

# Chapter 1

## Introduction

The European crisis, which began as a financial, then economic and social crisis, is now a political and constitutional one as well. In some countries constitutions are already dead letter at the economic and social levels, and within the superstructure of the European Union, cohesion is thus endangered. The crisis has placed all other issues out of the spotlight. The very question of the European Constitution is invoked only timidly before the imperative of immediate action, and the average European citizen is confronted with bad news everyday since social unrest in Greece or Spain is equally disconcerting for the Germans, the English, or the French—we are all in the same boat: prosperity or ruin is our common fate. It is only a matter of time. There hasn't been much debate on the European constitutional arrangement in these times when we are practically at war and our energies are spent trying to do triage on immediate emergencies.

In this book, we propose to study the deeper roots of European political and ethical problems and constitutional questions. The casino economy and the levity of those to whom we deliver our money (some banks and governments) and who play irresponsibly and may be even criminally with our lives, is nothing but a manifestation of the moral crisis we have been living under for a long time.

This is a crisis that has forgotten the values and virtues of the Republic, an ideal that, however, has been revived in certain intellectual sectors of our societies. There is, of course, a need for sound financial and economic measures—and before these, political measures and decisions—that can save us all from the abyss that some claim is certain. We are confident that there is a way to avoid that abyss by reversing the policy of austerity, and many authorities, starting with Nobel Laureates, have insisted that Europe should reverse this course, though, unfortunately, governments and the supranational institutions generally don't listen to these opinions. But at the heart of everything is the need for societies to turn to political values and virtues. Not, of course, the values and virtues that old-fashioned or hypocritical virtues which, as Paul Valéry suggests, would make our contemporaries smile. But it is a matter of more perennial ethics, i.e., of republican ethics. With all the adaptations that the times dictate. Not only sociologically, but also ethically.

In fact, Republican Ethics is no longer only a mystic of dedication and service to the *Res Publica*, a set of simple republican virtues with which to impregnate the State itself through the Constitution. Today's constitutions emphasize republican values above all, implicitly (the Spanish, in Art. 1, 1, or the Croatian, in Art. 2, 3, explicitly), and begin to stress the need for republican virtues as well.

The Republic is an ethical democracy, not only a technical<sup>1</sup> democracy. It is not only about the democratic veneer, it is about democratic substance. It is not only a ritual of voting and electing representatives, etc. All of that has to make sense, and all of that needs to be done in the community interest and aspire to the common good.<sup>2</sup> Just as governance has to be strictly devoted to the public interest, with all that implies.<sup>3</sup>

Europe and its Constitution—its real Constitution, present in *the praxis* of European law and politics—may only survive if it puts aside its logic of monetary values and greedy virtues, and embraces the way of true republican ethics. A utopia? Let us quote the neoliberals, *pro domo nostra*: “There Is No Alternative.” TINA is back, this time it is on the other side: the side of the Republic and Ethics.

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<sup>1</sup> Montoro Ballesteros (1979), and Bigotte Chorão (1986). To oppose democracy to the republic does not seem a good conceptual procedure. If a republic is really very bad in what concerns at least fundamental rights, it wouldn't be a real republic. If “republic” cannot be “replaced” for a “democracy” everything is wrong, although the concepts are not alike ... at least, in today's conceptualization. Cf., in a controversial perspective, Rousseau (2007); New perspectives, Tzitzis (2012/2013).

<sup>2</sup> See Schachtscheiner (1994), Anderheiden (2003), pp. 45 et sq., Groeschner (2004), § 23, Rn. 34 et sq. The connotations of the “common good” vary, as well as its concept. See, in general, Ferreira da Cunha (2005), pp. 92 et sq., Kosłowski (1999).

<sup>3</sup> A classic treatise on the public interest question in a legal context is the masterwork of Ehrhardt Soares (1959). It is always important, when we are theorizing politically, not to forget that many of the great concepts of politics have a legal basis, which can be a source of inspiration, in one way or another.



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