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ON MATTERS CONSTITUTIONAL

Justice in Europe

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To say that the EU is just would be to stretch words considerably. The same applies to the idea that the EU is democratic. The EU, for the moment, is neither one nor the other. Some people are not worried about it in the least. They believe that the EU's job has little to do with democracy or justice. Instead, they think that the EU's main job is to preserve and promote a well-functioning European Economy through a market. The market, whether common/single or internal, is an instrument to produce wealth. But it is not the place to distribute wealth. So it is not a place for Justice. And it is not a place for democracy, since economic forces do not call for popular assent or dissent. Obviously, many other people believe that the market alone is not enough, and that the EU needs something else to deserve the name of union. In particular, it requires structures of governance to steer the administrative boat in the right direction: possibly in the direction of justice; indeed, some insist that the boat should be steered towards re-distribution of the wealth produced. That is where timid claims of justice are couched: EU governance could be used to correct the injustice produced by the market alone. Those who are aware of the fact that the market produces injustice along with wealth called for democracy a few years ago. But the democratic deficit has not been resolved, so there is no chance that EU governing institutions could engage in democratic redistribution. What they do is to allocate disproportionate amount of the budget to actors that have had historical priority, as it is the case in the common agricultural policy.

It is high time to think of Europe as committed to a just society. This requires a fully-fledged ethical vision for Europe. It should be asking for more than political justice, which simply asks EU political institutions to correct the injustice produced by the market. A Just European Society (AJES) is a society that does not allow for economic exploitation and individual alienation. AJES is committed to full re-distribution from the outset: Europe should not merely justify the status quo of national redistributive policies. It should nudge European nations into becoming more just. But there is more: AJES is committed to reform life in Europe from birth to death through education and work in a way that does not focus on the creation of a homo oeconomicus; rather it relies on a completely different anthropological view of humanity based on the idea of homo ethicus. The former is the servant of the market society that is geared towards the maximisation of material wealth. Homo oeconomicus is just a cog of the gigantic machinery that produces wealth. On the other side, homo ethicus is aware of being part of a much grander scheme of things: the natural world. Its pursuit is to understand and nourish his instinctive desires, and dismiss as futile the desires manufactured by the market society.

AJES is a society that is structured in a way that let each individual flourish in her own preferred direction, while redistributing the benefits and burdens within the community. Armed with this Ethical vision, we can now evaluate the genealogy of the EU with a critical eye as to what has worked and what has not worked. In particular, I want to suggest how to re-interpret the trajectory of the EU in order to reorient it towards AJES.

The remote origins are promising. The European project is a response to the ultimate injustice of nationalisms that ravaged Europe and attempted to solve conflicts by using violence, and subjected one class of people with the misplaced idea that one race is superior over another. Nationalist injustice, however, is not born in a vacuum. In fact, it was very much the embodiment of fear following the economic depression that begun in 1929. The economic depression came to highlight the injustice intrinsic to the economic system of nations that characterised the

world until then. An economic depression has the power to bring out in the light of the day, the scope of the economic injustice. Once that was unveiled, and was felt amongst the poorest parts of the society, feelings of fear and desperation found a very fertile breeding ground that was then turned into a political message of hatred and division perfectly embodied by nationalism.

The ECSC treaties were a first step in the right direction of justice. By pulling together the production of carbon and steel, Europe committed itself not to deal with conflicts by exercising ultimate violence. And violent resolution of a conflict is a negation of justice. But then what is it that can help to deal with a conflict without resorting to violence? The European response then was the Treaty of Rome: the idea was to channel and direct national competition towards the economic field by setting up a common market where players could compete in a fair environment. While the establishment of a common market might have taken us further from violent conflict, it did not address the roots of economic injustice that were present before the economic depression of 1929. Economic injustice of that type was connected with industrialisation and mass production: the class conflict was central to that mode of production.

A European common market did not promise to eradicate economic injustice and class struggle: it only displaced the struggle at a supranational level. By doing that, it took the struggle away from the state, which was back then the only likely addressee of claims of injustice. The supranational level was free of those claims, since it did not have an inbuilt democratic distributive principle that would help to mitigate the injustices produced by the market. To be honest, the EU could not even aspire to put forward democratic principles of distribution since it did not have the political structures to do so. The founding fathers thought that the easier way to build a political union was by starting with an economic union. Today the mistake can be seen clearly. The EU is built on the entrenchment of an unjust system of economic production. And the talk of democratic deficit yesterday, and justice deficit today, point to the fact that the EU has not been able to create a political structure capable of distributing the wealth created by the market.

The lack of democratic legitimacy occupied Europhiles in the 80's and 90's. With hindsight, the noble attempts to engineer political governance to rule over an economic structure were bound to fail. The point is that the common market is a powerful means of wealth production and injustice. Thirty years of injustice led to the Treaty of Maastricht that addressed, but did not solve, the problem of democratic deficit; not only that, Maastricht also paved the way for an enhanced economic injustice: the creation of a common currency and a monetary union. Even if the intentions were positive, the monetary union was destined to entrench the injustice that comes with the lack of re-distribution and the lack of effective governance that can guarantee re-distribution. Economic injustice is much deeper than political injustice. (Paradoxically, one of the states that did not accept to belong in the monetary union did so not for reasons of justice but for reasons of self-interest.) But once economic structures rule over a political space, it is very hard to rein them in. It is not a surprise that the ECB is perceived as calling the shots, when it comes to highly political decisions that are of the utmost relevance from the viewpoint of justice.

All attempts to introduce a European Constitution that could potentially mitigate the negative effects of the market were bound to fail. Again hindsight is useful here. Over ten years after the EU stillborn constitution, it is possible to say that France and Holland made an important call: to allow for the establishment of a EU constitution would not have ushered in justice at the economic level. At best, it would have introduced modest correctives to the market and the monetary union, which would have simply legitimised the status quo.

But the existence of structural economic injustice was bound to come to surface as it did in 1929. It took another crisis, the global financial crisis starting in 2007, to highlight the structural injustice behind the EU and the monetary union. Once Germany emerged as the strongest economy of the EU bloc, it started

using the arguments of financial stability to its own advantage. The much trumpeted politics of austerity only perpetuates the structural injustice of the common market and the monetary union. Austerity has no other political vision than to protect and preserve vested interests in the economic and financial sectors. The party of austerity is led by Germany, and silently backed up by other countries that have economic interests in this business: many institutions, including France and Italy, hold interests in the repayment of the Greek debt.

It is not surprising that huge movements of justice originated in Greece and in Spain, two of the hardest hit countries in the EU. The message is something that the EU cannot afford to silence. Those political movements are likely to spread in many other countries, possibly the whole continent. That would not be a bad thing. The EU has no choice: either it listens today and starts to incorporate claims of redistributive justice or it will have to be forced to do so in a few years by the strength of political rebellion fuelled by claims of justice.

I do believe that it is high time for the EU to adopt an Ethical vision of a just society. As I said at the beginning, an ethical vision begins with an anthropological insight. Homo Ethicus is not a clog in the market/monetary machine. Homo Ethicus must be nurtured from the beginning to allow her to flourish. The EU must direct its own resources to reform European education from the bottom up. EU institutions must serve that vision; they are just tools to create the conditions that allow human beings to flourish. As they stand now, European institutions are servants of the common market. They contribute to injustice by insisting on austerity and formal rules, rather than by focusing on re-distributing effectively wealth creation. Of course, this does not mean that once strong distributive principles are at the centre of the European project, the work will be done. There are few other dimensions of justice that deserve mention: retributive justice and external justice.

A Just European Society is committed to nudge national governments to abandon their own structural obstacles to effective distribution. One example is corruption. Corruption is the chief political vice that stands against effective distribution. Resources are simply drained rather than distributed. A just European society is committed to eradicating corruption prior to begin re-distribution. Retributive justice is not disconnected from distributive justice. White collars crimes should be a priority for the whole continent. A supranational entity has the duty to bring national governments in line with this expectation.

The last dimension of justice I want to mention here is external: Europe owes much to neighbouring people who struggle for survival. AJES cannot turn a blind eye to what happens next door. The reasons are many: Europe's very security is at stake to begin with. More importantly, AJES will prosper if other regions of the world will prosper: more global wellbeing can only bring more stability and peace.

AJES does not depend on the creation of new institutions or the politicisation of its role. Rather, it depends on the cultural shift from a society that is centred on exploitation to a society that is centred on human flourishing. Political and constitutional correctives will not achieve justice. Only a Copernican revolution of the mind will do.

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