk hardening divisions and segmentation within Europe. This may endanger the future prospects of European integration as a whole. Though at odds with Habermas’ normative intentions, the changes in law and political practice during the Eurozone and sovereign debt crisis could be indicative of the problems linked to accelerated power concentrations in European powerhouses that are likely to be a byproduct of a two-tier EU. Those changes have already advanced vertical and horizontal “dominance through segmentation” (Eriksen 2019). With the dominance exerted by powerful “core” member states of the Eurozone that has reinforced a lopsided political and economic power system, political fragmentation has also increased in recent years; and so has the alienation and disenfranchisement with the European Union especially among populations in nation-states then possibly ending up in the prospective “periphery”.<sup>10</sup> A further structural separation in a two-track system could

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10 As Eriksen points out, during the crisis pressing exigencies were addressed by “removing decisions from parliamentary agendas and by compartmentalising them in convoluted, executive-driven decision-making processes under the auspices of the European Council” (Eriksen 2019: 87).

thus induce a politically and normatively problematic vicious cycle of dominance, exclusion and self-exclusion rather than increasing the appeal of the European project. When Habermas seems to suggest that member states unsupportive of political constitutionalisation should face the repercussions of either turning to the “second tier” or leaving the “cosmopolitan” EU altogether, this can be viewed as a “stigmatizing strategy” among respective citizens. While it may indeed now be better for European integration that the obstructionist UK has left the project, “stigmatisation, intended or unintended, can strike back against dominators, rather than enlist support from those opposed to differentiation” (Eriksen 2019: 231). Moreover, an internally further segmented political order can feed into coordination and accountability problems rather than necessarily making the EU more effective and democratic.

Second, while Habermas recognises that challenges to solidarity are central for the European project (Genna and Wilson 2016a: 220), he also suggests that political cohesion developed from trusting various national groups can “aid in explaining the probabilities for supporting European integration”, and thus cosmopolitanism is a way to deepen integration (Genna 2016: 72), and vice versa. In the case of differentiated integration, this seems to imply that effective, temporarily *differentiated* cosmopolitan solidarity may also eventually “spill over” beyond the “high speed” core (and finally towards solidarity fostering world domestic policy).

Asimina Michailidou and Hans-Jörg Trenz (2018: abstract) praise “mutations in the concept of EU solidarity” they observe alongside “a new politics of *differentiated solidarity* in the EU [...] different from the old politics of European identity”. This entails support for differentiated integration and a shift of emphasis from the promotion of integration aiming at a “reciprocal relationship among equals to the promotion of flexible arrangements among EU members, discretionary redistributive mechanisms and hegemony”. Part of such differentiated “solidarity among non-equals” means the “constant renegotiation of the costs and benefits of solidarity as a rescuing mechanism, which binds donating and receiving countries together in a situation of emergency”, whereby “the deservingness of the receivers of solidarity is not predefined [...] but needs to be constantly negotiated” (Michailidou and Trenz 2018: abstract, 13). Solidarity, in this view, becomes “optional, not a moral duty but a political choice and, as such, needs to be claimed for, defended and justified” (Michailidou and Trenz 2018: 13).

However, while such differentiation and “politicizations of solidarity” may enable new forms of solidarity in Europe (and possibly even cosmopolitan forms of solidarity beyond), such solidarity would be at odds with Arendt’s concept of political solidarity among equals as the foundation of political community. There is also reason to be skeptical about the specific empirical and policy impact of such differentiated solidarity. A trade-off between more solidarity among citizens of Western European “core members” and (lacking) solidarity with others – or straightforward new exclusions and denials of solidarity – is certainly among the possible scenarios.

Finally, there is the procedural dimension. The idea of a European-wide constitutional referendum, as suggested by Habermas, remains normatively ambiguous. It can certainly be one device among others to foster democratic legitimation of European



political integration and constitutionalisation. With Arendt, it could be conceived as an “act of getting together”. Yet more normative self-reflection on the limits of referenda, which are often little more than snapshots of democratic deliberation processes, would be needed. To explain lacking national support for the European constitution, Habermas rightly blames the nature of the bloated Constitutional Treaty and the problematic national referendum procedure employed to get it ratified. But it is far from clear if the results would have been different if another approach had been pursued.

However, Habermas is also confident that European-wide referenda will yield endorsements of European political constitutionalisation even among citizens of member states whose previous national referenda were so “overshadowed by extraneous domestic political controversies and emotions that they could not provide an undistorted expression of opinions concerning Europe” (Habermas 2009: 101). The latter appears as one of Habermas’ weakest arguments in relation to a European-wide referendum granting support for a political constitution of “core Europe”, especially in light of Arendt’s understanding of the messy nature of politics and political debate. When can we ever expect to have an “undistorted” expression of opinions and process of public will-formation? Habermas laments non-ideal conditions during the referenda during the mid-2000s, in an age before social media and the partisan polarisation we experience today. His hope for conditions enabling “undistorted” public will-formation not “overshadowed” by domestic “controversies” and “emotions” is even more far-fetched today than it was then. The results of the Dutch and French referenda in 2005, as in the later Brexit referendum in 2016, instead point to, first, structural challenges of an increasingly polarised public sphere that seems less and less capable of the rational debate Habermas hopes for – and for consensus-building. And the digital structural transformation of the public sphere with its polarizing effects was just in its infancy when Habermas made these observations. Second, Habermas overlooks the deeper problems with such referenda, especially if they are viewed as binding rather than a momentary expression of a majority will.<sup>11</sup> In particular, simple majorities in referenda on decisions of constitutional proportions are constitutionally and democratically questionable. At any rate, a one-time referendum should not be confused with the complex legitimations of a constitutional democracy, which require deliberation and constitutional principles, separation of powers, accountable political representation, a free public sphere and inalienable civil, human and political rights. A simple majority in a referendum on a single issue is neither the “highest” and “purest” form of the expression of the public will, nor does it provide the highest level of democratic legitimacy. In the age of a transformed public sphere shaped by social media bubbles and post-factual “news” deeply affected by private corporations and autocratic governments, there is certainly a political responsibility and pressing need now to improve or regain public communicative conditions for rational debate and democratic deliberation. However, it is not probable that such rational European-wide debate with fewer “emotions” and “domestic controversies” than in the 2000s will be attainable anytime soon.

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11 The Brexit referendum of 2016 was not binding, but was viewed as such in the hegemonic perception of supporters and critics alike – notwithstanding that it succeeded only by a narrow simple majority. Furthermore, following a more thorough public debate and public deliberations, most later polls indicated that a Brexit majority among British citizens could no longer be attained in subsequent years.

## 5. Conclusion: Does differentiated integration mean European Disintegration or a step towards a European demos?

While Habermas and Arendt help illuminate normative needs, requirements, dilemmas and problems of European post-national democratic integration and of differentiated integration, their ideas are “difficult to apply due to the complex realities present in Europe” (Genna and Wilson 2016a: 215). Rather than providing persuasive policy solutions their ideas can hardly escape the profound and tenacious “problem that integration is a ‘must’ – a categorical imperative – at the same time as the conditions for integration are not in place” (Eriksen 2019: 221). From a normative and policy perspective, Habermas’ differentiated integration model featured here, which hopes to ultimately engender a more potent and democratically legitimate European Union as well as cosmopolitan solidarity, makes some valid claims yet may also risk leaving behind an ever more fragmented, disintegrated European project. Arendt’s radically pro-European approach, which like Habermas argues for a more robust European democracy in response to European crises, provides a cautionary towards the differentiated integration suggested by Habermas. While it is not entirely clear what her stance on a European-wide constitutional referendum would be at this stage of the European integration and constitutionalization process, she would arguably see the democratic legitimation benefits but also the risks of dismantling the EU altogether, given the state of the agora, or the public sphere(s), in Europe today.

Contrary to national-protectionist beliefs, however, and in line with Habermas’ arguments about the need for political integration, the current coronavirus crisis alerts us to the fact that Europe’s challenges do not stop at borders and need coordinated European and global responses to be mastered – and solidarity across borders. The awareness of the trans-national economic and health impact of this crisis has already induced a shift in the EU from neo-liberal economic policy to broadened redistributive and steering policies within Europe and thus renewed discussions about political integration well down Habermas’ alley – just as the readiness to support European redistributive policies among European populations has increased with the perceived risk of European disintegration (Leruth 2020). This, too, can be a lesson for differentiated integration and the future of European democracy or, for that matter, the political actualisation of a European demos.

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EU Integration and Differentiation  
for Effectiveness and Accountability

**Differentiation has become the new normal in the European Union (EU)** and one of the most crucial matters in defining its future. A certain degree of differentiation has always been part of the European integration project since its early days. The Eurozone and the Schengen area have further consolidated this trend into long-term projects of differentiated integration among EU Member States.

A number of unprecedented internal and external challenges to the EU, however, including the financial and economic crisis, the migration phenomenon, renewed geopolitical tensions and Brexit, have reinforced today the belief that **more flexibility is needed within the complex EU machinery**. A Permanent Structured Cooperation, for example, has been launched in the field of defence, enabling groups of willing and able Member States to join forces through new, flexible arrangements. Differentiation could offer a way forward also in many other key policy fields within the Union, where uniformity is undesirable or unattainable, as well as in the design of EU external action within an increasingly unstable global environment, offering manifold models of cooperation between the EU and candidate countries, potential accession countries and associated third countries.

EU IDEA's key goal is to address **whether, how much and what form of differentiation is not only compatible with, but is also conducive to a more effective, cohesive and democratic EU**. The basic claim of the project is that differentiation is not only necessary to address current challenges more effectively, by making the Union more resilient and responsive to citizens. Differentiation is also desirable as long as such flexibility is compatible with the core principles of the EU's constitutionalism and identity, sustainable in terms of governance, and acceptable to EU citizens, Member States and affected third partners.



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