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Reflections on the European Project: Some Thoughts on the Agenda

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I was delighted to be invited by D. Chalmers, M. Jachtenfuchs and C. Joerges to join them and others in a reflection on the European project triggered by their book, *'The End of the Eurocrats' Dream: Adjusting to European Diversity'*. It is always useful to rethink the European project. Yet, this is a great challenge and 'some humility is required' as the editors themselves make it clear at the outset. One ought to be cautious to take a broad spectrum so as to avoid the temptation of narrowing down concerns to a specific set of events such as Brexit or 'a crisis'. The process of European integration is indeed so advanced that a narrow approach could result in a biased analysis. Meanwhile, one still needs to be precise and concrete so as to induce a constructive dialogue for change.

This edited volume is a powerful attempt at addressing these challenges. It brings together contributions from a wide range of renown academics from across Europe (if not beyond) and various disciplines from law to philosophy, with a stopover in political science. The authors examine several dimensions of European integration placed under strain in recent years, ranging from the monetary union, fiscal policy to concerns for citizenship. Contributors also investigate important horizontal institutional questions such as accountability of the EU executive or the characteristics of EU decision-making. The editors finally seek to draw general observations on the tensions underlying the process of European integration in opening and closing chapters. The book thus unquestionably adopts the warranted broad approach and brings together advanced expertise on each topic.

Having enjoyed reading through these Chapters and rather than discussing specific aspects, I would like to share three thoughts triggered by this stimulating read. These comments identify points that may be worthy of attention in future debates rather than make specific suggestions. In seeking to contribute to this reflection on the European project, I want to ask who are we talking to and what are we talking about, and finish by suggesting a particular focus on fundamental rights. I am thereby leaving the why do we need to rethink about the European project out of the scope of this note as there is plenty of food for thought in the book itself on this point. (Please note that references to authors below relate to specific chapters of the edited volume at the origins of this discussion.)

Who are we talking to?

In re-thinking the European project, current and future reflections will have several addressees. The list of addressees naturally includes Eurocrats, as hinted at in the title of the book and several of its chapters; these would also include political leaders at European level, and at the very least domestic political leaders as well as their constituents. It is important not to overlook domestic addressees. Admittedly, there is a problematic disjunction between citizens and the European Union. Many factors explain this disjunction and some of these factors are unquestionably driven by European forces, as usefully conceptualized by C. Colliot-Thélène and further argued by D. Chalmers. Reflection on this point is thus necessary and welcome. Yet, any long term past and future vision of the European project can only result from strong and reliable commitments by domestic leaders in the first place. After all, the European project remains primarily driven by leaders designated through national elections, be it in their functions in national or in European institutions.

This observation points at a paradox. The supranational decision-making is blamed for unbalancing

domestic political spheres; meanwhile, major change ought to come through these very same domestic political spheres. This creates a twofold methodological difficulty in designing the future of the European project; a difficulty that is also discussed by C. Joerges and B. Bremen although in slightly different terms. If we do want to give a chance to 'Europe' and reflect on how to better align 'trajectories and structures of European integration' – as the editors encourage us to do – we should ask ourselves how to shape reflections on such a common good while addressing a plurality of political leaders spread across the continent. We should also further ensure from these domestic players that they share a sense of ownership of a project to which they would be willing to contribute in good faith. Examples abound of domestic leaders playing very different cards depending on the forum they attend and thus profoundly hindering the existence of a sound political debate on the European project. The above are crucial premises for a constructive reflection on the process of European integration. As a starting point, we may want to pay attention to addressing a broad range of actors when leading a discussion on the future of Europe so as not to promote a vision whereby the exclusive sources of EU weaknesses would be distant and to be found elsewhere.

What are we talking about?

The edited volume takes as a starting point the 'euro crisis', but the debate that this on-line symposium seeks to stimulate goes well beyond. We are invited to 'rethink the European project'. I welcome the broad range of this follow up initiative. A profound rethinking of the European integration process ought to encompass all the dimensions of this process, as difficult as this may be. Current debates triggered by successive shocks (borrowing from P. de Wilde), be they related to the euro or migration flows, often zoom into the specifics of the relevant governance framework. This is perfectly understandable as such frameworks develop very quickly and raise important new questions. It is furthermore necessary to closely examine these processes as they may have implications well outside the narrow scope of the specific policy area under scrutiny as made clear by F. Scharpf for instance. Yet, if we are to rethink the European project, we ought to also look at the development and dynamics of the more 'classic' and 'stable' areas of EU intervention; thereby reflecting on whether change is needed there too, and if so in which directions this should go. In many ways, the Brexit vote invites us to lead this investigation.

One key aspect, naturally, is the internal market, and not only selected aspects of it as could be tempting in post-Brexit vote context but all its components. There are also many other areas of EU intervention which warrant attention, one of them is social policy. It is perhaps worth recalling that the European Commission is busy with a consultation on the so-called 'European Pillar of Social Rights'. What structure this pillar will ultimately support and what the pillar will involve is still a mystery. Nevertheless, the President of the European Commission has made it a personal priority to make Europe more social in latest speeches on the State of the Union. One may thus hope for a modernisation of the social acquis as well as for a re-balancing economic and social concerns across EU policies as several contributors to this edited volume call for. This is not to say that such initiatives will cure all ills of the EU; the point being made is that our reflection on the European project ought not neglect the daily running of policies that may have been shadowed by successive 'shocks'.

European fundamental rights

One aspect that should figure prominently in any forward looking reflection on the European project is the protection and promotion of fundamental rights. The theme runs across several recent 'crises', whether we discuss social rights in the context of the euro and financial shocks or rights of third country nationals as threatened by current world imbalances. The theme also cuts across all areas of EU intervention, be they internal or external. It exemplifies most dynamic areas of EU policy from the past two decades such as data protection and anti-discrimination.

Back in 1999, Philip Alston and Joseph Weiler made a powerful call for the development of a coher-

ent EU fundamental rights' policy in a famous paper entitled "An 'Ever Closer Union' in Need of a Human Rights Policy". The authors argued that the EU needed to bridge the cleavage between its verbal commitment to human rights and its actions. They were critical of the complexity and weaknesses of the system of fundamental right protection created through the back door as the EU was not conceived as a human rights organization (ie. an organization explicitly and directly devoting policy tools to enhancing the protection of fundamental rights).

As is clear today, almost two decades later, the EU (still) does not have a fully-fledged competence to regulate fundamental rights. Despite significant developments, the basic constitutional framework has not fundamentally changed. Compliance – or 'negative' – duties towards fundamental rights have been enhanced. The EU and the Member States acting within the scope of EU law must comply with fundamental rights as expressed among others in a binding Charter. Furthermore, the Article 7 TEU mechanism has been designed to monitor compliance with EU values across the Member State. A number of enabling legal basis, creating opportunities for 'positive' intervention, have also been created. The EU may access international human right treaties (eg. UNCRPD) and shall access the ECHR. The EU may develop policies to protect selected fundamental rights such as the right to data protection and equal treatment. Nevertheless, the EU still has no direct mandate and institutional framework to develop a fundamental rights policy.

Although the constitutional framework thus remains fundamentally unchanged, the 'fundamental rights pressure' on the EU has been increasing. The broadening of EU competences to cover sensitive matters such as police and justice cooperation or migration, the acute impact of recent shocks on the quality of life of EU citizens and third country nationals alike as much as worrying political trends in certain Member States have indeed pressed fundamental right compliance and protection – or lack thereof – to the fore. The Court of Justice of the EU, the European Commission and the European legislature are in the process of filling gaps. Now, fundamental rights may perform a 'unifying ideal' as much as they may be 'divisive' and differ from polity to polity (Weiler 1995). The strengths and weaknesses of the constitutional setting in which their protection develops or fails to develop at European level is thus highly sensitive.

One of the key responses to the Alston and Weiler proposal, back in 2000, came from Armin von Bogdandy. He stressed that although it is true that the protection against fundamental right violations in the context of EU intervention should be accompanied by corrective and distributive mechanisms, this ought 'not be cast in human right terms, let alone in terms of human rights policy'. This is for two reasons. Firstly, casting corrective and distributive mechanisms in human rights terms may ignore the careful balancing process between liberal freedoms, political rights and social entitlements that political institutions ought to perform. The danger here is that the fundamental right discourse may create an appeal for wording claims to entitlements in terms of 'fundamental rights' instead of using better suited tools. Secondly, the politicisation of fundamental rights will inevitably remain intertwined with a strong 'constitutional' framing. This would create pressure on the Court to increasingly use a human rights' discourse and place it – as well as itself – in a position of greater centrality in the European political process. Along similar lines as argued by D. Grimm in this edited volume, Von Bogdandy warned that the Court may not have the necessary legitimacy to depart to such a great extent from its primary function, which is to ensure that the result of the political process be enforced.

As the 'fundamental right pressure' on the EU increases, it is necessary to reflect on the interplay between European and domestic standards, institutional framework and techniques on how to shape the specific content of fundamental rights, weigh them against another as well as to ensure compliance. 'Adjusting to European Diversity' on such sensitive and important matters must be on the agenda for further reflection on the European project.

Bibliography

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