

The European Union As Will And Representation : A Pessimistic View Of Europe

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Abstract: *Despite the multiple crises experienced by the European Union in recent years (economic crisis, sovereign debt crisis, refugee crisis) and the growing rejection of its integration model (Brexit, opposition from illiberal governments, resistance of national jurisdictions) Europe does not seem ready to question the optimistic dogma on which the integration process is based. In contrast to the optimism of Kant's cosmopolitanism or Hegel's Spirit, Schopenhauer's pessimistic idealism, built on the dichotomy between Will and Representation, sheds a different light on the European construction and its eschatological vision of unity.*

Keywords : *regional integration, democracy, rule of law, liberalism, common values.*

I. Introduction

The German philosopher Arthur Schopenhauer, famous for being the most pessimistic thinker in the Western tradition, believed that this world is, on the one side, entirely Representation (*Vorstellung*), just as, on the other, it is entirely Will (*Wille*)¹. Even if Will and Representation are one and the same reality, regarded from different perspectives, the Will alone is indestructible, as the thing-in-itself². In the same way, we can argue, and demonstrate, that the European Union (EU), as an international organization, offers itself to us in two different ways : on the one hand as a *Representation* in phenomenal knowledge, as an object among other objects and subject to certain laws ; on the other hand — and at the same time — as that principle immediately known to everyone which is called *Will* but that it will be necessary to define more clearly. In what sense is this dualistic (and somewhat idealistic³) way of considering things pessimistic ? To understand it, it is necessary to remember that in a Schopenhauerian perspective, the world as Representation is not the true world because it is the superficial world of appearance which cannot be the object of an authentic knowledge : it is a simple phenomenon subject to contingency and diversity. To reach the thing-in-itself which is the Will (intimate substance and core of any particular thing) it is necessary to go beyond the plurality of phenomena. Indeed, phenomenon means Representation, and any representation, any object is phenomenon. As for the Will, it manifests itself in all the organic and inorganic forces of the world. Above all, this Will has nothing to do with *freedom* (the so-called free will) or *reason* since it is universal (metaphysical pantheism) and tyrannical (source of moral and physical suffering to humanity). In other words, the Schopenhauerian *Will to live* is a pervasive and irrational force without reason (*grundlos*), a blind incessant impulse that is found everywhere: in the movements of the stars, the crystallization of rocks, the appetite of animals and the volition of man. We believe that it would be worthwhile to transpose that philosophical pessimism to the political and legal field of (post-)modern Europe which remains marked, through its liberalism, by a dark and disenchanted anthropology inherited from the Hobbesian conception of human nature (which Schopenhauer had made his own⁴). More specifically, Schopenhauer's metaphysical model of universe can usefully be applied to the European Union entity — which is the most successful regional integration organization in the world — not in a dogmatic way but in a heuristic and existential approach, with the aim of highlighting the features that seem to be the mark of an unsurpassable fatalism, very far from a certain idea of Europe that accommodates itself to a naive optimism and a misleading political eschatology. Let us add that the pessimism that we propose to explore in this study is not intended to cynically invoke the « Cassandra of despair » or to throw a harsh light on the illusions of the

¹ The will to live (*Wille zum Leben*)

² Arthur Schopenhauer, *The world as will and representation*, translated from the German by E. F. J. Payne, 2 volumes, Dover Publications, Inc. New York, 1969.

³ In the pure tradition of Plato and Kant.

⁴ He quotes and develops the famous Hobbesian adage « homo homini lupus » in his work.

Panglossian discourses on Europe. Pessimism should not lead to (euro)scepticism but to a certain awareness or even a kind of awakening. The aim is to shed light on the process of integration from a different angle by calling on thinkers to whom academic researchers do not usually refer when commenting on the vicissitudes of Europe. After having briefly presented the EU as a Representation (1), then as a Will (2), we will try to expose the two types of pessimism with which EU is confronted and from which it can draw meaningful consequences on the political-legal level and in the axiological field (3).

II. Europe as Representation

According to Schopenhauer, everything that exists for knowledge, and hence the whole of this world, is only object in relation to the knowing subject, in a word, *Representation*. All representations are objects for the subject and all objects of the subject are representations. The objective world, the world as Representation, is not the only side of the world, but merely its external side because the world has an other and entirely different face which is its innermost being : the Will. Plurality and difference exist only in the phenomenon. The EU as Representation is the EU as it appears to its members, bodies and any potential partners or observers: its Member States ; European institutions and agencies ; European citizens and other individuals to whom its law applies and subjects with whom it interacts. As a Representation, EU is a continent of appearances, ideas, objects and diversity (of individuals, states, people, nations, cultures, legal systems and interests etc). But this phenomenal plurality that our intellect (which is also phenomenal) tries to apprehend — through conceptualizations and theoretical constructions in the occidental tradition of optimistic rationalism — remains fundamentally an illusion.

1.1. In varietate concordia

The official motto of the EU « *In varietate concordia* » which can be translated as « United in diversity » is a symbolic example of optimism that inspires the supporters of a united Europe. This motto means that Europeans are united in working together for peace and prosperity, and that the many different cultures, traditions and languages in Europe are a positive asset for the continent⁵. This Latin formula that echoes the famous « *E pluribus unum* » of the United States of America undoubtedly has a federalist connotation. Indeed, if it remains a pure slogan, superficial but highly symbolic, it nevertheless carries a federal eschatology. The EU likes to present itself as united, especially on the international stage, because unity means strength and credibility. However, the diversity that manifests in the UE (and that constitutes a value on which political federalism is based) cannot be denied, so that the classical problem of the articulation between the one and the multiple arises. The contradiction that can arise in the relationship between unity and plurality, on the phenomenal level, was masterfully illustrated by Schopenhauer in the metaphor of the hedgehog's dilemma⁶. Even if the concept is applied in Schopenhauerian thought at the scale of individuals, it allows us to understand the dialectic of unity and diversity on which the EU is based since the philosopher suggests that people want to be part of a group (unity) but need — at the same time — to preserve their own identities and spaces (diversity). The multiplicity that belongs to the phenomenal world is rooted in the *principle of individuation*. Although this principle is held to be illusory and the source of all evils, as it belongs to the deceptive world of representation, it is nonetheless the origin of plurality and the feeling of autonomy (*ego*) of individuals. The EU itself seeks to affirm this principle.

1.2. The principium individuationis

As a *sui generis* entity, the EU faces an existential challenge inherent in its own motto : to achieve unity while respecting diversity and preserving cultural differences as well as the distinctiveness of its Member States. It is well-known that the existential crisis of the EU is intimately linked to the difficulty of conceiving a European identity because the problem of identity is fundamentally political and the pragmatic approach of the functionalist method for European integration (promoted by the founding fathers) has shown its limits. European identity presupposes common values and ideological references in order to guarantee its coherence and to

⁵ https://europa.ba/?page_id=935.

⁶ Schopenhauer metaphorically describes a situation in which a group of hedgehogs seek to move close to one another to share heat but they also must remain apart, because they cannot avoid hurting one another with their spines.

provide the « meta-legal basis for a political community »⁷. Identity is an indispensable element in the constitution of a « shared mental universe » and a « coalition of cultures » because the identity of a civilisation reveals an « awareness of the identical » and a feeling of « belonging to the community »⁸. But it is also well known that we can only make our mark by opposing, i.e. by distinguishing and differentiating oneself from others in order to achieve autonomy. It is precisely in this « negative » aspect of identity that the principle of individuation (*principium individuationis*)⁹ is lodged. Insofar as it is constitutive of phenomenal plurality, individuation (from which egoism and xenophobia are derived) is definitely an illusion in Schopenhauer's thought : it belongs to the world of representation. The contingent plurality of the principle of individuation which tends to be embodied in each subject is at the heart of the suffering of the world which is, at the ultimate level, ontologically one. We find the same tension between the One and the multiple and the question of individuation in the writings of another great pessimistic philosopher, Nietzsche, who was a dissident disciple of Schopenhauer. Taking up the Schopenhauerian duality, Nietzsche — whose thinking is and remains fundamentally and radically pessimistic — associates the undifferentiated One to the disturbing and mystic divinity Dionysus and the individuation to the more reassuring figure of the god Apollo. Even if the Apollonian form remains illusory (Nietzsche evokes the superb divine image of the *principium individuationis* from the « Apollonian dream ») it is through it that the individual asserts his own identity, defines a character and distinguishes a personality¹⁰. Applied to the EU, this model assumes a very significant politico-legal dimension because the Apollonian principle inspires patriotic feeling and rational state order, whereas the Dionysian principle leads to a deterioration of political instincts. Apollo as god of order, balance and reason, introduces form, stability and measure into the world: he affirms the collective individual (the city, the state, the nation etc). According to Nietzsche, Apollo as the genius of the *principium individuationis* is the builder of states (public power and public order)¹¹. In this sense, the enshrinement of certain values in the European treaties¹², such as the rule of law and democracy, has the merit of giving representativeness to the concept of belonging. It contributes to the rooting of an European model of society and « European demos »¹³.

1.3. A Union of law

The EU is founded on the rule of law and relies on law to ensure that its policies are realized in the Member States. The rule of law is a necessary condition for modern democracy in that it requires a system of checks and balances (separation of powers), a certain distribution of functions and competences as well as control mechanisms of power. Above all, it implies that fundamental rights are constitutionally guaranteed. Since the rule of law is based on the status of the justice, the independence of the judiciary is the first condition of any state governed by the rule of law. For Schopenhauer, as for Hobbes, it is to avoid the « war of the egos » that public power is necessary, with its rules and its judges¹⁴. Although judges remain human beings who are not infallible (they too are driven by the *Will*), the legal technique of judicial motivation makes it possible to attenuate the emotion that underlies the decision¹⁵. This strategy helps to rationalise the judicial decision by making it appear objective, abstract and disembodied. Insofar as the notion of the rule of law concerns the procedural and substantive limits to the exercise of power, it can be related to the pessimistic view that sees the

⁷ Nabli Béliq, « Identité européenne et communauté politique », *Revue internationale et stratégique*, vol. 66, no. 2, 2007, pp. 37-46.

⁸ Rostane Mehdi, « L'identité de l'Union européenne », in *L'identité à la croisée des Etats et de l'Europe : Quels sens ? Quelles fonctions ?*, Bruylant, La croisée des droits, 2015, pp. 143-161.

⁹ Schopenhauer adapted this principle from medieval scholasticism.

¹⁰ Nietzsche *La naissance de la tragédie*, trad. Philippe Lacoue-Labarthe, Paris, Gallimard, coll. « Œuvres philosophiques complètes de Nietzsche », 1977, p. 44.

¹¹ *Ibid.*, p. 135.

¹² In accordance with Article 2 of the TEU « 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 ».

¹³ Nabli Béliq, « Identité européenne et communauté politique », *Revue internationale et stratégique*, vol. 66, no. 2, 2007, pp. 37-46.

¹⁴ Frédéric Schiffter, *Philosophie sentimentale*, Flammarion, 2020, p. 85.

¹⁵ Alexandre Viala, *Le pessimisme est un humanisme*, Schopenhauer et la raison juridique, Mare et Martin, p. 285.

law as a means of disembodied power : a form of « political negation of the will »¹⁶ in accordance with Schopenhauer's thinking. Indeed, the rule of law, in which the subjectivity of power is exercised within the objective limits of the law, is an institutional mechanism in which the caprice of the will is weakened behind the anonymous reign of norms¹⁷. The rule of law is therefore a guarantee of rationality. But if it is a safeguard against the excesses of the exercise of public authority power, it is nonetheless part of the artificial world of representation. Insofar as the rule of law implies formal principles and limits which are made necessary for the expression of the political will, it belongs to the Apollonian principle, in accordance with Nietzsche's thinking. With regard to the EU, the Court of Justice declared in 1986 that the European Community was a « community based on the rule of law » insofar as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the Treaty¹⁸. The EU as a « Union of law » recognizes the existence of a *rule of law* governing the ordering of powers and institutional balance : all European institutions and bodies are bound to respect the law. It also allows individuals to assert their rights and protects them against authority, including against the tyranny of the majority in a democracy. The rule of law in Europe thus fulfills a neutralizing function in order to guarantee pluralism. In a sense, it favors the figure of a *homo oeconomicus* indifferent to ethical considerations, seeking only to maximise his interests. This conception is, incidentally, in perfect harmony with the functionalism that is the driving force of European integration. Hence, the liberal principle of the rule of law, as envisaged by the EU, definitively renounces the idea of making the citizen a « virtuous being »¹⁹. Political liberalism is basically a pessimism that does not assume itself as such. As for the members of the EU, the Member States also present themselves as states governed by the *rule of law*, even if, as we shall see, this assertion tends to be increasingly questioned, particularly in the case of Hungary and Poland. It is indeed in the name of a certain conception of democracy that these two states tend to transgress the limits within which the rule of law (as conceived by the EU) confines them. This question leads us to study the complex relationship between democracy and the rule of law in the EU, particularly from the point of view of the notion of *representation*.

1.4. Representative Democracy in Europe

The existential crisis of the EU, discussed above in terms of its quest for identity (is it a federation in progress or something else) finds its most anguished expression in the thorny issue of its democratic legitimacy. Here again, it is the question of the relationship between diversity and unity, between the individual and the universal (or the collective), the particular and the common that must be considered. In Hobbes' *Leviathan*, political representation allows the multitude (a diversity of individuals driven by their particular interests) to become a « demos » (people) for the reason that all individuals consent to submit to a single sovereign authority. Given the geographical dimension of the EU and the historic context of Europe (that is made of nation-states with separate national identities), the issue becomes more complex. The question is all the more delicate as there is nowadays a real tension in Europe between, on the one hand, the rule of law (as promoted by the European institutions such as the Commission and the Court of Justice) and, on the other hand, democracy (as defended by certain Member States). More precisely, it is a certain representation or idea (or fantasy) of democracy that Poland and Hungary seek to preserve (nationalist and identitarian). And to do so, these Member States do not hesitate to denounce the EU's alleged democratic deficit (denouncing the absence of a European identity, nation and genuine sovereignty). It is true that the specificity of the EU's decision-making process, enhanced by its congenital functionalism, leads its actors to emphasize technical aspects to the detriment of political debates. This « political » — rather than « democratic » — deficit is due to the difficulties of creating a « European public space » structured by transnational political parties. Indeed, it must be admitted that only the development of a debate between opposing social forces, ideas and interests would allow the emergence of a European public opinion²⁰. Meanwhile, the EU is a representative democracy because it is based on a system of shared powers and specialized institutions. Although modern democracy can only be representative (the rule of law involving representation), this political form is increasingly being contested. However, strong criticism of the Brussels technocracy is not legitimate when it is conveyed through populist discourses. Openly « Europhobic » governments, such as those in Hungary and Poland, tend to oppose national democracy to the

¹⁶ *Ibid.*, p. 284.

¹⁷ *Ibid.*

¹⁸ CJUE 23-04-1986, *Les Verts*, 294/83, EU:C:1986:166, paragraph 23.

¹⁹ Alexandre Viala, *Le pessimisme est un humanisme*, Schopenhauer et la raison juridique, p. 272.

²⁰ Dominique Ritleng, « L'Union européenne : un système démocratique, un vide politique », *Titre VII*, vol. 2, no. 1, 2019, pp. 2-10.

rule of law as it is taking shape in the EU. The problem is that these democracies are taking a dangerous illiberal direction, as illustrated by the repeated attacks on the independence of the judiciary or freedom of expression. Modern populism that is based on the fantasy of a « identity-based democracy » pretends to ignore that modern (i.e. liberal) democracy is closely related to the notion of the rule of law and thus representation. In so doing, the so-called illiberal governments are merely repeating the factitious staging of a radical opposition between democracy and liberalism, as theorized by the sulfurous Nazi regime lawyer Carl Schmitt. As Professor O. Jouanjan points out, this myth, poor in its rational foundations and dangerous in its political consequences, has curiously penetrated our modern, technical, cold and rational societies. This is a perverse representation because we must never forget that, in totalitarian thinking, the total State presupposes the total people, and that this total people is a fantasized people²¹.

III. Europe as Will

According to Schopenhauer, all objects and phenomenal events are, as objectifications, merely aspects of the « Will to live » which is infinite and irrational. It is not only in people and animals that the Will is expressed, since it is universally present through the diversity of phenomena²². It manifests itself in the form of attraction and repulsion, combination and decomposition²³. The Will, which enjoys a metaphysical status, is characterized by its unity and immutability and therefore resists the plurality of individuals (human or not) through which it is subjectively manifested. What can be observed at the level of individuals can be transposed to the level of communities: whatever the seat of its affirmation, the Will expresses itself in the smallest organism to the widest spaces, consciously, semi-consciously or totally blindly. Far from being the mark of free will or reason, the Will that is the essence of the world and its motor is fundamentally tyrannical and source of delusion when it is not repressed. In conflict with the *principle of individuation*, the Will objectified in the phenomenal world is locked in a contradiction that leads it to fight against itself. The pessimistic adage *homo hominis lupus* formulated by Hobbes expresses what Schopenhauer calls the « Will's inner conflict with itself ». Indeed, this Will is ultimately a painful desire pushing humanity into eternal conflict. From this comes the fact that each individual, each community only privileges its own conception of justice and good, fooled as they are by the prison of their ego that is a product of the spatio-temporal world of Representation. Transposed to the scale of the EU, this metaphysical conception explains the contradictions and setbacks encountered by the Union and its Member States : Europe as a Will is not a systematized and harmonious whole, but an indissoluble variety of phenomena that all have their source in the Will to live. Europe as a Representation or Idea constitutes only one face of the object studied, its *apparent* surface. The real face is the internal face, absolutely different from the first one, essence and core of its being: the *Will*.

2.1 The indivisibility and sovereignty of the Will

The EU is an « objectification » of the Will, just as states are because the Will is indistinctly present both in the organization and in its members. In the same way as Jean Bodin described sovereignty, the Will for Schopenhauer is « one and indivisible ». Moreover, it is hegemonic and insatiable so that it cannot help but impose itself wherever it establishes itself. The Will is present, whole and undivided, in each individual and it is precisely through egoism that the « Will's inner conflict with itself » reaches its strongest expression. For Schopenhauer, « this egoism has its continuance and being in that opposition of the microcosm and macrocosm, or in the fact that the objectification of the will has for its form the *principium individuationis*, and thus the will manifests itself in innumerable individuals in the same way, and moreover in each of these entirely and completely in both aspects (will and representation) »²⁴. Quoting Hobbes, Schopenhauer recalls the « state of nature » in which individuals find themselves : « *bellum omnium contra omnes* »²⁵. As for the adage retained by posterity « *homo homini lupus* » he expressly links it to the conflict of the Will with itself. Indeed, the history of

²¹ Olivier Jouanjan, « L'État de droit démocratique », Jus Politicum, n° 22 [<http://juspoliticum.com/article/L-Etat-de-droit-democratique-1284.html>].

²² Schopenhauer mentions the individual who acts for determined motives as well as the plant that grows or the stone that falls. This will can be found in the driving force in plants, the force growing in crystals, turning magnets north, delivering a shock when heterogeneous metals strike each other etc.

²³ Arthur Schopenhauer, *The world as will and representation*, Volume I, The Cambridge Edition of the works of Schopenhauer, p. 134.

²⁴ *Ibid.*, p. 332.

²⁵ *Ibid.*

the world teaches that the Will appears « most distinctly as soon as any mob is released from all law and order »²⁶. The philosopher considers that the lives of great tyrants and world-devastating wars are the political illustration of this tyrannical Will to live. One particular passage in Schopenhauer's writings seems to apply specifically to the Will as it unfolds in the European integration process : « for the one will, that objectifies itself in all Ideas, strives for the highest possible objectification, and in this case gives up the low grades of its phenomenon after a conflict, in order to appear in a higher grade that is so much the more powerful. No victory without struggle; since the higher Idea or objectification of will can appear only by subduing the lower Ideas, it endures the opposition of these. Although these lower Ideas have been brought into subjection, they still constantly strive to reach an independent and complete expression of their inner nature »²⁷. Further on, Schopenhauer adds : « the constant tension between centripetal and centrifugal forces (...) is itself an expression of that universal conflict which is essential to the phenomenon of the Will »²⁸. Every organism, every organization is, according to Schopenhauer, a structure of domination in which a superior force leads and commands a set of forces inferior to it. This *in abstracto* analysis may well be applicable to the concrete European construction: the EU is a regional *integration* organization where a superior force (EU law) tries to maintain its control by overcoming inferior forces (Member States and their sovereign rights) which resist and want to gain the upper hand. These considerations are reflected in the issues related to federalism, in which the division of powers leads to « conflicts of jurisdiction » between the federation and the federated states. Even though the EU is not strictly speaking a Federation²⁹, it experiences very similar conflicts of competence between the European institutions (as « centripetal force ») and the national authorities (as « centrifugal forces »). In both cases, the question of sovereignty arises, particularly in terms of its shared nature. This issue raises conceptual contradictions since the very expression of « shared sovereignty » appears to be a *contradictio in terminis* if one considers that sovereignty is by definition indivisible³⁰. These reflections echo what Schopenhauer calls the contradiction between the one and the multiple or the « divorce of the Will with itself ». Within Federations or regional integration organizations, as EU, it is possible to identify a « dynamic of autonomy »: that dynamic implies that every institution tends to favor policies that ensure the preservation of its own influence³¹. This essential concern is reflected in the attempt to protect and develop its power by rejecting external encroachments that may undermine it. Thus, each government will seek to strengthen its political control and increase its sphere of action. The confrontation between the Federation and the federated entities will typically see the opposition of national unity on the one hand, and regional autonomy or States' Rights on the other. Although the EU is not federal, it has always pursued the same *dynamic of autonomy* that leads to a phenomenon of centralization. According to neo-functional theories, European integration can be explained by the « spill-over effect » that appears as a conceptualization of the Will to live (as centripetal force) that tends to its higher expression: gradual and uncontrollable transfers of power to EU are the result of incremental and unintentional acts. However, recent developments in European integration called the spill-over thesis into question. The spill-over effects suggests that European integration is a process that only moves in one direction, and that Member States do not have the power (and the Will) to reverse the process. This optimistic eschatology masks the conflictual dimension that is inherent in the integration process. Even if it is largely illusory, the *principle of individuation*, asserted in the Member States, constitutes a substantial obstacle to the ascending dynamic pursued by the EU.

2.2. The delusion of individuation of the States

The importance of centrifugal pressures, embodied by the Member States, in the European integration process cannot be denied: as European unification deepens and integration progresses, the centrifugal temptation becomes more and more evident. Just as individuals are fooled by the illusion of the principle of individuation (world as Representation), Member States persist in seeing themselves as isolated from the rest of the community and organization to which they belong. The illusion of being separate from others is compounded by the inability to see that the « other » is in essence the « same » (world as Will). From a Schopenhauerian perspective, one should consider that EU law and national law are not separate legal orders but totally

²⁶ *Ibid.*, p. 333.

²⁷ *Ibid.*, p. 146.

²⁸ *Ibid.*, p. 148.

²⁹ Anaëlle Martin, L'instrumentalisation du principe de subsidiarité, un révélateur de la nature juridique de l'Union européenne, Université de Strasbourg, thesis, 2020.

³⁰ Raymond Carré de Malberg, Contribution à la Théorie générale de l'État, Dalloz, Paris, 2004, t. 1, p. 139.

³¹ Renaud Dehousse, Fédéralisme et relations internationales, une réflexion comparative, Vol. I., Florence, 1988.

intertwined. Indeed, the world as Will and Representation is ontologically the same world perceived from two different angles : phenomenal and subjective (illusory) or metaphysical (authentic). This « monism »³² is precisely reflected in the assumptions on which the EU legal order is based: according to the European Court of Justice, by contrast with ordinary international treaties, the European Treaties have created a legal system which became an integral part of the legal systems of the Member States and which their courts are bound to apply. Eu law « forms part of the law of those States and directly concerns their nationals, in whose favor it has created individual rights which national courts must protect »³³. The monism implies also the primacy of international/European law over state law. For the European Court, the precedence of European law implies that European regulation « shall be binding and directly applicable in all Member States »³⁴. Thus, it is clearly established in the case law that national measures cannot take precedence over European law. However, this theoretical vision, important as it is for the Europe, seems to be challenged by practice. This is due to the fact that EU law will be apprehended differently depending on whether it is a European institution (Court of Justice, Commission) or a national authority (government, national judges) that considers it. The illusion of the phenomenal world of representation and the principle of individuation lead the Member States, driven by the Will, to challenge the authority of Union law. It is now time to look in a very concrete way at the recent humiliations the EU has suffered at the hands of its members.

2.3. The successive humiliations suffered by the EU

In recent years, the EU has suffered setbacks that have considerably undermined the optimism of Europe's Founding fathers. The first bone of contention to be mentioned is « Brexit » which marked the return to national egoism : the « apple of discord » has been thrown by the United Kingdom, whose government had presented the withdrawal from the EU as an attractive alternative to the integration project³⁵. To understand the significance of the United Kingdom withdrawal it is important to remember that a certain naive vision of European construction has long been based on the myth of the linearity of the progression of integration. This is expressly attested in the preamble to European treaties, which refers to « the process of creating an ever closer union among the peoples of Europe ». Furthermore, the federal ideology implicitly conveyed the idea (before the revision of the treaties) that there could be no right of unilateral withdrawal from the European Union. This implied that Member States would have lost the ability to decide for themselves on their participation in the Union. The Brexit, commonly presented as a triumph of democracy over the elites, can just as easily be interpreted as the victory of anti-liberal populism over liberal Europe. The United Kingdom's exit from EU is in any case a humiliation for Europe which has lost one of its members.

The second bone of contention that we have chosen to mention is the German case. Certainly, the German government is not willing to withdraw from the EU. However, the German Federal Constitutional Court has recently appeared to be a (very) disruptive element in the European landscape. If the Karlsruhe Judges, whose « statocentric » paradigm and national tropism are well-known, have always been very skeptical about the European integration project (refusing to see the Union as a Federation) and have not hesitated, on several occasions³⁶, to rebel against the European Court, it is only recently that they have carried out their threat to not apply European decisions. The judicial decision of 5 May 2020 – known as the *PSPP* judgment³⁷ —

³² Monists accept that the internal and international legal systems form a unity. Kelsen defends a monist conception of international law : international law and national legal systems constitute a unified normative system.

³³ CJCE, 15 juillet 1964, *aff. 6/64, Costa/ENEL*.

³⁴ *Ibid.*

³⁵ Following a referendum in June 2016, in which 51.89% voted in favor of leaving the EU, Prime Minister D. Cameron resigned. On 29 March 2017, the Government led by T. May notified the EU of the United Kingdom's intention to withdraw, beginning the Brexit process.

³⁶ BVerfGE 37, 271 (282) - Solange I (English translation (ed.), Decisions of the Bundesverfassungsgericht. Volume 1/Part II, 1992 ; BVerfGE 73, 339 - Solange II (Wünsche) (English translation in Federal Constitutional Court (ed.), Decisions of the Bundesverfassungsgericht. Volume 1/Part II, 1992. BVerfG 12 October 1993, 2 BvR 2134, 2159/92, *Maastricht*, BVerfGE vol. 89, p. 155 at p. 188.

³⁷ The Public Sector Purchase Programme (PSPP) is part of the Expanded Asset Purchase programme (EAPP) which is a framework programme of the Eurosystem for the purchase of assets on financial markets. This programme is meant to increase money supply and intended to support consumption and investment spending in the euro area. The German complainants claimed that the PSPP violates the prohibition of monetary financing

unquestionably exceeds the limits set by EU law. This decision in which the German Constitutional Court found that the European Court's proportionality scrutiny of the European Central bank's decision on the PSPP program was « *ultra vires* » has set a dangerous precedent for the European integration³⁸. Indeed, in accordance with its jurisprudence³⁹, the Court of Justice has a monopoly on declaring European law invalid. Thus, by condemning the Court of Justice's proportionality assessment as *ultra vires*, the Karlsruhe Judges have violated the European law⁴⁰. Many commentators have expressed concern about the fact that « the entire system risks winding down towards some kind of judicial rule of the jungle: the rule of the strongest court » with the ultimate consequence of dismantling the core idea of European integration which is the safeguarding of peace in Europe « through law and legal equality »⁴¹. What is particularly worrying is that the judgment is based largely on the argument of the principle of democracy. The argument is insidious, since it could perfectly play into the hands of EU's « rogue » Member States. The Polish and Hungarian governments could use the democratic argument to try to justify their refusal to apply UE law and to challenge the decisions of the Court of Justice, especially those that condemn them for violating the independence of the judiciary.

These considerations lead us directly to the third bone of contention, namely the problem of illiberal democracies within the EU (that we have already mentioned above). Hungary and Poland are regularly accused of undermining the liberal and democratic values on which the EU and its members are based: the independence of the judiciary, minority rights, freedom of expression, academic freedom and freedom of the press. The debate on the respect of the rule of law that preoccupies the European Commission and agitates the Courts in Europe raises the thorny question of values. Although they are regularly condemned for not respecting EU law, the Polish and Hungarian governments do not have the feeling that they are undermining the rule of law. Conservative leaders keep repeating that the state they are governing is a democratic state governed by the principle of the rule of law (they frequently add « sovereign »). Far from any cynicism or nihilism (in the non-Nietzschean sense) the illiberal democracies show, on the contrary, a naive and stubborn optimism that disconcerts their European liberal neighbors. The competing model they defend, perceived as ultra-conservative, reactionary and retrograde by most Member States of EU, is rooted in traditional and Christian values. For example, Poland's recent near-total abortion ban can be analyzed, from the point of view of values, as a defense of the right to life for the unborn (as defended by the Polish government supported by the Church) or as an assault on the principle of equality between men and women (freedom of decision over one's own body). In Hungary, non-governmental organizations and private universities, accused of promoting foreign interests, are often the target of Orban's government. To legitimize authoritarian excesses, Budapest and Warsaw do not hesitate to brandish the superior interest of the nation as well as Christian values. The conclusion to be drawn from these few reflections could be formulated by borrowing a Weberian metaphor: Europe is facing a kind of « war of the gods ».

2.4. The war of the gods in Europe

The nationalistic optimism of Warsaw and Budapest, tinged with xenophobia and homophobia, appears as a means of rejecting what is perceived, in the East, as a form of Western decadence (multiculturalism, gender theory, feminism, individualism, liberal values etc). By emphasizing the sovereignty and the nation, patriotic and populist discourses convey a national collective identity purged of foreign cultural elements. They are dreams and fantasies of glory, salvation and regeneration. In Poland, patriotism is nationalistic in nature: in the construction of Polish identity, religion (catholicism) is combined with a variety of beliefs, including the ethnic homogeneity, blood ties, common ancestry and collective memory. Poland's common values are based on these national myths. Needless to say, myth is inherently irrational. In a Schopenhauerian perspective, inherited from Kantian dualism which opposes the sensible world of phenomena to the *noumenal world* of the « metaphysics of morals », values have an irrational basis. The German positivism, sensitive to this dichotomy, is reflected in the sociology of Max Weber, which opposes the *objectivity of facts* to the *subjectivity of values*. Following this approach, states are seen as homes to burgeoning axiological production (to which scientific reason has no

and the Principle of conferral enshrined in the European treaties even if European Court of Justice held in a judgment of 11 December 2018 that the PSPP did not exceed the EU's competences.

³⁸ The German Court then applied its own conception of proportionality, considering that the European Court had failed in the judicial review of this principle.

³⁹ CJUE, 22 October 1987, Case 314/85, *Foto-Frost v Hauptzollamt Lübeck-Ost* (1987).

⁴⁰ See Article 267.3 TFEU and 19 TEU.

⁴¹ Franz Mayer,(2020). The Ultra Vires Ruling: Deconstructing the German Federal Constitutional Court's PSPP decision of 5 May 2020. *European Constitutional Law Review*, 16(4), 733-769.

access). This necessarily leads to a pluralism of values and a strong relativism. In Weber's thinking, values, fundamentally irreducible and irreconcilable, are only confronting each other in terms of power relations. Relative to each other, they are part of an axiological polytheism that Weber metaphorically calls « the war of the gods »⁴². This « war of gods and demons » excludes any intervention of the scientific reason. As Professor Alexandre Viala has pointed out, some have judged this Weberian separation of facts and values very harshly, accusing it of nihilism⁴³. Weber's irreconcilable death-struggle « between God and Devil » (to use the metaphor) clearly justifies the label of « tragic pluralism » insofar as he states that « unsettled *conflict*, and therefore the necessity for constant *compromises*, dominates the sphere of values »⁴⁴. He adds that « no one knows *how* compromises should be made, unless a 'revealed' *religion* will forcibly decide »⁴⁵. This axiological polytheism puts all the values on an ethico-moral equal footing, recognizing only « force » as the means to resolve their conflicts⁴⁶. In a democracy, force can only be numerical, since it is for the majority to decide (prerogatives of the majority). If one adopts this view, one has to admit that the EU is similarly founded on an irrational basis.⁴⁷ The values of rule of law and fundamental rights clearly have a moral dimension. It is these values which, like deities from a modern pantheon, conflict with the ancient gods of Christianity, nationalism and sovereignty. But these modern idols of democracy, secularism, rationalism and human rights appear under the abstract aspect of impersonal powers because these gods are disenchanted. Anyway, as Weber observed : « the multitude of former gods (...) are climbing out their graves, striving for power over our lives and resuming their eternal struggle with one another »⁴⁸. We find here the classical theme (dear to Hobbes) of the « war of all against all » (*Bellum omnium contra omnes*), or to put it in Schopenhauerian terms: the affirmation of the Will against itself.

IV. The two forms of pessimism for Europe

Hobbes' pessimism (which is traditionally opposed to « Rousseauist optimism ») is rooted in the observation that humanity is by nature violent and greedy. This disillusioned anthropology is also found in Schopenhauer's work, but formulated in paradoxical terms: the permanent conflictuality of the phenomenal world is the consequence of an illusion of which the Will — objectified in the world as Representation — is the victim. As a thing-in-itself, the Will is actually fighting against itself, its process of objectification in individuals being of the order of the phenomenon. But Schopenhauer's philosophy does not rest on this gloomy observation since it proposes a very simple solution to put an end to suffering and conflict in the world: the only remedy to injustice is the negation of the Will. This almost Buddhist pessimism can therefore be described as ascetic and ethical. Deeply influenced by the idea that representation is only the external face of a deeper fact which is the Will, the young Nietzsche adopted the pessimism of his master while adapting it to his « vitalist » conception of life. Far from denying the pessimistic conception of existence, Dionysian vitalism presents itself as a more radical and courageous pessimism than that of Schopenhauer. In a very paradoxical way, Nietzsche affirms that one must assume suffering rather than flee from it. By affirming suffering, and thus life, Nietzsche denies the negation of the *Will to live* recommended by Schopenhauer (whom he cynically compares to Christ and Buddha). After having successively considered the EU under the prism of these two forms of pessimism, we will tackle the question of the « Will to live together » in the disenchanted context of the post-modern West.

3.1. Schopenhauer's ascetic pessimism : the negation of the *Will to live*

As Professor Alexandre Viala points out, for Schopenhauer, injustice is the result of the affirmation of the Will-to-live that leads to the negation of the Will-to-live of the other⁴⁹. The remedy to injustice takes the form of the following reasoning: if the objectified Will can only assert itself against itself and if injustice is the consequence of the affirmation of the Will-to-live, only the negation of the Will can put an end to suffering. In this, law is presented as an instrument for repressing the tyrannical Will. Schopenhauer's pessimism leads him to consider law, not as an ideal, but as a necessary evil: it is the only way to regulate, not abolish, the egoism and

⁴² Max Weber, *Le savant et le politique*, Bibliothèque 10/18, J.-C. Zylberstein, Plon, 1959.

⁴³ Alexandre Viala, *Le pessimisme est un humanisme*, Schopenhauer et la raison juridique, p. 132.

⁴⁴ Peter Lassman, "Pluralism without Illusions", in: *Etica & Politica / Ethics & Politics*, VII (2005) 2, pp. 1-12.

⁴⁵ *Ibid.*

⁴⁶ Alexandre Viala, *Le pessimisme est un humanisme*, p. 135. What the author calls an « emotivist meta-ethic ».

⁴⁷ As evidenced by the turmoil caused in the doctrine (despite its alleged « axiological neutrality ») by certain violations of principles regarded as « fundamental » by and for society.

⁴⁸ Max Weber, *Le savant et le politique*, Bibliothèque 10/18, J.-C. Zylberstein, Plon, 1959, p. 108.

⁴⁹ Alexandre Viala, *Le pessimisme est un humanisme*, p. 244.

illusory conflictuality of the phenomenal world. The great pessimist insists on the rationality of the legal instrument: not in its content, which is always more or less ethical, but in the idea of its use to coerce individuals into ethical behavior. The objectivity of the abstract law prompts individuals to go beyond their personal point of view. Legal normativity resides in the generality and impersonality of the rule that is addressed to the subjects in an institutional manner⁵⁰. Indeed, for Kelsen, the norm is the objective meaning of an act of will. Even if normativity remains, according to Schopenhauer, fundamentally subject to the Will, it appears as the instrument of reason (which distinguishes man from the animal) that allows the subject to overcome the illusions of the *principle of individuation*. What is valid at the level of individuals applies to states since states as well as individuals are, from the legal point of view, subjects of law, (i.e. points of imputation of rights and obligations). From the Kelsenian point of view, objective and subjective laws are, ontologically speaking, the same law perceived from different angles. EU law, which applies to states as well as to individuals, appears precisely as an « autonomous » legal order (although integrated into the national legal orders⁵¹). The European Court of Justice promptly laid the judicial foundation for an autonomous legal order of the new Community⁵². In this way, it makes it possible to reconcile the great diversity of legal systems in Europe. The will to make EU law prevail over national legal order, and the willingness of the European Court of Justice to strike down incompatible legislations of Member States, requires the judicial elaboration of « autonomous notions ». Indeed, the European construction depends on an « integration through law ».

In addition to these legal implications, let us now consider the political aspects of Schopenhauerian pessimism for Europe. Schopenhauer's disillusioned thinking about values can only lead to a political liberalism. Indeed, as law is intended to regulate behavior, public power is only a *necessary evil*. Government (whatever it is) whose origin is conventional cannot pursue a particular ideal or a supreme good since its authority, in a Hobbesian perspective, is a negative authority: it is placed at the service of individuals who have agreed to submit to a unique sovereign through a social contract. If the EU tends to appear as a Leviathan (itself made up of Leviathan-states) it remains a subsidiary « monster » and negative authority, as shown by the enshrinement of the principles of attribution, subsidiarity and proportionality in the treaties. Moreover, the consecration of fundamental rights in a Charter reflects the liberal dimension of Europe. According to the European Court of Justice, « the review by the Court of the validity of any Community measure in the light of fundamental rights must be considered to be the expression, in a community based on the rule of law, of a constitutional guarantee stemming from the EC Treaty »⁵³. Like law, public power (State, EU) taken in a liberal perspective, is the political expression of the negation of the Will to live, dear to Schopenhauer. The « war of the gods » and the axiological disenchantment in Europe should lead to an ethic of detachment which is the mark of relativism and political liberalism. According to Professor Viala, liberalism is a pessimism in that it refuses the question of ultimate ends⁵⁴. And pessimism is a humanism. The EU undoubtedly fits into this modern pessimistic approach, since it seeks to guarantee pluralism and diversity rather than to impose a single absolutist or totalitarian model. The EU fulfills a function of neutralizing the egotistical aspirations of its members and, in so doing, regulates the excessive manifestations of the *Will to live* that seeks expression in the states. Nevertheless, one must beware of naive idealism, since the EU itself is not immune to the trap set by the *principle of individuation*. Europe could also give in to the sirens of the *Will to live* and attempt to unilaterally impose a hegemonic model of centralization and uniformization, to the detriment of Member States and European citizens. Just as the Will instrumentalizes the individual (for the needs of the species), the EU tends to instrumentalize its legal subjects for its own perpetuation⁵⁵. The negation of the Will, transposed to the EU, means to renounce to try to become sovereign or to exceed the limits of its attributions. This also implies grieving for the « state model » by renouncing its reproduction on a European scale. For the time being, the liberalism that the EU wishes to promote is more in line with a « democracy of control and distrust » (pessimism) than with a « democracy of action and trust » (optimism)⁵⁶. It is precisely on this point that it comes into conflict with the « illiberal democracies » of dangerously optimistic states, like Poland or Hungary.

⁵⁰ *Ibid.*, p. 251.

⁵¹ The EU legal order is interdependent and interwoven with the national legal orders. The autonomous legal orders do not exist separately from each other.

⁵² CJCE 5 févr. 1963, Van Gend en Loos, aff. 26/62, Rec., p. 3.

⁵³ CJUE, aff. C-308/06 Intertanko, paragraph 290.

⁵⁴ Alexandre Viala, *Le pessimisme est un humanisme*, p. 271.

⁵⁵ By invoking the subjective rights they derive from the European legal order, against the States, individuals contribute to ensuring the effectiveness of EU law.

⁵⁶ To borrow Professor Viala's formula, *Ibid.*, p. 275.

3.2. Nietzsche's Dionysian pessimism : the negation of the negation of the *Will to live*

Nietzsche's thought, eminently complex and paradoxical, is often caricatured. In the line of Hobbes and Schopenhauer, and in rupture with Aristotle, Nietzsche considers that the sociability of humans is unnatural. He points out that in the state of nature the powerful and healthy people attack, like birds of prey, weak people, who gather in flocks because they are afraid. But unlike Hobbes, Nietzsche rejects the *social contract theory* insofar as the strong can easily dominate the weak. The submission of the weak to the strong is, according to Nietzsche, a law of nature⁵⁷. As a great reader of Darwin, he was quickly convinced that human beings live in a cruel nature ruled by fate and antagonism. Early on, he acquired the tragic sense of existence in the understanding that « no higher purpose gives meaning to death »⁵⁸. If he admits, in agreement with his master Schopenhauer, that the essence of the world is the Will (qualitatively identical in all creation but quantitatively different) he condemns the negation of the *Will to live* because he assimilates it to a nihilism of the same type as platonism or christianism: the desire of extinction is analyzed as a « leveling down » which characterizes the thought of weak or decadent minds. The tragic dimension of Nietzsche's thought finds its source in the pessimism he attributed to the ancient Greeks. In his first work, *The Birth of Tragedy*, Schopenhauer's young disciple formulates *Dionysian pessimism* through the mouth of the old satyr Silenus: « The supreme good is not to be born ». This tragic statement is the starting point of his philosophy. By drawing on ancient wisdom, the Dionysian philosopher offers modern man a new version of pessimism, vitalist and radical. For Nietzsche, the Greeks (before Socrates and Platon) were pessimists but not in the manner of Schopenhauer. They were pessimists in the tragic sense because they affirmed life *not in spite of suffering but because of suffering and through it*. Contrary to Schopenhauer who deplores the contradictions of the Will with itself (source of universal suffering), Nietzsche affirms that the Will « plays » with itself: the *original One* is not caught in a contradiction but in a (cruel) game in which suffering, ugliness and disharmony are part of the game, just like pleasure and enjoyment. For Nietzsche, the supreme voluptuousness is possible only if one assumes the suffering that the Dionysian emotion involves. It is through Dionysian compassion that one becomes aware of the ontological and universal character of suffering. The Greeks, as a young and robust race, did not capitulate in front of the suffering of the world but on the contrary desired its *representation* by the *Tragedy*. Far from recommending the negation of the *Will to live*, Nietzsche advocates the affirmation of life through the prominent concept of « Will to power » (*Wille zur Macht*). Even if Nietzsche's concept is influenced by the Schopenhauerian « Will to live » (*Wille zum Leben*), the implications of his pessimistic thought are diametrically opposed to those of his disowned master. In this regard, it is particularly interesting to look at the writings that Nietzsche devoted to Europe. Already at the end of XIX century, he rightly noted that Europe was undergoing a double movement of democratization and unification. Certainly, he does not hold democracy in high esteem, in which he sees a means of flattering the plebs. As for Europe, Nietzsche finds the idea more attractive, if only because its unification would make it possible to overcome the model of the nation-state, which he deeply despises. Nietzsche's reflection on European unification is remarkably relevant since he foreshadows, as early as 1880, the economic integration of Europe⁵⁹. Going against the grain of his contemporaries, he did not hesitate to denounce the madness of nationalism that made the European nations strangers to each other and considers as « pathological » the reciprocal ignorance of states. Nietzsche predicted a kind of European federation in which each state would occupy « the situation of a canton », i.e. a federated state⁶⁰. If he was in favor of a « union of European peoples », it was above all to overcome the « national neurosis » that he abhorred⁶¹. However, the Nietzschean dream of a united Europe is deeply ambiguous because his reflection takes a cynical turn. For the German thinker, modern Europeans are not the ancient Greeks. He thus sees in the European a mediocre and weakened man. The democratic evolution in Europe would be accompanied « of a lesser collective vitality and a weakening of the energies »⁶². The disciple of Dionysus describes the modern European as a fearful and gregarious animal with a herd instinct. For Nietzsche, the point is clear: this unfortunate situation is the result of a European « nihilism », ultimate consequence of Christianity (which is a platonism for people) and its modern version, socialism, whose principle of equality leads to level down the values and the ambitions of humanity. It is obvious that as a dissident disciple of Schopenhauer (to whom he reproaches his *moralism*), Nietzsche draws very different conclusions from philosophical pessimism: transposed to the political-legal level, Nietzsche's

⁵⁷ Kazantzakis Nikos, Friedrich Nietzsche et la philosophie du droit et de l'Etat, L'Harmattan, p. 61.

⁵⁸ Emmanuel Salanskis, « Nature artiste, nature tragique : les deux faces de la « métaphysique esthétique » du jeune Nietzsche », *Les Cahiers philosophiques de Strasbourg*, 40 | 2016, 55-70.

⁵⁹ Friedrich Nietzsche, *Pensées sur les chers Européens d'aujourd'hui et de demain*, 1885-88.

⁶⁰ Lacoste Jean. « Nietzsche et l'Europe », *Poésie*, vol. 160-161, no. 2-3, 2017, pp. 294-298.

⁶¹ *Ibid.*

⁶² *Ibid.*

vision leads to the depreciation of the state but also of the law (in particular the principles aiming at protecting the weak party). The *negation of the negation of the Will doctrine* leads thus to a negation of law⁶³. It is in this that Nietzsche's pessimism is more radical and darker than Schopenhauer's disillusioned thinking. This drastic position is the result of his refusal of metaphysical idealism that would judge reality from the point of view of any ideal (which is always, in Nietzsche's eyes, only an idol). Dionysian vitalism is opposed to Schopenhauer's asceticism which contains, despite its pessimism, a residue of idealism.

3.3. The post-modern disenchantment of the Occident : from « Will to Live » to « Will to Live together »

This article invites (post-)modern Europeans to ask themselves « which pessimism to adopt ? ». In a deeply disenchanted Europe (and world), it is no longer a question of choosing between (illusory) optimism and (skeptical) pessimism but of deciding between a *Schopenhauerian ethic* or a *Nietzschean attitude* which are both pessimistic approaches to life, but with two very different remedies to offer. Whether it is a matter of *Will to live* (according to Schopenhauer) or *Will to power* (according to Nietzsche), the question remains the same: how do Europeans conceive of the « Will to live together »? As it has been noted, « the deeper the disenchantment the more intense the effect of value pluralism becomes »⁶⁴. Indeed, Europe is not only a market, it is also the *Will to live together*. *L'enfer, c'est les autres*, Sartre said⁶⁵. Even if the French philosopher of existentialism gave a specific meaning to this formula, this statement speaks a lot about the state of Europe today (and also about the *states* of Europe). Schopenhauerian pessimism is a philosophy of humility that carries an ethics of altruism and compassion which invites us to overcome our subjectivity (as European and as human being). Where Schopenhauer invites us to make the Intellect triumph over the Will (in a kind of heroic revenge on the *principle of individuation*) by preserving the *rule of law* in Europe, Nietzsche calls on Europeans to endure their destiny with virility, break the old tables of the law and give themselves a new decalogue. The Schopenhauerian ethics of ascetic renunciation can lead to a reconsideration of some of the issues that the EU is facing today: the solidarity between European states, the way Europeans perceive and receive non-European migrants, the issue of animal welfare, the environmental question and the ecological transition, transhumanism and artificial intelligence... It is a matter of fact that the figure of the « Other » takes on multiple forms and *representations* in the *phenomenal* world (neighbors, refugees, future generations, animals, machines, humanoid robots). The Nietzschean temptation consists, against all « angelism », in giving in to the model of the « *Übermensch* » (necessarily deviated insofar as the conception of the *superior man* in Nietzsche's work is never political) by pursuing a logic of promotion of absolute freedom and domination of the elites (the « birds of prey ») on the mob (the « flock of doves »). History teaches us that the most dangerous political ideas are more the result of optimistic and utopian conceptions than pessimistic ones⁶⁶. If it is common to see in the *Leviathan* (the biblical monster to which Hobbes compares his model of state) a « state absolutism » at the origin of totalitarian doctrines, the authoritarian state of the pessimist Hobbes appears, on the contrary, as a precursor of liberalism: the Hobbesian State is not instituted as an end in itself but for the individuals⁶⁷. As for Nietzsche, if the Nazi regime tried to appropriate his thought, it is a complete misunderstanding of his work since the philosopher never ceased to denounce the German disease of nationalism, which he considered ridiculous. That is why Nietzsche, who described himself as a « good European » (and a « bad German »), saw the weakening and destruction of nations as laudable objectives. The sulfurous philosopher who liked to compare himself to a gravedigger of dogmas, did not hesitate to write that « *the state is the coldest of the cold monsters. He lies coldly (...) I the State, I am the people* »⁶⁸. We find in Schopenhauer's writings the same hostility towards the figure of the state, in which he sees the « apotheosis of philistinism »⁶⁹. Although the Frankfurt master's thinking was more peaceful than that of his disciple⁷⁰, Schopenhauer often became furious when he mentioned philosophers, especially Hegel, whose doctrines placed the fulfillment of man in the state or who set up the state as the supreme end of human existence. But from a Schopenhauerian perspective, pessimism generally tends towards detachment, relativism and therefore liberalism. However, this posture is not without flaws since it is characterized by what Nietzsche called « mediocre » and « decadent », i.e. weak. This inherent weakness of

⁶³ Alexandre Vialan, *Le pessimisme est un humanisme*, p. 283.

⁶⁴ Peter Lassman, "Pluralism without Illusions", in: *Etica & Politica / Ethics & Politics*, VII (2005) 2, pp. 1-12.

⁶⁵ « Hell is other people ».

⁶⁶ The examples of nazism and soviet totalitarianism are the most striking illustration of this. Nazism, Stalinism and Fascism are totalitarianisms based on the existence of a totalitarian will, driven by an ideology. This ideology is embodied in a party that aspires to a total transformation of society.

⁶⁷ Alexandre Viala, *Le pessimisme est un humanisme*, Schopenhauer et la raison juridique, p. 194.

⁶⁸ Friedrich Nietzsche, *Thus spoke Zarathustra*, Cambridge University Press, 2006.

⁶⁹ Arthur Schopenhauer, *Parerga et Paralipomena*.

⁷⁰ With the exception of his visceral anti-hegelianism.

modern and liberal regimes comes from the fact that democracy is in essence vulnerable because it is constantly threatened (whether from the inside or the outside). For Nietzsche, there is no doubt that Europe wants to unify⁷¹. And in spite of his disdain for democracy, the German philosopher sees in the democratic principle a « factor of innovation » which allows to overcome the historical nationalisms of European states⁷². But the main problem of the current Europe is undoubtedly that it no longer inspires people to dream. It no longer inspires enthusiasm or confidence. Threatened by the populist successes of the eurosceptic and europhobic parties, EU has only a « neoliberal »⁷³ alternative⁷⁴ to propose. This neoliberal « ideology » is nevertheless sterile insofar as democratic freedoms do not lead to concrete progressive advances. In order to move forward and overcome the crisis of legitimacy it is going through, the EU could, for example, renounce its budgetary austerity, which is part of its neoliberal ideology. If the modern man of Europe is a sick man today — to use Nietzsche's old expression — it is perhaps because Europe has made him so...

In the 1990s, after the fall of the Berlin wall, an idea took hold: « the end of history » and its conflicts and the belief in the inevitable victory of free-market democracy. The announcement of the so-called *end of history* by the American academic Fukuyama, understood as the end of a conflictual world giving way to the (forever) triumph of liberal democracy (and neoliberal capitalism), appears to be an optimism as illusory as it is frightening. Illusory because, without even mentioning the problem of religious fundamentalisms (like radical islam) that revealed the undue optimism of the thesis, the illiberal democracies that are flourishing on European soil show that competing value systems still have a bright future. For example, in Poland, Post-Communist era allows the redefinition of relations between the state, the nation and the Church. Polish nationalism is thus based on shared religion and ethnicity. As it was well said « the cross is used among civil society as a tool to differentiate 'us' from 'them', and exclude from the nation those who do not identify with the idea of ethno-Catholic state, based on Christian values and traditions »⁷⁵. During the refugee crisis, to oppose the entry of non-European migrants on their territory, Poland, as well as Hungary, invoked the defense of Christian values. These values justified the refusal of any solidarity with their European neighbors and the systematic opposition to the proposals of the European Commission to reform the Common European Asylum System⁷⁶. The idea of the *end of history* is also worrying because an optimism that closes the future by postulating that next generations will not have the imagination to propose new forms of democracy and economic exchange is not an optimism but a « determinism »⁷⁷. For a contemporary philosopher like Castoriadis, very critical of our so-called post-modern democracies (where *democratic power* is used as a screen for *power of money*), the periods of lethargy that humanity goes through are always accompanied by material well-being⁷⁸. The expression *post-modernism* in itself betrays, according to him, the stupid self-complacency in which he sees the realization of the darkest pessimistic prophecies (notably those of Nietzsche).

V. Conclusion

Even if Nietzsche heralded the death of God (« *Gott ist tot* »), Weber reminds us that the ancient gods never really die. They put on another mask and change their faces but still fight the same battles (*God vs Devil, angels vs demons, Abel vs Cain, Apollo vs Dionysus*). In the same way, the anti-historicism of Schopenhauer and Nietzsche leads them to reject any eschatological and teleological vision of society. In this light, it is interesting to note that the European treaties expressly refer to the will of the Member States to pursue « an ever closer union among the peoples of Europe ». By announcing a progressive fusion of national societies and economies, the European integration has a teleological character. This idealized future of the EU, in particular that of a federal Europe, conveys an eschatological ideology that many Europeans are not ready to embrace. Finally, we can recall the remark of another pessimist of Europe, Emil Cioran, who cynically considered that « by banishing the irrational » utopia sets itself against tragedy which is the « quintessence of history ». Indeed, « in a perfect city, all conflict would cease, human wills would be throttled, mollified or rendered miraculously convergent,

⁷¹ Friedrich Nietzsche, *Par-delà le bien et le mal*.

⁷² Lacoste Jean, « Nietzsche et l'Europe », *Poésie*, vol. 160-161, no. 2-3, 2017, pp. 294-298.

⁷³ Let us remember that neoliberalism is not liberalism because classical liberalism insists on the individual as a subject of right and neoliberalism sees the individual as a subject of pleasure and interest. Neoliberalism amalgamates law and economy.

⁷⁴ An alternative that is not really an alternative because it imposes itself in a hegemonic way.

⁷⁵ Anna Posmykiewicz, *Religion, Multiculturalism and Racism in Poland*, an interview-based exploration among members of religious minorities, Uppsala Universitet, Master thesis, 2017.

⁷⁶ By a paradox that is only apparent, post-modern Christian morality in the Polish-Hungarian style is insensitive to the (secularized) angelism of the human rights discourse of supranational institutions.

⁷⁷ Jean-Michel Blanquer, *Changer d'ère, progrès, déclin, transformation*, Descartes et Cie.

⁷⁸ Cornelius Castoriadis, *La montée de l'insignifiance*, éditions du seuil, 1996, p. 248

here would reign only unity, without the ingredient of chance or contradiction : utopia is a mixture of childish rationalism and secularized angelism »⁷⁹. It is precisely against this « mollification » that the tragical Nietzsche protested, but that the negation of the *Will to live* — advocated by the moral asceticism of Schopenhauer — could paradoxically lead to.

References

- [1]. -Alexandre Viala, *Le pessimisme est un humanisme*, Schopenhauer et la raison juridique, Mare Martin, 305 p.
- [2]. -Anaëlle Martin, *L'instrumentalisation du principe de subsidiarité, un révélateur de la nature juridique de l'Union européenne*, University of Strasbourg, thesis, 2020.
- [3]. -Anna Posmykiewicz, *Religion, Multiculturalism and Racism in Poland*, an interview-based exploration among members of religious minorities, Uppsala Universitet, Master thesis, 2017.
- [4]. -Arthur Schopenhauer, *The world as will and representation*, translated from the German by E. F. J. Payne, 2 volumes, Dover Publications, Inc. New York, 1969.
- [5]. -Arthur Schopenhauer, *Parerga et Paralipomena*, Bouquins, Robert Laffont, 2020, 1088 p.
- [6]. -Cornelius Castoriadis, *La montée de l'insignifiance*, éditions du seuil, 1996, 292 p.
- [7]. -Dominique Ritleng, « L'Union européenne : un système démocratique, un vide politique », *Titre VII*, vol. 2, n°1, 2019.
- [8]. -Emil Cioran, *History and Utopia*, Women's Press, 1987
- [9]. -Emmanuel Salanskis, « Nature artiste, nature tragique : les deux faces de la « métaphysique esthétique » du jeune Nietzsche », *Les Cahiers philosophiques de Strasbourg*, 40 | 2016, 55-70.
- [10]. -Franz Mayer, (2020). *The Ultra Vires Ruling: Deconstructing the German Federal Constitutional Court's PSPP decision of 5 May 2020*. *European Constitutional Law Review*, 16(4), 733-769.
- [11]. -Frédéric Schiffter, *Philosophie sentimentale*, Flammarion, 2020, p. 85.
- [12]. -Friedrich Nietzsche, *Par-delà le bien et le mal*, Le livre de Poche, LGF, 1991, 413 p.
- [13]. -Friedrich Nietzsche, *Pensées sur les chers Européens d'aujourd'hui et de demain*, 1885-88.
- [14]. -Friedrich Nietzsche, *Thus spoke Zarathustra*, Cambridge University Press, 2006.
- [15]. -Jean Lacoste, « Nietzsche et l'Europe », *Poésie*, vol. 160-161, no. 2-3, 2017, pp. 294-298.
- [16]. -Jean-Michel Blanquer, *Changer d'ère, progrès, déclin, transformation*, Descartes et Cie.
- [17]. -Max Weber, *Le savant et le politique*, Bibliothèque 10/18, J.-C. Zylberstein, Plon, 1959, 221 p.
- [18]. -Nabli Bélig, « Identité européenne et communauté politique », *Revue internationale et stratégique*, vol. 66, no. 2, 2007, pp. 37-46.
- [19]. -Nikos Kazantzakis, *Friedrich Nietzsche et la philosophie du droit et de l'Etat*, L'Harmattan, 103 p.
- [20]. -Olivier Jouanjan, « L'État de droit démocratique », *Jus Politicum*, n° 22 [<http://juspoliticum.com/article/L-Etat-de-droit-democratique-1284.html>].
- [21]. -Peter Lassman, "Pluralism without Illusions", in: *Etica & Politica/Ethics & Politics*, VII (2005) 2, pp. 1-12.
- [22]. -Raymond Carré de Malberg, *Contribution à la Théorie générale de l'État*, Dalloz, Paris, 2004, t. 1.
- [23]. -Renaud Dehousse, *Fédéralisme et relations internationales, une réflexion comparative*, Vol.I., Florence, 1988.
- [24]. -Rostane Mehdi, « L'identité de l'Union européenne », in *L'identité à la croisée des Etats et de l'Europe : Quels sens ? Quelles fonctions ?*, Bruylant, La croisée des droits, 2015, pp. 143-161.

⁷⁹ Emil Cioran, *History and Utopia*, Women's Press, 1987.