1   Europe: Law, Politics, History, Culture

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The enlargement of the European Union (EU) to include ten new states prompted an immediate debate centring on such questions as migration, border controls, labour regulation, the common agricultural policy, the costs of regional subsidies and defence. Such debates are as important as they are inevitable. But enlargement also raised issues that go beyond the agenda of economic, monetary and political integration, issues that concern the limits and integrity of European culture as such. While the accession of Finland, Sweden and Austria during the 1990s increased the size of the EU, membership for the new states which joined in 2004 and for those seeking membership in the future raises questions more profound and far-reaching than those concerning the feasibility of the EU's current decision-making procedures. For most of those new states, membership of the EU is at the same time part of a 'return to Europe' in a broader sense. The fact that some of these states have Slavic populations, that some have immature democratic polities, or large peasant populations, or populations which have for centuries been within the orbit of orthodox Christianity or Islam, raises questions about Europe's internal cultural identity. Such questions have become more sharply focused as a result of the larger geo-political and cultural realignments of which Europe is a part.

To be sure, there is no logical reason why debate about European culture and identity should be dependent upon shifts in geopolitics. But the fact is that the attention of intellectuals has been drawn towards it precisely in times of geopolitical uncertainty. The period between the beginning of the First World War and the formation of the European Coal and Steel Community, for instance, produced many of the more important and profound philosophical and literary reflections on Europe.[1] By contrast, as long as the Cold War division of Europe persisted, little serious work on European identity appeared.[2] It was as though the economic and political barrier that was the Iron Curtain gave rise to a cultural and intellectual barrier of comparable proportions.

Not only did the thoughts of politicians and bureaucrats about the prosperity of Western Europe assume the immovability of this barrier with the East, Western scholars and intellectuals too were, throughout the Cold War, content to have the opportunity for travel, cultural exchange and general curiosity without taking it as much as they might have. The collapse of communism was a cultural as well as a political shock to them, inducing the realisation that they had some catching up to do; a task they were not always able to carry out without assuming that the book of Eastern European cultures had hitherto been closed to them by forces beyond their control.[3] According to this view, Soviet communism was a crude form of modernisation which in Russia had turned millions of peasants into *homo sovieticus* and which had actively suppressed the national traditions of its Eastern European satellite states. The irony of this position was that it overlooked one of the paradoxes of really existing socialism, namely that, as Marx himself would doubtless have observed, chronic economic failure meant that the forces that are most likely to destroy local, specific cultures and identities − rapid and successful economic and technological progress − were held in check. The factories, steelworks and tower block complexes which were strewn across postwar Eastern Europe did not replace but came to exist alongside indigenous art and architecture, religious beliefs and folk traditions. Added to which was an economy in which the individual's prospects of substantial material gain were limited. The consequence of this was that, in what were officially workers' states based upon a philosophy of historical materialism, non-material sources of personal identity − sources which have little to do with one's position in the division of labour or one's career − came to play a more prominent role in the individual's search for meaning or significance than they did and do in the prosperous Western democracies.[4] If it is true, as is often claimed by political sociologists, that Leninist approaches to political and economic conduct survived communism's demise, then it is also true that today in Eastern Europe questions of culture are, still, not as readily reducible to those of economics or politics as they are in the West.[5] This means that the difference between the historical regions of Europe is not merely one between, say, Protestant, Catholic and Orthodox cultures,[6] but between modes of conceptualising the relationship between economics, politics, law and culture. An illustration of this point was provided by the arguments about whether Christianity should be mentioned in a European constitution. These were not so much arguments between the religious and the secular as arguments between those who see the EU as a cultural entity with economic and political characteristics and those who

see it as a technical and pragmatic entity with a cultural background. Indeed, one of the reasons why it makes sense to say that EU enlargement is also EU transformation is that the rationale for membership among some of its new members is qualitatively distinct from that of its founders. The original European Coal and Steel Community, later the European Economic Community (EEC), was a political and economic response to the ravages and horrors of war, designed to put an end to war in Europe through shared political goals and sustained economic growth. It was accompanied too by a measure of collective European guilt − German and Italian fascism could be seen as a European failure; the nihilistic consequence of an inflated Promethean ambition − and a willingness to accept a substantial American military and political presence on European soil. The economic success of the original EEC then defined the terms under which subsequent prospective members applied: the goal of greater economic prosperity could be had, with the sacrificing of a measure of sovereignty a price worth paying. By contrast, while it is undeniable that these possibilities play a role in the motivation of today's new members, the economic circumstances of the current EU are much less favourable to their being realised than was the case in the early 1970s or, arguably, the early 1980s.[7] More importantly, for the new EU members, alongside questions of prosperity and security lie those of cultural and geo-political identity. Membership of the EU, as much as that of NATO, is a means of putting behind them the legacy of Soviet imperialism and ensuring a 'return to Europe'. This is no mere symbolic gesture for these countries, but expresses a belief widely held in the former Eastern bloc that there is a basic civilisational distinction between the Russia under whose influence they suffered and the Europe to which they genuinely belong.[8]

It is for this reason that we combine in this volume considerations of a more technocratic or pragmatic type with those concerning European identity and culture. In order to do so it is necessary to specify just how that relationship is to be conceived, and to do so in such a way that the terms in which the volume is conceived make sense to a broad European audience. Such a project faces the difficulty that different versions of this relationship resonate differently in different parts of Europe, and that these differences become more not less palpable with the enlargement of the EU. As long as the Cold War persisted, so one might argue, the distinction between questions concerning the EEC (later the EU) and questions concerning European culture as such could be kept separate from one another in such a way that the relationship between them was, for better or worse, of little intellectual interest. Discussions of the future of the former could and did take place in isolation from discussions

of the latter, so that the technocratic-pragmatic agenda of European policy making could remain distinct from that of cultural history. The enlargement of the EU marks a shift in this relationship, not in the sense that the geographical limits of the EU become the limits of the European world, but in the sense that the gap between the meaning of 'Europe' as a set of organisations and institutions and of 'Europe' as a political, civilisational and legal entity has narrowed. As a consequence, the idea that economics, politics and culture are simply branches of a complex division of intellectual labour is difficult to sustain. Sociologists of culture are right to be bored by books about the relationship between the European Commission and the Council of Ministers or comparative studies of social security in five European states, East and West. The suspicion of ignorance or irrelevance that political scientists and economists are prone to direct at books entitled *The Anthropology of Europe* is often justified.[9] If this volume contributes to anything, it will be to overcoming this mutual suspicion.

The reader will see that each of its contributors responds at some point to the ideas set down in Jürgen Habermas's arguments for a European constitution, and may be forgiven for thinking that Habermas's ideas are the focus of the book. But Habermas's writings on Europe raise so many questions and hint at so many agendas that the chapters are arranged in such a way that these ideas are addressed from a variety of angles, so that each section may be read as a way of refocusing the contributions in other sections.

Constitutionality and political participation

In 2003, much publicity was given to the activities of the European Convention and to its remit, the production of a draft EU constitution. The impression was created in some quarters that this marked a decisive new phase in the EU's development, a definitive move towards a single European state. In others it was seen as confirmation that a fully united Europe having the status of a polity was inherent in the European project from its start. This latter view is by no means a Eurosceptic one, for as Joseph Weiler has pointed out, what emerged following the Schuman Plan and the Treaty of Rome in the 1950s was already 'a constitutional legal order the constitutional theory of which has not been worked out, its long-term, transcendent values not sufficiently elaborated'.[10] On this view, Maastricht was shocking precisely because it announced what had always been the case. It was thus 'the beginning of the first truly Europe-wide public constitutional "hearkening" of an

act to which the peoples of Europe and its member states had already
said, in one way or another, "we will do":[11]

> . . . more than any other concept of European integration, constitutionalism has
> been the meeting ground of the various disciplines, principally political science,
> international relations, political economy, law and more recently sociology,
> which engage, conceptualise, and theorise about, European integration.
> To understand the intellectual history of constitutionalisation is to understand
> a goodly chunk of integration studies as a cross-disciplinary endeavour.[12]

We do not aim to trace this intellectual history here; nor are the essays
in this volume readily placed under the heading of 'integration studies'.
But in responding in some way to Habermas's arguments in favour of
a European constitution, they are responding to an essay that is itself
positioned in the interdisciplinary meeting ground to which Weiler
refers. To be sure, Habermas's arguments, as outlined in Chapter 2
in this volume, are directed towards the idea of a constitution in the
American sense, rather than to the attribution of a constitutional status
to an existing European Legal Order.[13] But it is worth remembering that
his proposal for a constitution as the consolidation of a European legal
order – in which human beings are ruled by laws rather than by other
human beings – has changed into an account of the political culture of
the EU, of its dominant modes of communication, and of its possible
legitimacy, a legitimacy which is conceptualised not only according to
political criteria such as democratic decision-making and transparency,
but also according to social criteria derived from the already existing
achievements of the postwar Western European states in welfare, legal
rights and personal security.[14] Such achievements would be the basis,
moreover, for a European political identity in which there would be
no need to resort to the idea of Europe as an 'imagined community',
or community of fate (*Schicksalsgemeinschaft*). This is the point of
Habermas's repeated emphasis on the idea of a European public sphere
and of 'constitutional patriotism', first developed in the context of
intra-state affairs.[15]

    Such a view is not without its critics. It may be asked, for instance,
whether 'Europe' as a political entity can be theorised with tools
developed for the purposes of mainstream political sociology. Philippe
Schmitter (Chapter 3) argues that the EU is not comparable to a nation-
state and that consequently questions of citizenship, representation and
decision-making at the EU level require a different set of intellectual
responses. First, to seek to constitutionalise an entity whose precise
status – federation, confederation, something in between – is unclear
may produce unexpected effects. Second, a European constitution

cannot be the work of specialists, but may require lengthier processes of consultation than those that preceded the French and Dutch referenda of 2005. To this end Schmitter has set down a set of detailed proposals for a European-wide referendum, the establishment of two parallel constituent assemblies, and a subsequent referendum in which European citizens would be invited to choose between two alternative sets of arrangements. He suggests, therefore, a European polity with two constitutions, one for a core and one for a peripheral set of members, as a viable future arrangement.

Habermas's social theoretical rationale for a European constitution, and Schmitter's proposal for policy-makers, can be contrasted with Larry Siedentop's concerns of the consequences of EU enlargement for political culture in a broader sense. The argument in his *Democracy in Europe*[16] is that the future success of the EU is dependent on the mobilisation of consent and creation of European level legitimacy to an extent that was not the case at the time of the European Coal and Steel Community's inception. Furthermore, the prospects for such mobilisation are hampered by the influence on European policy-making of a French political elite whose instincts are more technocratic than constitutional. Drawing on the experience of federalism in the United States of America, Siedentop argues that there is an intrinsic connection between federalism, self-government and what he calls the 'constitutional sense'. The consequence of the lack of such a consti-tutional sense in Europe is that the much-vaunted subsidiarity may result less in regional self-government than in a parochial form of regionalism to which the civic traditions built up at the level of nation-states are irrelevant.[17]

Each of these arguments, concerning social legitimacy (Habermas), political democracy (Schmitter) and self-government (Siedentop), are in a way projections onto a larger canvas of arguments developed at the level of intra-state affairs. In one sense, such projections run up against the fact that the EU is, in political terms, a cipher. It has no military power and no tax-raising powers; it has indeed no government com-parable to those of its nation-state members. Yet in another sense the key components of the transformation of the EEC into the EU have made such projections inevitable. With the introduction of a political union in 1992, a vision of Europe as a constitutional unity has come to prevail over one of Europe as a community of member states bound by treaties and counter-measures. In particular, the introduction of rights of citizens as a result of negotiations that led to the Maastricht Treaty[18] has helped spawn a discourse of European citizenship in which a language and tradition of thought geared for an understanding of the internal

politics of nation-states is asked to make sense of a larger and different entity.

This has had two important consequences. The first is uncertainty about whether the EU can be described as a polity at all. As Philippe Schmitter has acerbically put it:

Try to imagine a polity that did not have the following: a single locus of clearly defined supreme authority; an established and relatively centralised hierarchy of public offices; a predefined and distinctive public sphere of competency within which it can make decisions binding on all; a fixed and contiguous territory over which it exercises authority; a unique recognition by other polities, membership in international organisations and exclusive capacity to conclude international treaties; an overarching identity and symbolic presence for its subjects/citizens, but did have the capability to take decisions, resolve conflicts, produce public goods, coordinate behaviour, generate revenue, incorporate new members, allocate expenditures ... and even declare and wage war![19]

Political science, for all the voluminous literature that it has produced on Europe, has struggled to find the tools with which to define this entity, which is neither purely intergovernmental and therefore not describable in the language of neo-realist international relations, nor yet a supra-national entity describable in the language of neo-functionalism.[20]

The second problem is that even if the EU can be described as a polity, it remains unclear whether it should have a postnational character or that of a nation-state writ large. Habermas's claims, for instance, to have identified a broad, postnational consciousness among the European peoples,[21] a consciousness which would form the core of a European political identity, should be set against Weiler's wariness about the consequences of introducing 'citizenship' into European discourse:

If indeed, the classical vocabulary of citizenship is the vocabulary of the state, the nation and peoplehood, its very introduction into the discourse of European integration is problematic, for it conflicts with one of Europe's articles of faith, encapsulated for decades in the preamble to the treaty of Rome. Mystery, mist and mirrors notwithstanding, one thing has always seemed clear: that the community and Union were about 'laying the foundations of an ever closer union of the peoples of Europe.' Not the creation of one people, but the union of many.[22]

These two questions − that of the character of a European polity and that of whether a European people is possible or desirable − may be treated separately. Yet they converge on a theme, which increasingly forms the (often unacknowledged) core of the current debate on Europe: legitimacy. There are a number of reasons for this: a growing

awareness that the EEC's original rationale − a technocratic and economic response to a political catastrophe − no longer has a hold on the populations of Europe; the disintegration of Yugoslavia, in the face of which the EU proved itself unable or unwilling to act; the internal transformation of the EEC from a set of intergovernmental institutions with a constitutional character into a union, which increasingly defines itself explicitly as a legal and political entity; the addition of new members for whom the cultural and civilisational motives for membership are as strong as economic-pragmatic ones; the decreased capacity of the EU to meet the latter expectations in any case.

To be sure, among policy-makers in Brussels a technocratic agenda persists, so much so that it may be argued that whatever normative justification the EEC might once have had has given way in official statements to the imperatives of a single currency, the stringencies of the growth and stability pact, and a legal discourse that is not readily digestible. The possible legitimacy deficit is implicitly, if comically, illustrated by the design of the euro currency itself; with concessions to member state identity being expressed in member-specific coinage design, the notes proving more recalcitrant, and resort being had not to the roster of writers and composers who once adorned national currencies, but to the indeterminate, non-culture specific bridges and viaducts of a child's architectural fantasy. Lest it be thought that such remarks belong more to popular commentary than social theoretical analysis, they illustrate a problem that besets discussions of Europe at all levels, namely the tension − economic, political, legal, cultural − between state-specific and supranational sources of identity and legitimation. For some this is a source of intellectual and political confusion, for others it implies that, regardless of moves towards constitutionalisation and monetary union, the EU will remain an *a la carte* affair, with a range of types of fit between directives and their implementation, and between aspiration and achievement.

European polity and European civil society

Let us say, then, that we are dealing here with a polity which, while it is neither a confederation nor a nation-state writ large, is a polity nonetheless in search of the resources by which it might be legitimated and justified. Let us say further that one of the most important of such resources for any polity is its historiography, and with it the stories it tells about itself. As Heidrun Friese and Peter Wagner point out in their contribution to this volume (Chapter 4), the legitimation of the European polity is hampered by the existence of at least three distinct

narratives of European political modernity: narratives of universal human rights, of the modern states system and of democracy. Existing contributions to the debate on European integration often combine an emphasis on two of these narratives with a neglect of the third. The political sociology alternative proposed here is to see existing political arrangements as compromises between different political theories that political science frequently keeps apart. For instance, the postwar Western European settlement was a temporary compromise between liberalism, nationalism and socialism. Taking up Habermas's suggestion about the artificial or constructed character of the European polity, Friese and Wagner push this further by arguing that European integration in the present be seen not as part of an evolutionary process but as requiring an act of foundation; central to which would be a reworking of three sources of justification: political and civil liberties, organised social solidarity and community. Though they hesitate to say so, their resort to the term 'political form' may also be read as a response to the thesis set down by Carl Schmitt, according to which European political modernity could be narrated precisely as a single story, one which would have as its last line the claim that a Europe whose intellectual and spiritual foundations were no longer Catholic was incapable of political form. As Schmitt put it:

> Should economic thinking succeed in realising its utopian goal and in bringing about an absolutely unpolitical condition of human society, the Church would remain the only agency of political thinking and political form.[23]

Friese and Wagner's contribution reminds us that there are several varieties of modernity, and several attendant stories to be told, a plurality on which the Schmittian narrative runs aground. Much of the current debate over Europe revolves around the question of whether any act of foundation for Europe runs aground for the same reasons.

At the same time, the bases for the political legitimacy of a European polity − political and civil liberties, organised social solidarity and community − are themselves already of a social nature, and remind us of the importance of civil society as the arena in which legitimacy will be either maintained or challenged in the future. And William Outhwaite (Chapter 5) concludes from this that civil society may be as much a condition for European integration as something that grows out of it. Noting the relative absence of anything that can be described as a European cultural (as opposed to political) elite, and the absence of a corresponding European culture of *consensus*, he suggests that the future

of European integration and ultimately the legitimacy of European political institutions may depend upon the manner in which *conflicts* between European-wide civil society organisations can emerge and be resolved.

European history and European culture

Yet the deepening and extension of political science and political sociology goes only so far. In one of the best essays on the future of Europe, Tony Judt has written:

> Just as an obsession with growth has left a moral vacuum at the heart of some modern nations, so the abstract, materialist quality of the idea of Europe is proving insufficient to legitimate its own institutions and retain popular confidence. The mere objective of unification is not enough to capture the imagination and allegiance of those left behind by change, the more so in that it is no longer accompanied by a convincing promise of indefinitely extended well-being.[24]

If debates among policy-makers and constitutional theorists need to be supplemented and sometimes regrounded by a political sociology of Europe, EU expansion invites the further supplementation of political sociology by historical/cultural sociology and civilisational analysis. To be sure, such a move cannot wholly dispel current anxieties about cultural stereotyping or combat a popular academic wariness towards substantive generalisations about how different societies hold together. The belief in common, shared elements of human culture across societies is the product of a healthy impulse, just as the invocation of cultural difference can be a ready tool in the hands of xenophobes. Yet it would be a bleak prospect if the search for European legitimation were to stop short at deracinated blueprints for human rights legislation, welfare arrangements and labour protection, important though these are, and if the voice of substantive European cultural achievement were to be wholly silenced.

The problem here is to specify cultural achievements, which could act as a source of legitimacy, while avoiding a language of aggressive self-assertion. Habermas and Weiler are understandably wary of any theory of Europe that conceptualises Europe as a community of fate. Yet as Judt suggests, a Europe that has lost some of its forward-looking vitality and whose current growth rates are low is bound to draw upon elements of its heritage for making sense of itself. This means that historical arguments about the legitimacy of a European polity may be pushed further than Habermas does, even in the face of the apparent