

1 The ethos of Europe: an introduction

Of course temporary agreements are possible between capitalists and between states. In this sense a United States of Europe is possible as an agreement between the European capitalists ... but to what end?

Lenin 1915

An uncertain 'soul'

Half a century after the EU was formed there is still doubt and angst about the nature of its constitution.¹ We are perhaps no nearer a clear understanding of what the European Union is *for* ('to what end' in Lenin's prescient terms) or the values that govern its development and practice than we were in 1957. Even though its success, if measured in terms of longevity, ubiquity and political importance, is incontrovertible it remains essentially contested,² an 'unresolved political problem' depending on perspective.³ Indeed, the longer time has gone on the more complex the issue has become. As testimony to its extraordinary evolution there now seems to be so much the EU *could* be as we progress into the twenty-first century. From technocratic facilitator for the enrichment of its members to exemplar for global justice (and an expansive variety in between) the EU might be interpreted

¹ For convenience I use the term 'EU' or 'Union' throughout this book to signify the entity that has been in existence since 1957. Although it has gone through a number of designations, the EU is intended to capture its historical identity and institutional continuity. I do mention the EEC or the European Community where that particular term relates to a specific time and event.

² Zenon Bańkowski and Emiliios Christodoulidis, 'The European Union as an Essentially Contested Project', *European Law Journal* 4:4 (1998) 341–54.

³ Etienne Balibar, *We, The People of Europe: Reflections on Transnational Citizenship* (Princeton: Princeton University Press, 2004) at 2.

as a conceptual chameleon, shifting its purpose depending on the changing political, social, economic and legal environment as well as perspective.

Unsurprisingly, therefore, the EU has always defied easy categorisation. It seems to possess a floating character. One minute an international organisation, the next, a state in the making. Then again a regime that crosses traditional boundaries, an entity that hovers amidst and between different collective regime-types. We might be fairly certain about what it is not, however. It is not a state. Nor has it evolved in the way that nations of Western Europe have evolved. It has not emerged as a simple product of culture or popular uprising. It may have the initial appearance of an 'imagined community',⁴ mimicking the construction of some European nations, but the imagination has invariably had to come from relatively few individuals. The EU was created by a closed agreement between a small number of states influenced by a similarly few 'founding fathers'. Since that creation it has developed both as a product of external intervention (through the influence and practices of Member State governments as well as other actors) and internal initiative (through its constructed institutions). But ambiguity has reigned. The EU remains a political conundrum both as to what it is about and what it should do.

The political uncertainty attached to the EU, sometimes referred to as a lack of *telos*, has been matched in a number of other realms. There has been and remains vagueness as to the Union's spatial limits. The Six became the Nine, became the Twelve, became the Fifteen, became the Twenty-four. Now we have twenty-seven Member States. Negotiations continue with particular Balkan countries. Turkey remains, at least for the present, committed to attaining membership. How is the Union thus confined? Where does 'Europe' end if Turkey is a potential member? What logic persists in limits imposed by geographical features such as the Carpathians, the Urals, the Caucasus, the Mediterranean? One only has to look at the map of modern-day Europe to ask; if Finland and the Baltic States, why not Ukraine and Belarus? If Cyprus, why not the southern shore of the Mediterranean? If Turkey, why not Georgia and Armenia? And if those, why not Russia? The limits are blurred. And the Treaty of European Union hardly helps when it allows for 'any European State', without supplying a definition in this regard,

⁴ See Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1991).

to 'apply to become a member of the Union'.⁵ Such uncertainty leaves open the door for an idea of Europe that can only vaguely assist with any process of self-constituting. There is a danger that 'Europe will become an incoherent collection of sub-unions lacking any historical, ethnic, psychic – or even geographical – reason to exist'.⁶ Its borders are indeed neither defining nor defined as a project or projection.⁷ Olli Rehn, the EU's enlargement commissioner may have said in 2006 that 'values make the borders of Europe'.⁸ His colleague Vladimir Špidla echoed these words proclaiming 'Europe ends' where its values 'are not shared'.⁹ But this only serves to increase the geographical uncertainty. Indeed, it suggests that any correlation between a scheme of values and 'Europe', as a geographical rather than political construct, is false. And that the link between the name 'Europe' and the EU is contradictory.

Culturally, too, uncertainty flows from the geographical and demographical mix of the EU's present as well as potential future territory and population. Some figures have questioned the ability of the Union to assimilate cultures radically different from those which have been perceived as centrally 'European'. Giscard d'Estaing's infamous comment that Turkey as an Islamic country, and therefore by extension all countries that possessed an Islamic religious majority, could not belong to the EU, is indicative of a certain Eurocentric, some would undoubtedly say racist, ideology.¹⁰ But of course what it is to be 'European' is a subject of much debate. Can there be a totalising description without the imposition of a worldview that ultimately discriminates against those with different images? Does 'Europe' really possess a partial identity through 'shared traditions and heritages' such as 'Roman law, political democracy, parliamentary institutions, and Judaeo-Christian ethics' as A.D. Smith has claimed?¹¹ We must surely appreciate the

⁵ Article 49 TEU.

⁶ Philip Allott, 'The Crisis of European Constitutionalism: Reflections on the Revolution in Europe', *Common Market Law Review* 34 (1997) 439–90 at 487.

⁷ Étienne Balibar has called this a 'borderland' that has no borders. See Balibar, *We, The People of Europe* at 220.

⁸ See, www.guardian.co.uk/world/2006/nov/08/eu.worlddispatch and Olli Rehn, *Europe's Next Frontiers* (Baden-Baden: Nomos, 2006).

⁹ Vladimir Špidla, 'Some Reflections on the European Social Model', in Detlev Albers, Stephen Haseler and Henning Meyer (eds.), *Social Europe: a Continent's Answer to Market Fundamentalism* (London: European Research Forum, 2006) 111–16, at 112.

¹⁰ See *Le Monde*, 9 November 2002.

¹¹ Anthony D. Smith, 'National Identity and the Idea of European Unity', in Peter Gowan and Perry Anderson (eds.), *The Question of Europe* (London: Verso, 1997) 318–42 at 335.

perils that can attach to a project that fails to understand the importance of culture in the creation of a political enterprise intent on giving effect to some kind of integration.¹² Charges of neo-colonialism, exclusion, even xenophobia surface with varying degrees of persuasion.¹³ At an extremely provocative level it might even give vent to Balibar's suggestion that a 'virtual *European apartheid*' has been constructed, based on a 'stigmatization and repression of populations whose presence within European societies is nonetheless increasingly massive and legitimate'.¹⁴ But uncertainty of the EU regarding culture appears to result in its basic inability to address these dangers. The uncertainty that exists is a product of failure to provide any sense of inclusion. Exclusion emerges as an interpretation of its uncertain approach, suggesting for some that European unification is based more on hate and fear than on feelings of fraternity and hospitality.¹⁵ Even the rhetoric of 'unity through diversity' has failed to address these issues other than superficially. In a belated attempt to take culture seriously as a vital component of integration the EU has demonstrated an inability to come to terms with the ever-changing complex terrain of this subject. It has left itself open to the critique that in seeking 'unity' it in fact undermines diversity.¹⁶ Diversity is only acceptable, it has been

For a more recent attempt to advocate for a serious embrace of Christian values into the constituting texts of the EU, see Joseph Weiler, *Un'Europa Cristiana: un saggio esplorativo* (Milan: BUR, 2003).

¹² See, for instance, the critique of Edward Said, *Culture and Imperialism* (London: Vintage, 1994).

¹³ See, variously, Verena Stolke, 'Talking Culture: New Boundaries, New Rhetorics of Exclusion in Europe', *Current Anthropology* 36:1 (1995) 1–24; Peter Fitzpatrick, 'New Europe, Old Story: Racism and the European Community', in Paddy Ireland and Per Laleng (eds.), *The Critical Lawyers' Handbook 2* (London: Pluto Press, 1997) 86–95; and Allott, 'The Crisis of European Constitutionalism' at 486–9 where he notes the 'collective neo-colonialism in central and eastern Europe' as a possible element of '[a]n imposed prussianizing of part of Europe'.

¹⁴ Balibar, *We, The People of Europe* at x.

¹⁵ Jean-François Lyotard famously claimed that 'unification of Europe means the unification of hatreds' and Conor Gearty has also adopted a similar tone when he suggested that 'at the centre of the plan for a new European landscape there is to be found a hard seed of hate'. See Jean-François Lyotard, *Europe, the Jews and the Book* (London: UCL Press, 1993) at 159 and Conor A. Gearty, 'The Internal and External "Other" in the Union Legal Order: Racism, Religious Intolerance and Xenophobia in Europe', in Philip Alston, Mara Bustelo and James Heenan (eds.), *The EU and Human Rights* (Oxford: Oxford University Press, 1999) 325–58 at 327.

¹⁶ Cris Shore, 'The Cultural Policies of the European Union and Cultural Diversity', Research Position Paper 3 Council of Europe 2003, online, available at: www.coe.int/t/dg4/cultureheritage/Completed/Diversity/EN_Diversity_Bennett.pdf.

argued, in so far as it does not jeopardise unity. The cultural aspects of Europe thus remain steadfastly indeterminate, subject to ‘a constant process of negotiation, exchange and syncretism’.¹⁷

But perhaps the greatest uncertainty is philosophical in nature. The coupling of a contested sense of purpose and a vague appreciation of form has provided an environment almost designed to undermine any consistent identity construction. Ambiguity on matters of what and how ‘certain beliefs and values’ have interacted within the ‘distinct community’ that the EU has come to represent has been fundamental.¹⁸ Questions as to the nature of those values that have directed the EU during its development, the extent to which they have had effect and influence, and the relationship that exists between them in the resolution of conflicts have plagued the EU from even before it took institutional form. Although values were espoused rhetorically and constitutionally from the earliest moments in the EU’s history, their scope and depth and inter-relationship have always been unclear. How, for instance, was the resolution to ‘preserve peace and liberty’ in the preamble to the 1957 EEC Treaty to be understood? To what extent were those ‘cherished values’ and shared ‘attitudes to life’, noted in the 1973 Declaration of a European Identity, to be applied? How, indeed, were ‘the principles of representative democracy, of the rule of law, of social justice – which is the ultimate goal of economic progress – and of respect for human rights’¹⁹ to be measured against each other and developed institutionally?

This philosophical uncertainty has been recognised within the EU from its beginnings. The response has often taken a metaphysical turn. Soon after it was created a search for its ‘spirit’ emerged as a means to express the ambitions for the entity beyond the Treaty text. At the end of the 1960s the need for an ‘identity’ *of* and *for* the Union became fashionable, the former for projection beyond the Community to the outside world, the latter to create some sense of belonging for citizens *within*. Then, the desire to complete the internal market in the 1990s was described as putting ‘flesh on the bones’. It was not long before Jacques Delors began to speak of the search for a ‘soul’, recognising the importance of moving beyond the technical and economic advantages of the Union to attract the greater loyalty and commitment of

¹⁷ *Ibid.*

¹⁸ Jan Zielonka, *Europe as Empire: the Nature of the Enlarged European Union* (Oxford: Oxford University Press, 2006) at 133.

¹⁹ EC Bull 12–1973 118–22.

the people of Europe to this elusive polity constructed in their name.²⁰ Delors said specifically that if ‘in the next ten years we haven’t managed to give a Soul to Europe, to give it spirituality and meaning the game will be up’.²¹

Of course, Delors was speaking at a time when Europe was entering a period of immense upheaval. The end of the Cold War had provoked a sense of ideological and political vacuum in Western Europe.²² The perceived need to fix some kind of ethical framework for the EU, to provide an identity through espoused values, had become of vital concern. Ironically perhaps, the ubiquity of EU-sponsored initiatives that were self-consciously devoted to promulgating but also entrenching often repeated Western liberal values in post-communist states also gave added impetus to the advance of these same values *within* a Europe supposedly already constructed upon them. For, how could the EU require putative Member States to demonstrate their commitment and observance to a whole range of political criteria without at least maintaining that both existing members and European institutions were already abiding by them? A mirror had indeed been held up to the EU’s face. The fact that the EU had up until then still satisfactorily addressed those critiques focused on its democratic deficit, its ambivalent attitude towards human rights, and its inability to fashion a fully working single market, suggested that transition could be as much for domestic as it was external consumption. When enlargement became a possible political settlement for a Europe emerging from the fearful shadows of a schismatic continent, the self-interrogation as to what the new Europe might stand for intensified. A wholesale constitutional review, as it might now appear in retrospect, began in an attempt

²⁰ This prompted the 2004 Berlin Conference on ‘A Soul for Europe’ which managed to make the matter an almost exclusively cultural policy enterprise thereby missing the point of its own rhetoric. For brief conclusions of the conference see www.felix.meritis.nl/nieuws/berlin/declaration.html.

²¹ President Delors, Speech to the churches, Brussels, 4 February 1992, online, available at: http://europa.eu.int/comm/dgs/policy_advisers/activities/dialogue_religions_humanisms/issues/soul_for_Europe/index_En.htm.

²² Tony Judt, in his recent history of post-war Europe, commented, ‘[w]hen Communism fell and the Soviet Union imploded, they took with them not just an ideological system but the political and geographical coordinates of an entire continent’. Judt, *Postwar: A History of Europe Since 1945* (London: Pimlico, 2007) at 749. Similarly, John Gray has been vociferous in remarking that this upheaval and ‘the disappearance of familiar post-war political landmarks ... left Western thought and policy regarding the post-communist countries rudderless’. See *Enlightenment’s Wake* (Abingdon: Routledge, 2007) at 56.

to make sense of the evolving EU without losing sight of its origins and history. So the Treaty on European Union (TEU), pronounced at Maastricht, attempted to grapple with some issues of institutional values by making the more specific claim in its Preamble that the Union was attached to the ‘principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law’. The Treaty of Amsterdam incorporated these into the body of the TEU text and invested them with a certain mythic constitutional quality in the process. The Union was described, in Article 6(1), as ‘founded on’ these principles, an assertion that was not necessarily self-evident. And then the political decision to form a ‘constitution’, formalised through a Convention on the Future of Europe in 2001, gave institutional force to the ‘soul-searching’ that the EU had provoked.

The identification of a panoply of ‘principles’ and ‘values’ that should govern the Union was finally agreed within the context of a Constitutional Treaty. Although this Treaty became famously still-born, the attachment to a specified list of values, along with most of the provisions, was replicated in the replacement Lisbon Treaty. An apparent political will, or at least, intent, to represent constitutionally the EU’s ‘moral identity’ to some degree has become entrenched.²³ The assertion is retained, presently in the new Article 2 of the TEU, that the EU 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.

This is complemented by the new Article 3 TEU, which maintains that the Union’s aim is ‘to promote peace, its values and the well-being of its peoples’. The EU will promote ‘social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child’ and ‘economic, social and territorial cohesion, and solidarity among Member States’. Externally,

it shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the

²³ Takis Tridimas suggests this was the purpose of Article I-2 CT. See Tridimas, *The General Principles of EU Law*, 2nd edn (Oxford: Oxford University Press, 2006) at 16.

child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

Identifying such a plethora of constitutional principles and values mixed with policy statements is a particularly inept way to construct, or even simply represent, a meaningful philosophical framework for the EU. There is little by way of definition here that might counter the uncertainty I have already highlighted. Nonetheless, with the Lisbon Treaty provisions coming into force, there is a clear and concerted attempt to enshrine constitutionally a notion of the 'good' for Europe that is sought through the EU.

Despite these valiant attempts to construct meaning for the EU, as Delors demanded, many commentators clearly remain to be convinced. There has been a tendency to contend that the EU simply does not possess any 'ethos'. Without adequately defining what this term means, a variety of figures or analysts have suggested that there is an 'absence' here that leaves the EU in an unresolved crisis. Vaclav Havel, for instance, wrote that Europe 'lacks an ethos; it lacks imagination ... it lacks a genuine identification with the meaning and purpose of integration'.²⁴ Ian Ward has argued that attaining clear ethical coordinates from the discourses of 'unity in diversity' and subsidiarity is extremely problematic. Reconciling 'uniformity and diversity', he has suggested, 'demands an intellectual suppleness' that is currently lacking.²⁵ What is required and what is missing is a 'public philosophy which can inspire'.²⁶ Others claim that the 'public space' that has developed in the EU is 'fragmented and weak'.²⁷ In such an environment there can 'hardly be a single dominant identity, ethos, and demos'.²⁸ Rather, values appear contingent, malleable and ever changing. It follows that public and political attachment to, or identity with, the EU becomes increasingly difficult. Etienne Balibar has gone so far as to suggest that there has yet to be constructed an identity for the EU 'capable of becoming part of both objective institutions and individuals' imaginations'.²⁹ There has been a failure to bring 'to consciousness' the 'soul and person of Europe', if that were ever possible.³⁰ The absence of an

²⁴ Václav Havel as quoted by Ian Ward, 'A Decade of Europe? Some Reflections on an Aspiration', *Journal of Law and Society* 30 (2003) 236–57 at 257.

²⁵ *Ibid.* at 255. ²⁶ *Ibid.*

²⁷ Zielonka, *Europe as Empire* at 138.

²⁸ *Ibid.* ²⁹ Balibar, *We, The People of Europe* at 9.

³⁰ Allott, 'The Crisis of European Constitutionalism' at 469. Such critique is not new. Nearly fifty years ago, Stanley Hoffman diagnosed that 'Europe today has no clear

‘ethos’, therefore, appears as a prevalent and crucial criticism. People simply do not know what the EU stands for.

But is all this critique accurate? Does philosophical uncertainty, the uncertain ‘soul’, presuppose the absence of an ethos, that there is no ethical core to the European Union? Not if we see ‘ethos’ in a more defined light. And indeed, if we look deeper into the history of EU critique we can see this made evident.³¹ In a seminal text produced some fifty years ago, Karl Deutsch and his fellow report writers, interpreted empirical observations of ‘amalgamated security-communities’ and spoke of the ‘way of life’ of selected regional integration projects.³² This ‘way of life’ was defined as ‘a set of socially accepted values and of institutional means for their pursuit and attainment, and a set of established or emerging habits of behaviour corresponding to them’.³³ By looking, in effect, to ideal, practical and legal forms of constitution, all of which together encompass a ‘society’s self-constituting’,³⁴ Deutsch recognised the importance of action as much as ideas in constructing a community.³⁵ But the construction of norms has as much to do with the effect of cumulative practice and practices as it does with principles enshrined in any constitutional text. A ‘political ethos’

identity, no profile other than that which a process of industrialisation and a process of economic integration have given it. Europe today has no sense of direction and purpose’. See, Hoffman, ‘Europe’s Identity Crisis: Between the Past and America’, in Hoffman, *The European Sisyphus: Essays on Europe 1964–1994* (Boulder, CO: Westview Press, 1995) 9–50 at 9.

³¹ This is in addition to that philosophical dimension related to ‘Europe’ as an historical idea as opposed to Europe in the guise of the EU. See for instance, Paul Ricoeur, ‘Reflections on a New Ethos for Europe’, in Richard Kearney (ed.), *The Hermeneutics of Action* (London: Sage, 1996) 3–13.

³² Karl Deutsch, Sidney A. Burrell, Robert A. Kann et al. *Political Community and the North Atlantic Area: International Organization in the Light of Historical Experience* (Princeton: Princeton University Press, 1957).

³³ *Ibid.* at 48.

³⁴ See Philip Allott, *Eunomia; New Order for a New World* (Oxford: Oxford University Press, 1990). Allott’s description is echoed by a number of EU commentators vis-à-vis its process of constitutionalism. See, for instance, Neil Walker, ‘Europe’s Constitutional Momentum and the Search for Polity Legitimacy’, *International Journal of Constitutional Law* 3:2 (2005) 211–38 and Miguel Polares Maduro, ‘The Importance of Being Called a Constitution: Constitutional Authority and the Authority of Constitutionalism’, *International Journal of Constitutional Law* (2005) 332–56.

³⁵ More recently, Berthold Rittberger and Frank Schimmelfennig adopted the term ‘ethos’ to denote those ‘constitutive norms that define the collective identity of the community – who “we” are, what we stand for and how we differ from other communities’. See Berthold Rittberger and Frank Schimmelfennig, ‘The Constitutionalization of the European Union; Explaining the Parliamentarization and Institutionalization

or 'self-understanding' can emerge through transparent democratic processes, or through practical (communicative) action rather than some form of unarticulated and 'natural' social evolution.³⁶

In this sense, we are *not* dealing with a concept of ethos that relates to individuals or some form of homogenous society. The overall uncertainty of form and purpose of the EU, which I have described, does not allow for strong claims to be made that a public ethos has emerged from a European society of peoples. It is common ground that there is no European *demos*, that there is no apparent ethos capable of emerging from some form of *volksgeist*. But this does not mean that the concept of 'ethos' has no relevance here. It does have specific application to the *institution* of the EU. We can therefore, I submit, talk usefully about an '*institutional ethos*'. But what do I mean by this?

Let me propose a working definition. 'Institutional ethos' should mean the collective disposition, character and fundamental values that capture the existent sense of the EU as an institution in terms of both its particular formally constructed arrangement *and* its 'general pattern of activity'.³⁷ It echoes, in part, G.A. Cohen's description of the ethos of a society as 'the set of sentiments and attitudes in virtue of which its normal practices, and informal pressures, are what they are'.³⁸ In other words, it is the EU's underlying and continuing ethical genius. It incorporates the sense in Greek of both *ēthos* (character) and *ethos* (custom), encompassing and reflecting the ethical nature of the EU as it has developed institutionally, and as that nature has informed, influenced and guided its law, its policy and its practices.³⁹ The philosopher Max Scheler's definition of ethos as 'the experiential structure of values and their immanent rules of preferring, which lie *behind* both the morality and ethics of a people' resonates here, although, of course,

of Human Rights', May 2005, Institution of Advanced Studies Vienna Political Science Series, online, available at: www.ihs.ac.at/publications/pol/pw_104.pdf at 19.

³⁶ Jürgen Habermas, 'Is the Development of a European Identity Necessary, and is it Possible?', in *The Divided West* (Cambridge: Polity Press, 2006) 67–82 at 80.

³⁷ I am using the dual definition of 'institution' provided by Robert Keohane, *International Institutions and State Power: Essays in International Relations Theory* (Boulder, CO: Westview Press, 1989) at 162.

³⁸ G.A. Cohen, 'Where the Action is: on the Site of Distributive Justice', *Philosophy and Public Affairs* 26 (1997) 3–30 at 28.

³⁹ This evokes Hans-Georg Gadamer's interpretation of Aristotle's use of 'ethos', which denoted a 'sphere' not of rigid laws alone nor of 'lawlessness' but rather institutions and attitudes. See Hans-Georg Gadamer, *Truth and Method* (London: Sheed and Ward, 1979) at 279.