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Ever Closer Union?

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QUANTITATIVELY SPEAKING, the shift in the centre of gravity of work on the EU from America to Europe itself has been a product of a now vast academic industry: some five hundred Jean Monnet chairs are currently planted across the Union. In the midst of a sea of conformity, a cluster of thinkers has emerged whose writing represents a qualitative advance in critical understanding of the Union. In independence of spirit closer in type to Gramsci's 'traditional' intellectuals, as distinct from the 'organic' variant represented by Luuk van Middelaar, these are not to be found nestling in official positions; form no collective school of thought; and are of diverse national and generational backgrounds. A short list would include Giandomenico Majone (Italy), theorist of regulation; the jurists Dieter Grimm (Germany) and Thomas Horsley (Britain); the sociologists Claus Offe and Wolfgang Streeck (Germany); the political scientists Christopher Bickerton (Britain), Morten Rasmussen (Denmark) and Antoine Vauchez (France); the historians Kiran Klaus Patel (Germany) and Vera Fritz (Luxembourg). In the work of these and other scholars, the dynamics of European integration emerge in a cooler, more searching light than in van Middelaar's panegyrics, revealing what these omit and scrutinising what they don't with a finer lens.

The Union, as we know it today, is a complex composed of five principal institutions: the European Commission, the European Court of Justice, the European Parliament, the European Council and the European Central Bank. A consideration of these can begin with the term conventionally encompassing the story of their development, 'European integration'. This came from America, as Patel has shown, and was adopted to avoid another term too pointed for tactical purposes in the politics of the 1950s. The word it replaced was 'federation', rejected by governments and what interested opinion then existed, if ardently espoused by a small but committed minority of activists. For them and their academic sympathisers, 'integration' supplied a more neutral term for progress towards an ideal best kept, for time being, *in petto*. Nowhere was it more helpful than in characterising the work of the Court of Justice, which was, as van Middelaar emphasises, the first mover in the 'passage to Europe' after the Treaty of Rome.

Today the court remains, of all Union institutions, the most withdrawn from the public. Discreetly situated in Luxembourg, not exactly a European crossroads, and composed of judges appointed – one per country – by member states, its proceedings are hidden from public scrutiny; its decisions permit no admission of dissent; its archives grant minimal access to researchers. In modus operandi, the ECJ is the antithesis of the US Supreme Court, whose emoluments it comfortably tops – its president receives a salary worth $400,000, plus many allowances; the chief justice in Washington a measly $277,000. Its origins date back to the first stage of integration: the European Coal and Steel Community (ECSC) born of the Schuman Plan was endowed with a Court of Justice that was rolled forward into the European Economic Community set up by the Treaty of Rome five years later, and then into the European Union created at Maastricht.

Thanks to the pioneering work of a young historian from Luxembourg, Vera Fritz, we now have a detailed scholarly study of the composition of the court in the first twenty years of its existence. Her findings are illuminating. There were seven founding judges and two advocates-general. Who were they? The Italian president of the court, Massimo Pilotti, had been deputy secretary-general of the League of Nations in the 1930s. There he acted as the long arm of the fascist regime in Rome, advising Mussolini on what counter-measures to take to shield Italy from condemnation by the League for its actions in Ethiopia. On resigning his post in 1937, Pilotti took part in the celebrations in Genoa of the conquest of Ethiopia; and during the Second World War headed the high court of occupied Ljubljana after Italy's annexation of Slovenia, where resistance was met with mass deportations, concentration camps, and police and military repression. The German judge on the court, Otto Riese, was so devoted a Nazi that without any duress – he spent the war as an academic in Switzerland – he retained his membership of the NSDAP until 1945. His compatriot Karl Roemer, an advocate-general to the court, spent the war in occupied Paris managing French companies and banks for the Third Reich; after the war, he married Adenauer's niece, and acted as defence lawyer for the Waffen SS charged with responsibility for the massacre of the occupants of the French village of Oradour. The other advocate-general, Maurice Lagrange, was a senior functionary in the Vichy government, fully committed to the ideology of a 'National Revolution' to sweep away the legacy of the Third Republic. Acting as link-man between the judicial apparatus of the Conseil d'État and the political apparatus of the Council of Ministers, Lagrange was in charge of co-ordinating the first wave of persecution of French Jews. When Laval took over the reins of Vichy in 1942, transferring Lagrange back to the Conseil d'État, Pétain thanked him for his 'rare perseverance' in the regime's legislative and administrative work, to which Lagrange replied that 'for me it has been a great privilege to be so closely associated with the enterprise of national renovation you have undertaken for the salvation of our country. I am convinced that every Frenchman can and should take part in this work.' After the war he was chosen by the Americans to help democratise the civil service in Germany, and by Monnet to help draft the treaty establishing the Coal and Steel Community.

That figures like these were the ornaments of Europe's first Court of Justice reflected, of course, the closing of political ranks after the Cold War set in, when what mattered was not the misdeeds of the fascist past but the menace of communist present. It was a time when the last commander of the Charlemagne Division of the SS, fighting to the last bullet to defend Hitler in his bunker, could emerge as best choice for the Robert Schuman Prize for services to European unity.* Why should European justice too not let bygones be bygones? More generally, appointments to the court had little or nothing to do with juridical qualifications. Nearly all were political. The Belgian judge was a leading figure in the Catholic Party of his country; one of the Dutch judges was the brother of a prewar foreign minister; the French judge, Jacques Rueff, a former deputy governor of the Banque de France, was one of the founders of the Centre National des Indépendants et Paysans; a Catholic trade unionist from the Netherlands and a socialist magistrate from Luxembourg rounded out the set.

Among the next levy of judges were a founder of the Christian Democratic Union (CDU) in Berlin, later a deputy for the party in the Bundestag; the son of a leader of the Anti-Revolutionary Party (Calvinist) in the Netherlands; a former aide to Dino Grandi, minister of justice for the Duce, and brother of the then finance minister in Italy; a co-founder of the Christian Social Party in Belgium; a one-time Nazi and stalwart of the SA (1933 vintage), latterly a Social Democrat in Germany; a long-time functionary in the Italian colonisation of Rhodes; a former *chef de cabinet* to the civil and military governor of Algeria. *Justice à l'européenne* was never blindfold: its eyes were wide open, and round its head was a bandana gaudy with the colours of the establishment parties of the time.

The second wave of appointees also included one who was, in the words of an admirer, Europe's equivalent of John Marshall, the patriarch of the Supreme Court in the US, responsible for establishing its authority across the land. Robert Lecourt was a leading politician in the French version of the Christian Democratic parties of Italy and Germany, the Mouvement Républicain Populaire (MRP), which formed part of every government of the Fourth Republic, for which it supplied the second and second to last prime ministers. The most significant difference between the MRP and its equivalents in Rome and Bonn was that France possessed a large colonial empire of which the party was a zealous defender, resolute in prosecuting the country's wars in Indochina and Algeria. Joining de Gaulle's government with the arrival of the Fifth Republic in 1958, the MRP split over his announcement of a referendum on self-determination in Algeria. The party's long-standing leader, Georges Bidault, joined the paramilitary OAS, which launched armed resistance against de Gaulle in the name of *Algérie française* and narrowly failed to assassinate him, while his colleagues in the party hewed to de Gaulle. Lecourt, who like Bidault and others in the party had been active in the Resistance, had a doctorate in law and served as minister of justice in 1948, 1949 and 1957. Under de Gaulle, he held portfolios for France's colonies in Africa and elsewhere. In May 1962, he was appointed to the European Court of Justice.

Lecourt came to Luxembourg with a particular set of associations and convictions. Alongside his role as a deputy and minister for the MRP, he had been active since the late 1940s in the Nouvelles Équipes Internationales (NEI), the undeclared international of Christian Democracy in Europe, participating in annual congresses devoted to such themes as 'firmness of Christian Democracy in the face of communism in crisis', and in due course becoming head of its French section. He continued without compunction to lead it at the 1962 NEI congress in Vienna, held after he had taken up his post at the Court of Justice. The NEI was in favour of European unity, and Lecourt was himself a member of Monnet's Action for a United States of Europe, formed in 1955. He was an ardent federalist.

With this background, Lecourt's arrival in Luxembourg could not have been more happily timed. For on the docket of the court lay the case that would produce its first landmark decision, *Van Gend en Loos*, a suit brought by a small transport firm against the Dutch government for imposing a customs charge on its import of an adhesive from West Germany. To all appearances, a dispute of minor significance. In the shadows, however, powerful forces had been gathering around it. One was the European Commission in Brussels. There, heading its Legal Service, was the Frenchman Michel Gaudet. When working in the same capacity for the ECSC before the Treaty of Rome, he had already been determined to ensure that the future ECJ would not be an international court along conventional lines, but a federal supreme court on the American model. Corresponding in 1957 with Donald Swatland, a Wall Street lawyer who had been a wartime associate of Monnet, Gaudet explained that 'federal ideas are still very new in continental Europe', and sought guidance in promoting them. He also developed a close relationship with the American legal scholar Eric Stein, the first person anywhere to hail the promising judicial future of the Luxembourg court. In 1959 Stein invited Gaudet for a six-week trip to the US to learn about federalism first-hand. In return, while Stein was on sabbatical in 1962, Gaudet planted him in the offices of the Legal Service with a desk of his own, and invited him to sit in on briefings with lawyers preparing the Commission's case on *Van Gend en Loos* for the ECJ. Stein, proponent of a set of fundamental axioms for a constitutional order in Europe, could be counted on as a transatlantic zealot of federalism for the Old World.

Meanwhile, associations of jurists concerned to promote European law had been springing up in each of the countries of the Six, of which the German Wissenschaftliche Gesellschaft für Europarecht (WGE) was the largest and most important, followed by the Association Française des Juristes Européens. In close touch with these organisations, the Commission supplied

financial support for their meetings, and in 1961 Gaudet created an umbrella group, the Fédération Internationale pour le Droit Européen (FIDE), 'with the explicit aim of facilitating exchanges across political, bureaucratic and scholarly boundaries'. In the words of its first president, FIDE acted as 'a private army of the European communities'. 'In Europe around 1950,' a member of its German branch recalled, 'the idea of European unification was capable of evoking almost religious enthusiasm among young lawyers. We believed in the United States of Europe.' The Dutch section of FIDE was particularly active. One of its members acted as counsel for *Van Gend en Loos* and it can be surmised with some confidence that the case was set up by this lobby. However that might be, supported by the Commission it found the right rapporteur in Luxembourg, where Lecourt, hotfoot from Paris, wrote the historic verdict overturning a national law.

A year later, in 1964, came the second decisive act. In Italy, two lawyers outraged by the nationalisation of the electricity industry set up a challenge to the constitutionality of its issuance of a 1925 lire utility bill. When the Italian constitutional court ruled that nationalisation was not a constitutional issue and couldn't be challenged by reference to the Treaty of Rome, as passed subsequent to it, they appealed to the European court. Two weeks after its advocate-general argued that the Italian court could not be overridden, though it should be encouraged to seek ways of integrating European law into national law, the WGE held a meeting in Hesse at which three ECJ judges were present. There, a participant recorded, they sat with 'red ears' as a leading authority of the WGE, Hans Peter Ipsen, instructed them on the supremacy of European law over the national law of any member state. Ipsen's opinion would prevail: five days later Lecourt issued the ECJ's ruling on *Costa v. Enel* to the same effect. The cornerstone of European justice was laid.

Who was Ipsen? A jurist from Hamburg who joined the SA in 1933 and the NSDAP in 1937, becoming a full professor at the age of 32 on the strength of a doctorate subsequently published as a book under the title *Politik und Justiz*, which dealt with 'sovereign acts' by the state that dispensed with considerations of justice. Exalting the German version of these based on the '*Führergewalt*' of Nazi power – which had found expression since 1933 in arrests, purges, expropriations, the *Gleichschaltung* of trade unions – as superior to earlier merely 'governmental' legislation in France, and to the fascist variant in Italy, which was based on legislative authority in a division of powers system, the book understandably attracted the interest of the Nazi Party's central Chancellery. During the war, Ipsen served as a commissar for Hitler, dealing with universities in occupied Belgium. There in 1943 he extolled the 'external administration' of the Third Reich, which now covered Norway, Belgium, the Netherlands, France, the Ukraine, the Baltic states, the General-gouvernement of Poland, occupied areas of Serbia and Greece, not to speak of Alsace, Lorraine, Luxembourg, Southern Styria and the protectorates of Bohemia and Moravia – an area comprising some 2,865,000 square kilometres and 154 million inhabitants, in addition to the nearly 700,000 square kilometres and 90 million inhabitants of the enlarged 'inner Reich', and amounting in all to 46 per cent of the population of the continent. These lands held the promise of a future *Grossraumordnung* of Europe under Nazi command. Before the war was out, Ipsen became dean of the Law Faculty at the University of Hamburg and adviser to the Ministry of Justice in Berlin. In 1945 he was briefly deprived of his chair, but soon recovered it. A better than average Nazi career was capped with postwar honours as he became the doyen of European law, in 1972 authoring a monumental summum on the subject in the Federal Republic.

In 1967 Lecourt became president of the court. In this position, he wooed national judges with regular invitations to learn from Luxembourg: a systematic 'campaign of seduction' assorted with champagne brunches, aimed at disarming resistance to the supremacy it claimed. By the end of his tenure, some 2500 magistrates from across the member states had enjoyed his hospitality. In the other direction, judges of the court were encouraged to pay ceremonial visits to the governments of the Community, where they were typically received, an assistant could report, 'like

emperors'. Since so many of them had come from political backgrounds, or were scions of well-placed family dynasties, they could take these visits as opportunities for insider exchange of news and views of an informal kind, oiling the wheels of ECJ presence and influence. Lecourt, with long experience of journalism and politics, also encouraged his colleagues to give lectures and write articles for the cognoscenti to spread the glad word of the court, setting an energetic example himself.

In all this he was seconded from 1967 onwards by Pierre Pescatore, another kin appointment, brother-in-law of the prime minister of Luxembourg and a more outspoken and prolific champion of federalism even than Lecourt – his legal opinions serving in the words of one witness as the 'shock troops' of supranational advance. Together they propelled European justice forward in what would later be seen as its heroic age: one bold judgment after another sealing the court's authority over successive aspects of the life of the Community. Lecourt's record as its president, Pescatore declared after his chief had retired, was nothing less than 'a jurisprudential miracle'. His own contribution was to uphold still more firmly a 'teleological', rather than a merely literal reading of the Treaty of Rome. Whatever its clauses might or might not say, it was inspired by ideals inherent in 'the common liberal and democratic traditions of the peoples of Western Europe', and these should acquire legal force. After Lecourt had gone, it was Pescatore who delivered the last key judgment of the court as a driver of European unity, the market-levelling verdict of *Cassis de Dijon* in 1979, ruling that any product on legal sale in one country of the Community was vendible in any other. Lecourt's strategy had always been to move gradually, avoiding any blatant provocation of national governments, deflecting their attention from momentous juridical pronouncements by attaching them to matters of seemingly minimal commercial importance. In this case, the commodity was a blackcurrant liqueur.

After *Cassis de Dijon*, strategic initiative passed to the European Council which gradually took shape after its creation by Giscard d'Estaing in the mid-1970s, and to the Commission after it came under the command of Jacques Delors in the mid-1980s. The court handled an increasing number of cases and its judicial activism scarcely abated. But it now reinforced rather than led the Hayekian turn in the Community, which crystallised in the Single European Act that came into force in 1987. In the new century, it has enjoyed an extra shot of neoliberal adrenalin with the arrival in Luxembourg of converts to free-market principles from Eastern Europe, resulting in two judgments – *Viking* and *Laval* of 2007, pitting Baltic freebooters against Nordic trade unions – that undermined labour rights. These were a departure from the tactical precepts of Lecourt, arousing adverse public attention of the kind the court had always sought to elude, and conspicuous further steps did not ensue. After Maastricht an important task would still fall to the court, but of a different character. Its pioneering work – celebrated by van Middelaar as the coup that essentially founded today's Union – had been accomplished.

WHERE did this achievement lie? The two jurists who have spelled it out with greatest clarity are Dieter Grimm, for twelve years a judge on the German constitutional court, and Thomas Horsley, two generations younger, a senior lecturer at Liverpool University. The decisions of the court in the 1960s, Grimm has observed, were 'revolutionary because the principles they announced were not agreed on in the treaties' that created the ECSC and the EEC, and 'almost certainly would not have been agreed on had the issues been raised'. It was a court with an agenda that did not correspond to the intentions of its founders, seeing itself 'neither as the guardian of the rights of the signatory states, nor as a neutral arbiter between the states and the Community, but rather the driving force of integration'. Its assertion of the supremacy of Community over domestic, let alone constitutional laws, Horsley remarks, had no basis in the Treaty of Rome, which granted it rights of judicial review only 'with respect to acts of the Union institutions', not those of member states. 'Yet, in effect, this is exactly what the court now undertakes on a routine basis', proceeding as if 'the treaty framework, as touchstone on the internal constitutionality of all EU institutional activity, has never actually meant what it so clearly states'.

But is there anything particularly unusual about this? Isn't creative interpretation of laws by judges almost as familiar as of figures by accountants? On an alternative and less cynical view, isn't the outcome what matters? Ankersmit or van Middelaar would see this as an instance of the judicial sublime. Without going that far, it is reasonable to inquire what's wrong with the upshot. The answer lies at the level of both principles and consequences. As to the first, Horsley opens his study with the following grave statement: 'Among EU institutions, the court remains uniquely distinguished as an actor in the integration process. It is the only Union institution whose activities are not routinely scrutinised (by itself or by others) for compliance with the EU treaties.' Yet the 'treaty framework provides no basis whatsoever to justify differentiating between the court and the Union's administrative and political institutions with regard to compliance with its demands. The court is formally designated an institution of the Union under Article 13 TEU. As such, along with the Union's political institutions, it is irrefutably subject to compliance with EU treaties.' But once, from the moment of its coup, the court had authorised itself as the guardian of a constitution which had no basis in the treaties, but supposedly corresponded to their 'ultimate purpose', what other institution could bring it to book? Its circular self-validation ruled out any such challenge.

The court thus became not just a unique institution within the Community, but unique within supreme or constitutional courts, endowed with powers that no analogue in a democracy has ever possessed. In all other cases, the rulings of such courts are subject to alteration or abrogation by elected legislatures. Those of the ECJ are not. They are irreversible. Short of amendment of the treaties themselves, requiring the unanimous agreement of all member states, 'which, as everyone knows, is all but out of the question', as Grimm writes, there is no recourse against them. They are set not in stone, but in granite, and are far from neutral in effect. Written in 'a technical language that is often opaque', the court's decisions often cloak highly political issues in an apolitical fashion; they fall 'below the threshold of public attention', rendering their effects difficult *ex ante* to perceive; but should they subsequently be protested, they are treated as accomplished facts that citizens are told it is too late to do anything about – 'there is now no alternative.' Since these rulings have constitutional force, much of what would be ordinary legislation at national level has been built into successive sequels to the original Treaty of Rome – Maastricht, Amsterdam, Nice, Lisbon – resulting in documents of such 'epic length' that the Ireland's EU commissioner declared of the last that 'no sane and sensible person' could read it, after his prime minister admitted, after signing it, he had not done so: they amount, in effect, to enormous cryptograms beyond the patience or grasp of any democratic public.

The effect of 'constitutionalising' (the apostrophes are needed, because the treaties remain international pacts, not federal charters) issues like the permissibility of state aid to industries, or subsidies to public services, is to immunise judicial ukases on them against any ordinary exercise of the popular will. As Grimm writes, 'the stronger the substantive content of the constitution, the narrower the leeway for politics.' Typically, 'whatever is governed in the constitution is removed from the realm of political decision-making. It is no longer an object, but a premise of politics.' In the EU, 'it cannot be influenced even by the outcome of an election.' That the judges who deliver the decisions of the ECJ are themselves unelected is, of course, common though not invariable practice in constitutional courts. What is not, is the European court's 'insatiable jurisdictional appetite'. Its current president, the Belgian Koen Lenaerts, has spelled out the extent of that hunger. In his words: 'There is simply no nucleus of sovereignty that the member states can invoke, as such, against the Community.' The court aims at 'the same practical outcome as the one that would be obtained through a direct invalidation of member state law'.

To such self-aggrandising presumption corresponds neither judicial nor political competence. Even setting aside its systematic disregard for the limits to its scope in the treaties, Horsley writes, 'the court fares poorly in comparison to its counterparts on the classic measures of comparative institutional analysis: democratic legitimacy and technical expertise. Its judges are not elected, its deliberations are secret and, as a court of general jurisdiction, it enjoys no special expertise in the wide range of policy fields over which it intercedes to adjudicate.' But if it has no special expertise, it had from the start a particular orientation, 'a settled and consistent policy of promoting European federalism', and after the turn of the 1980s, a decided social inclination, which it has pursued, in Grimm's view, with 'missionary zeal'. Interpreting 'prohibitions of discrimination against foreign companies so widely' that 'almost any national regulation could be understood as a market access obstacle', and pushing 'privatisation regardless of the motives for entrusting certain tasks to public services', the court effectively deprived member states of 'the power to determine the borderline between the private and public sector, market and state'.

Such judgments come not from a eurosceptic standpoint, but from authorities committed to what they see as the achievements of European integration. For Grimm, what is needed to restore legitimacy to the process is essentially the de-constitutionalisation of political decisions to allow their discussion by voters and revision by legislatures. Horsley, after explaining what in his opinion have been the benefits of judicial intervention along with its costs, assures readers that he does not seek to undermine the Court of Justice, let alone add to 'denigration of the Union', but to enhance the legitimacy of its lawmaking. Yet if their accounts of the ECJ are those of friends of the court, it is not clear what its enemies would have left to say. The truth is that, on any reasonable reckoning, it would be difficult to conceive of a judicial institution in the West that, from its tenebrous origins onwards, was purer of any trace of democratic accountability.

The European Commission, whose evolution has been more winding, was in its early years the crucial partner of the court. Its history can roughly be divided into three phases, corresponding to the three figures who would hold its presidency for a full decade across two terms: Walter Hallstein (1958-67), Jacques Delors (1985-95) and José Manuel Barroso (2004-14). Hallstein, a German lawyer and diplomat – a Christian Democrat best known for the Cold War doctrine to which he gave his name, which made West German recognition of any state dependent on its refusal to recognise East Germany – was an outspoken federalist, who conceived the Commission as a proto-government of the Community, declaring national sovereignty a 'doctrine of yesterday', and awarding himself the status of 'prime minister of Europe'. De Gaulle put a brusque end to his pretensions in 1965, and he left Brussels a mocked and deflated figure. However, in his heyday, between 1958 and 1964, Hallstein presided over a Commission that was a dynamo of energy in finding ways and means to circumvent the Treaty of Rome in the higher interests of European unity.

As the French scholar Antoine Vauchez has shown, Brussels quickly became a magnet for corporate lawyers and investors from America, on the lookout for market opportunities and bringing with them the expectations and practices of a powerful federation. They soon formed close relations with the substantial number of high-flying Belgian commercial jurists, and this common milieu offered smooth intermediation between arriving multinationals and the Commission, and a propitious setting for exchange of ideas with key departments, such as Competition and the Legal Service. The European Economic Community created by the Treaty of Rome was not conceived as a free-fire zone for the market, and gave birth to a heavily subsidised and regulated Common Agricultural Policy that was anathema to liberal economists, prompting Hayek's fellow thinker Wilhelm Röpke, taking aim at its Belgian founder, to denounce it as nothing more than a miserable 'Spaakistan'. From the outset, however, the Competition Service of the Commission was a fortress populated by German ordo-liberals, whose devotion to market principles and determination they should not be impeded by improper meddling on the part of any state made them natural proponents of federalism, as Hayek had been before the war. In this cause, the Legal Service led the way, supplying the Court of Justice with the overwhelming majority of cases on which its verdicts could build an ever more extensive edifice of European law trumping the rights of national legislatures. Between 1954 and 1978 the ten most frequent plaintiffs before the court brought a total of 1381 cases before it: of these 1082 came from the Commission or its adjuncts – just under 80 per cent. The loop of collusion was tightly woven. By 1964, Hallstein could announce triumphantly that Europe had achieved 'the beginnings of a real and full "political union"'.

A year later he was a busted flush, and it took another twenty years for the Commission to recover its dynamism. When it did so, it came under other colours. Delors, whose youthful background was in the Catholic trade-union confederation in France, in due course joined the Socialist Party, and there advocated a 'social Europe'. But when there was a conflict between the adjective and the noun, the noun came first. As finance minister under Mitterrand, it was Delors who made sure that the socialist programme on which Mitterrand had been elected and had at first implemented, was ditched in the famous U-turn of 1983 to austerity, in order to keep the franc in the European Monetary System. At the head of the Commission, Delors was profuse with declarations of the need for social solidarity, and did in the end secure cohesion funds to help less advantaged regions in the Community. His main achievements, however, were to pass the Single European Act – crafted under him by an emissary of Thatcher – unifying and deregulating markets across the Community, and to drive through the Monetary Union that became the centrepiece of the Treaty of Maastricht. In his mind, these were the necessary preambles to European-wide social solidarity. Not only were they economically efficient in themselves, promoting growth that would eventually lift all boats; without them, governments could not be persuaded of the need to

redistribute wealth across classes and regions, essential if Europe was to win the full adhesion of its citizens. A far more charismatic and commanding figure than Hallstein, a politician who dealt on equal terms with all the national leaders of the day, Delors led them to the single currency, but failed to achieve the social objectives he had thought he could buy with it. All governments save Britain and Denmark signed up to the first. Few wanted much of the second. Delors did get cohesion funds – help for disadvantaged regions, not classes – out of Maastricht, but these were the crumbs of solidarity, not the loaf: compared with the subsequent impact of the single currency, little more than the alms of an instrumental charity.

Barroso, installed four years before the global financial crisis of 2008 and exiting late in 2014, just before Syriza came to office, was the second sitting prime minister of a member state to become president of the Commission. A politician of the Portuguese right, whose main previous claim to fame was hosting the Azores Summit, attended by Bush, Blair and Aznar, which launched the Iraq War, his appointment to Brussels the following year demonstrated how hollow was the nominal opposition of France and Germany to Operation Iraqi Freedom. An usher of austerity in his own country, his tenure marked the apogee of the neoliberal drive that followed the introduction of the single currency, with the promulgation of Bolkestein's Services Directive in 2004 and the arrival of the Treaty of Lisbon in 2010. But though personally as ambitious for his role as Hallstein or Delors, the ideas he represented were conventional wisdom by the new century, while since Maastricht the power of the European Council had grown significantly at the expense of the Commission, and in Barroso's second term it enjoyed its own president in Van Rompuy, a rival for the limelight with whom his relations were never good. His tenure was less consequential than that of his predecessors.

Today, 27 commissioners, one per member state, each allocated a portfolio – naturally, of vastly differing importance: Competition long since became the top prize – formally enjoy equal status under the president, currently the CDU politician Ursula von der Leyen. In reality, as the former director-general of the Legal Service, the all-purpose Brussels fixer Jean-Claude Piris (22 years in the saddle) pointed out in 2012, since this would mean that the fourteen commissioners from the Union's smallest countries, representing a mere 12.65 per cent of the population of the Union, could easily outvote the six commissioners from its biggest countries, representing 70 per cent of its population, decisions are always taken by 'consensus' – that is, behind a façade of unanimity, under the impulsion or veto of the six major states. Similarly, the president of the Commission, responsible for liaison with the heads of government of member states, normally confers only with those in that select group, or perhaps just with Berlin and Paris at the top of it: to do otherwise would be 'too time-consuming'. So composed, the Commission is formally vested with the sole power to propose legislation for the Union, but here the reality differs: more than two-thirds of its proposals are now hatched jointly with representatives of the member states in the dense undergrowth at Brussels, in which COREPER – which brings together permanent envoys to the EU – holds pride of place, and then rubber-stamped by the relevant Council of Ministers when passed up to it.

Below the commissioners, appointed for five-year terms, sits the permanent bureaucracy of the EU, some 33,000 strong – the 'Eurocrats', as coined by the *Economist* in 1961 and popularised with no pejorative intent by a book of Altiero Spinelli in 1966. In its higher echelons, where heads and assistants of the Commission's 32 directorates-general are to be found, recruitment was until the mid-1980s heavily weighted towards functionaries with a legal background; below them, in the body of the administration, a general humanistic orientation was encouraged, an MA in European studies an advantage, preferably from the College of Europe in Bruges. Thereafter, and with the subsequent enlargement of the Union to the East, the pattern changed. Under Romano Prodi (president 1999-2004), Neil Kinnock was entrusted with the task of modernising the system of pay and recruitment, bringing the tidings of New Labour to Brussels, with predictable outcomes. By

2014, two-thirds of the directors-general were trained in economics, receiving commensurately higher salaries to compete with the private sector; lower down, in the name of democratising future intakes, knowledge of foreign languages or of any general culture faded as requirements, giving way to MBAs.

For observers of the course of the EU since Maastricht, such changes might be logical enough – neoliberals were being neoliberalised – but they were not appreciated by many of those affected by them, their Anglo-Saxon origin rubbing post-Brexit salt in the wounds. 'After having broken Europe from the inside for years, they're breaking it from the outside by destroying its political legitimacy,' Didier Georgakakis quotes one as saying. Another, not as angry: 'It's insane when you think about it. They are leaving after having imposed their administrative model on us?' Yet another: 'The new model is the Procter & Gamble one.' Barroso's elevation, from presidency of the Commission to chairman of the international division of Goldman Sachs, was a natural sequel to these reforms. But the alteration of outlooks and mores in the Commission also has to be understood in terms of its surroundings. There are now around 30,000 registered lobbyists in Brussels. That is more than double the number infesting Washington, reckoned at a mere 12,000. In Brussels, 63% are corporate and consultant lobbyists, 26% are from NGOs, 7% from think tanks and 5% municipal. That Europe's executive could resist infection from the vapours of this swamp is implausible.

Since Delors, the Commission has had to play second fiddle to the European Council, which is unlikely to appoint a figure of his political stature to lead it again. Contemporary popular suspicion of the Commission as the bureaucratic demiurge of the Union is in that sense misplaced. But it remains a considerable power within the complex machinery of the EU, by reason of three attributes peculiar to it. The first is simply its size as a corps of permanent functionaries compared with that of any of the Union's other institutions, and the closed citadel of its workings – 34 different 'procedures' that no lay person is equipped to understand. The second lies in the sheer size of the rulebook that it wields as an instrument of power within the Union – the *acquis communitaire*, impenetrable to its citizens, but inescapable for its states, forming the primary means of the *Gleichschaltung* of Eastern Europe to EU norms, over which commissioners presided as proconsuls from Brussels. Originally put together as a codification of EEC regulations to which the UK, Denmark and Ireland would have to adapt on entry into the Community in 1973, when it already came to 2800 pages, the *acquis* now runs to 90,000 pages, the longest and most formidable written monument of bureaucratic expansion in human history (the notorious US tax code is a mere 6500). Foucault's overblown identification of knowledge with power here finds literal embodiment.

'This technical and cognitive equipment', Vauchez writes, going on to quote Joseph Weiler,

> is not only the instrument that officially defines and authenticates that 'Europe' to which candidates are applying in phases of enlargement; it equally inserts itself into the most routine operations of the EU, turning into Europe's 'constitutional operating system … axiomatic, beyond discussion, above debate, like the rules of democratic discourse, or even the very rules of rationality themselves, which seem to condition debate but not be part of it'.

Nor, of course, is it institutionally neutral.

> As it formalises a stable figure of Europe (its foundations, its missions) and of its value objects (its body of law), the acquis implicitly locates the ability and responsibility for the 'rational guidance' of European affairs in particular institutions (here: the Commission and the court) and professional groups (Euro-lawyers and EU civil servants), while dispossessing others (here: member states, constitutional courts, national diplomats, bureaucrats etc).

At the same time, along with the *acquis* as a disciplinary instrument, the Commission possesses a mollifying implement of power in the apportionment and disbursement of its cohesion funds, the *annona* of van Middelaar's latter-day Roman strategy for securing clients. These form a significant source of patronage, a means of inducing compliance or rewarding loyalty, whose promise could be critical in winning local elites to the will of the Union, if conditions were also bent where it was politic to overlook corruption in the interests of ideological subsumption, as in Romania and other candidates for membership. Little noticed at the time, the geographical enlargement of the Union to the East also produced the greatest operational enlargement of the Commission since Hallstein's time, as it took charge of the task. That some of its fruits have since become thorns in its side, as the more advanced states of Eastern Europe, once their elites were safely inside the Union, became less submissive to it, is another of the unintended consequences, or counter-finalities, of which there have been so many in the history of integration.

What of the European Parliament? Composed now of 705 deputies, apportioned between the Union's 27 countries to reduce somewhat the weight of the largest (Germany in particular), and shuttling monthly between Brussels and Strasbourg, it has historically been an ally of the Commission and the court in its aspirations to a federalist future for Europe. The Commission would have liked to become what Hallstein expected it to be, the governing executive of Europe, and the Assembly – it only came to be officially styled a Parliament in the 1980s – sought to become the legislature of Europe to which this executive would be responsible: hopes that did not materialise. Nevertheless, over time the Parliament has acquired a substantial bureaucratic infrastructure of its own – presently, some seven thousand functionaries service it – and a limited number of powers, of which the three most significant are the right to 'co-decision' with the Council on legislation proposed by the Commission; to reject – but not to amend – the budget proposed by the Commission; and to reject – but not to elect – commissioners chosen by the president of the Commission. What it does not possess are the rights to elect a government, to initiate legislation, to levy taxes, to shape welfare, or determine a foreign policy. In short, it is a semblance of a parliament, as ordinarily understood, that falls far short of the reality of one.

Voters are aware of this, and have shown scant interest in it. Turnout at European elections is notoriously poor, falling steadily across four decades to a point where its recovery to just over 50 per cent in 2018 could be hailed as the sign at last of a robust European democracy, though this was still ten points below the figure in 1979, when the first such election was held. Nor are most of the citizens who do take the trouble to go to the polls voting on European issues. Rather, in casting their ballots for or against local parties, they are expressing their views on the performance of their national governments. The result is an assembly composed of some two hundred heteroclite parties, which then group themselves into six or seven blocs, whose unity does not run deep – ties between deputies in national delegations are often closer than with their pan-European affiliates. No division between government and opposition can emerge, because there is no government to be formed or opposed. The pattern instead is for grand coalitions along German lines, bringing together centre-right and centre-left blocs to control the proceedings, and electing the chief officers and key committee chairs of the assembly from their ranks, with variable input from Liberal and Green auxiliaries. The political difference between the two main blocs, in general faded enough at national level, becomes all but completely invisible in the successive GroKo combinations at Brussels and Strasbourg.

As might be expected, in this huge, heterogeneous, largely ceremonial body, deputies have little appetite for going through the motions of actually being there. Average attendance is around 45 per cent. Virtually all the work is seconded to committees, where behind closed doors the mysteries of 'trilogue' are enacted: that is, represent-atives of the Parliament confer with

representatives of the Council of Ministers and of the Commission as to what legislative proposals emanating from the Commission, and typically pre-cleared by member states and their permanent representatives in Brussels, can be accepted for transmission to a vote in the chamber – the discussions mostly revolving around matters of procedure rather than substance. As Christopher Bickerton notes, 'between 2009 and 2013, 81 per cent of proposals were passed at first reading via the trilogue method. Only 3 per cent ever reached third reading, which is where texts are debated in plenary sessions of the Parliament.' Such is the alchemy of co-decision.

In 2014, when turnout was just 42.5 per cent, the Parliament launched a campaign with wide media support to convert the elections to it into a pan-European exercise in the democratic will: each of the political blocs would nominate a candidate for the presidency of the Commission – legally in the gift of the Council – and the bloc securing the largest number of seats, equipped with the backing of the whole Parliament, would then elevate its *Spitzenkandidat* to the command of the Commission, as any other legislature might vote a government into office. The centre-right gained most votes; its candidate was the fixer Jean-Claude Juncker. After some tergiversation, Merkel prevailed on the Council to accept him and Juncker became president of the Commission on the strength of about 10 per cent of the European electorate. Had she not done so, Habermas told the *Frankfurter Allgemeine Zeitung*, it would have been 'a bullet to the heart of the European project'. Five years later Macron put his foot down, and the next president was picked according to the rules by the Council, ignoring the hapless *Spitzenkandidat*. Indignant at this rebuff to its pretensions, there was talk of a rebellion in the Parliament, which though it has no right to select, can reject a Commission president. But wouldn't that provoke a crisis of the European project? The terrifying prospect of open disagreement between its institutions quelled enough spirits for Ursula von der Leyen to sidle into office.

The function of the European Parliament, which neither aggregates nor channels the wishes of voters, from whom once the polls close it becomes completely detached, is, as the Italian scholar Stefano Bartolini has put it, 'elite consolidation'. That is, a process in which the parties collude with one another to present the appearance of a democratic assembly, behind which oligarchic coteries are comfortably entrenched. These would be happy to gain more powers, but have no interest in ceding any to those they nominally represent. The width of the gap between the institution and the populations beneath it can be judged from the rare occasions on which the latter have been able to make their voice heard directly. In the Netherlands, turnout for the European elections of 2004 was just 39 per cent. A year later, it was 63 per cent for the referendum on the Draft Constitutional Treaty – which, while supported by 80 per cent of the Dutch delegation at Strasbourg/Brussels, was rejected by 62 per cent of Dutch voters. The Parliament is not what it seems, and is the least consequential component of the Union. Does that mean it is little more than a glorified fig-leaf? Not quite. Appearances matter, and in its fashion the Parliament plays a constructive role for the Union, supplying a measure of the legitimation that any self-respecting liberal order requires. However limited citizen investment in them may be, synchronised pan-European polls are better than none, and their beneficiaries can continue to hope that a vibrant federal polity will one day arise from them.

Of an altogether different order of political avoirdupois is the European Central Bank, created to manage the single currency that came into force in 1999. Today it is one of the most powerful EU institutions, some would say, the most powerful. Based in Frankfurt, its governing council is composed of the heads of the central banks of the Eurozone countries and the six members of its executive board, meeting every two weeks. Its proceedings, unlike those of the Fed or the Bank of England, but in keeping with those of the European Court of Justice, are secret. Occasionally, unlike the ECJ, a member may resign, but its decisions are formally unanimous. No dissent is ever published. The Treaty of Maastricht conferred absolute independence on the bank, which operates without any of the counterweights – Congress, the White House, the Treasury – that surround the Fed, embedding it in a political setting where it is publicly accountable. Unlike any other central bank, the independence of the ECB isn't merely statutory, its rules or aims alterable by parliamentary decision: it is subject only to treaty revision. Nor, unlike the Commission, Parliament, Court of Justice or even Council, are its proceedings cumbersome. It can act with a speed and impact no other EU institution can match.

Maastricht gave the ECB a single objective. Where the Fed is charged by Congress with ensuring maximal employment as well as stable prices, the single responsibility of the ECB was to ensure monetary stability in what would become the Eurozone. From the outset, as economists were aware and not a few pointed out, the economies due to adopt the euro, differing widely in size, composition and level of development, in no way met the criteria of an 'optimal currency area' as set out by the economist Robert Mundell and others. Quite the contrary. But this did not deter the Delors Committee which drove the project through, since its aims were political rather than economic: in part to tie down a reunified Germany within the Community, but more broadly to create a currency which would lock those states that adopted it so closely together that they would be obliged to follow monetary union with political union. As an explicit goal, that was a bridge too far at Maastricht, where federalist hopes were dashed by intergovernmental bargaining of a traditional sort. Still, the treaty created a European Economic and Monetary Union, the assembled politicians who signed the document characteristically giving little thought to what its consequences might be when they were no longer in office. The portals of a political union were not entered; nor were they foreclosed.

The disjunction between means and ends soon made itself felt. Wim Duisenberg, the crude Dutch banker who became the first president of the ECB, prided himself on being a rough-hewn champion of financial orthodoxy on the best Anglo-Saxon lines. Yet he was overjoyed when Greece, after suitably cooking its books, promptly adopted the euro. His reasons were not economic, but political. Though the single currency was not, for those administering it, simply a short-cut to federalism, it was – as Giandomenico Majone, a thinker truer to classical principles, would put it – a 'prestige project' designed to raise the profile of the EU in the world. A decade later, the Eurozone would be paying for this vanity. Jean-Claude Trichet, the Frenchman next at the helm in Frankfurt, was a smoother figure, but equally blind. His response to the global financial crisis was pro-cyclical: raising interest rates to force governments to cut public spending, imposing austerity as a cure for the crash. His successor, Mario Draghi, was widely celebrated for reversing course, spraying money into the Eurozone economies with purchase of government bonds and a generous dose of other forms of liquidity. In fact, there was more overlap between the two than generally believed. Draghi, responsible for a sweeping privatisation progamme in Italy, was more outspokenly neoliberal, pronouncing Europe's social contract obsolete in the pages of the *Wall Street Journal*. But in August 2011, the two jointly wrote a secret letter to Berlusconi, then Italian prime minister, demanding that he resort to a Cold War emergency mechanism to cut pensions and other public expenditures – an unprecedented violation of its mandate by the bank. Three months later Berlusconi was gone. For his part, Trichet had by the end of his tenure come round to the use of schemes to circumvent the ban in the Treaty of Maastricht on the purchase of

public debt by the bank. Praising her chief, the former head of research at the ECB, Lucrezia Reichlin, told the *Financial Times* in February 2012: 'The whole concept of getting around European rules and doing QE without calling it QE was extremely clever.'

Five months later, Draghi announced to an audience in the City: 'Within our mandate, the ECB is ready to do whatever it takes to preserve the euro.' After boasting of the superiority of the Eurozone's economic performance to those of the US and Japan (the latter held less 'socially cohesive' than the Union, where half the youth of Italy, Spain and Greece were unemployed), he ended by making clear what was ultimately at stake in the crisis. No one should 'underestimate the amount of political capital that is being invested in the euro'. It was to safeguard this that the *ultima ratio regis* of the hour was required: 'targeted longer-term refinancing operations', 'outright monetary transactions' and the rest, or clever ways of getting around European rules, 'within the mandate' of the bank – that is, in blatant breach of Articles 123 and 125 of the Treaty of Lisbon. In due course, their legality would be challenged before the ECJ. But just as it had no compunction in interpreting the Treaty of Rome to arrogate powers to itself of which no trace can be found in the document signed by the Six, so the ECJ had none in deciding that Lisbon meant the opposite of what it said. Since it was now a question not of reading into a treaty what it did not contain, but of purging one of what it did contain, the contortions required were, in Horsley's words, 'herculean'. The comedy of judges solemnly explaining that financial assistance under the European Stability Mechanism constituted an act of economic, not monetary policy, and was therefore perfectly in order, while outright monetary transactions were an instrument of monetary, not economic policy, and therefore were also perfectly in order, calls for the pen of a Swift. What did the 'no bail-out clause' of Article 125 actually mean? That bail-outs were fine, so long as they served 'the higher objective' of preserving the euro. Or in van Middelaar's gloss, to break the rules was to be true to the contract.

In Germany successive attempts in 1974, 1986, 1993 and 2009 to contest the validity of laws or treaties of the Community before the country's own constitutional court have all yielded the same result. The judges in Karlsruhe have declared that Germany's *Grundgesetz* – Basic Law – may not be overridden by the European Court, but since no such infringement has 'so far' or 'yet' occurred, the plaintiffs have no case. Last year, it was called on once more, this time to pronounce on the legality of the blessing the ECJ had given to the ECB's bond-purchasing programme. Once again it declined to say this was illegal, while observing that the proportionality of its effects had not been adequately appraised, and instructing the German government and the Bundesbank to conduct such an appraisal and ensure appropriate proportionality. There was uproar in the Euromedia. The *Financial Times* was apoplectic. 'The German court has set a bomb under the EU's legal order,' Martin Sandbu cried. The court had 'launched a legal missile into the heart of the EU. Its judgment is extraordinary. It is an attack on basic economics, the central bank's integrity, its independence and the legal order of the EU,' Martin Wolf thundered. 'Future historians may mark this as the decisive turning-point in Europe's history, towards disintegration.' They need not have turned a hair. The Bundesverfassungsgericht is a mostly toothless body, as its studiously suspended judgments indicate. Best known for meekly overturning Germany's Basic Law to allow Schröder and Merkel in 2005 to stage an unconstitutional election before polls were due, it takes care to avoid serious offence to the *Obrigkeiten* of the day. Berlin and Frankfurt are unlikely to have much difficulty sending Karlsruhe back to sleep.

No piety is intoned so frequently by the EU, or identified so complacently with itself, as the rule of law. *Fatta la legge, trovato l'inganno* is popular wisdom in Italy. The adage implies that those who make and those who trick the law are not the same. What distinguishes the Union is that the two are one. In the hands of the European Court and the chorus of its admirers, the rule of law has more or less come to mean the misrule of lawyers who will stop at nothing to bend texts to their pleasure, at the expense of ordinary understandings of a principled justice. So what, if higher

needs are served – the survival of a monetary union on which rational labour markets, taxes and transfers, the prosperity of all depend? But as more than one writer has replied, are bankers and judges the most competent authorities to determine what pensions or wages should be? Certainly, in these matters they do well enough for themselves. Is that the most appropriate qualification? Fritz Scharpf's dictum stands: in the EU, it is precisely those institutions which have the greatest impact on the daily life of most people that are furthest removed from democratic accountability – the European Court of Justice, the European Central Bank, the European Commission.

Less removed is the last of the Union's institutions, the European Council, since it comprises heads of government enjoying majorities in genuine parliaments, the product of meaningful elections. As such, it has become the peak authority of the Union. Van Middelaar's *Passage to Europe* is largely the story of its rise to this position, and its claim that the Council is now the principal driver of European integration is warranted. What it does not do is look beneath the hood. What kind of a vehicle has been advancing? That is the subject of the most fundamental of all works on the EU of the past decade, Christopher Bickerton's *European Integration*, whose anodyne title, shared by dozens of other books, conceals its distinction, which comes in the subtitle that delivers its argument: 'From Nation-States to Member States'. Everyone has an idea what a nation-state is, and many know that 27 countries (with the UK's departure) are member states of the European Union. What is the conceptual difference between the two? Bickerton's definition is succinct. 'The concept of member state expresses a fundamental change in the political structure of the state, with horizontal ties between national executives taking precedence over vertical ties between governments and their own societies.' This development first struck him, he explains, at the time of the Irish referendum on the Treaty of Lisbon. 'When the No result was announced, members of the Irish government expressed a mixture of surprise and embarrassment: surprise as they were unfamiliar with the sentiments prevailing within their own population, and embarrassment because this compromised many of the promises they had made to their peers at previous meetings in Brussels.' (The description is something of an understatement. Spotted outside a pub in Dublin that evening, Brian Lenihan, minister of finance at the time, was white around the gills.)

How did the transition from nation-state to member state come about? After the Second World War – Bickerton follows Alan Milward and John Ruggie here – a class compromise between capital and labour was reached in Western Europe, taking the organisational form of a corporatist state committed to full employment, a range of welfare services and a set of transfer payments. Based on steady economic growth, the ideological consensus of this period presumed a strong measure of government involvement in economic life, and delivered rising popular living standards. Yet at the same time 'a more egalitarian and redistributive social contract' than in the prewar years 'coincided with a narrowing of the political spectrum': deradicalisation of the left presaging a broader depoliticisation, and lack of political experimentation leading to the dominance of centrist parties. The general economic crisis of the 1970s saw the unravelling of this class compromise, as growth sputtered, industrial unrest grew and Keynesian ideas gave way to Hayekian or Public Choice doctrines dismissive of a social contract. For a time, governments continued to try familiar recipes, but by the early 1980s neoliberalism had arrived, pioneered by Thatcher, followed by Mitterrand's U-turn, and the crushing of Danish, Belgian and British strikes. Liberated from the pressures of organised labour, governments converged towards deregulation and privatisation to liberate markets for innovation and competition according to the prescriptions of the new period. The Single European Act of 1985 marked their transposition to the plane of the Community.

The relaunching of the dynamic of integration under Delors was thus the outcome of a pattern of domestic political change in which policy priorities had become fiscal retrenchment, wage repression and a return to financial orthodoxies of classical stamp. Achieving sustained voter

assent to this course was never easy, but as processes of integration deepened, involving ever closer ministerial co-ordination across borders, governments could present unpopular measures as necessities flowing from the constitution of the Community. From the time of Montesquieu and Madison onwards, constitutionalism had involved the idea of a self-limitation of the political will to safeguard the liberties of the subject: a set of internal constraints – division of powers, checks and balances – to insure the nation against tyranny, whether rule by monarchs or mobs. In due course such became the standard liberal format of the nation-state. With the advent of the European Community, once the Court of Justice had succeeded in effectively, if not formally, constitutionalising it, member states accepted a set of external constraints whose form was radically different. 'The active subject, namely the people, is not doing the binding,' Bickerton writes:

> Rather, national governments commit to limit their own powers in order to contain the political power of domestic populations. Instead of the people expressing themselves qua constituent power through this constitutional architecture, national governments seek to limit popular power by binding themselves through an external set of rules, procedures and norms. An internal working out of popular sovereignty that serves to unite state and society is replaced with an externalisation of constraints to national power intended as a way of separating popular will from the policy-making process.

By the time the Cold War had ended in 1990, European executives had consolidated the transition to member-statehood. With Maastricht and the proclamation of monetary union, the constraints this involved naturally increased, as would their convenience to governments seeking to impose neoliberal ordinances of one kind or another on their citizens. In 1992-93, Giuliano Amato put through a 'fiscal correction' – i.e. an austerity package – amounting to no less than 6 per cent of the GDP of Italy in the name of the *vincolo esterno* of Union necessity. When the single currency, far from bringing renewed growth and prosperity, plunged Italy into prolonged stagnation and regression, and the Eurozone as a whole into crisis, the response was not to loosen the corsets of memberhood, but to tighten them still further, with the spectacular constriction of popular sovereignty in the Fiscal Compact of 2012. In this, the external restraints of the Union were for the first time written, at German behest, into the internal constitutions of successive member states, and their annual budgets, at the traditional heart of domestic politics, became subject to invigilation and instruction by envoys from Brussels.

Though friction is rarely absent from such visitations, the discipline they represent has for the most part come to be accepted as part of the natural order of things. 'For member states,' Bickerton writes, 'the Eurozone is not just a currency union but also a collective framework for co-ordinated macro-economic policy-making to which all belong and which in multiple ways is constitutive of their identities and interests as member states.' Not least in shielding them from the intrusion of potential protest, as the outcome of expert committees – ratified in ministerial conclaves, announced by heads of government and presented to citizens at home as *faits accomplis* – becomes the norm. In this process, what sets the EU apart, as a political structure unlike any other, is the presumption of consensus and the protocols that follow from that, which form the working code of its being. In Brussels, emissaries from the different nations confer on questions in their specialised fields, developing an esprit de corps and professional identification with the technical side of their discussions, in a system designed to exclude the unpredictability of public debate or political disagreement. The same pattern holds higher up, as decisions are passed to the Council of Ministers in any given area, and where required up to the European Council itself, where the result is anointed with family photographs and unanimous communiqués. The imperative of consensus is all. 'This explains why EU policy-making is so secretive and lacks what is elementary to political life at the national level,' where conflict is open and normal, Bickerton notes.

Structurally, he judges member-statehood a ‘fragile and contradictory’ social form, at once powerful in immunising national governments against domestic social pressures, and weak in lacking any roots remotely comparable to the vertical bonds between governments and populations of the classical nation-state. The form of national politics to which it gives rise, often held to pit a dominant technocracy against an oppositional populism, tends rather towards a malign combination of the two, with leaders mixing a populist stance on immigration with a technocratic approach to the economy, like Sarkozy, or posturing like Blair as a pragmatic manager close to the feelings of ordinary people; Macron offers the latest version of the blend. The shallowness of the attachment of elites to the citizens they represent inevitably strengthens their sense of solidarity with one another in the club of Union leaders where they gather every two months or so. But the fellowship it offers is not, so Bickerton, a stable refuge. Viewed historically, member-statehood is a ‘hard but hollow state form’.

Institutionally, however, it has been filling up. Since 2017, the European Council possesses for its bimonthly sessions a new symbol-saturated seat in Brussels – lantern in shape for the warm glow its deliberations radiate, polychrome in fittings for the diversity of peoples illuminated by them – where the heads of state and government, plus the presidents of the Commission and of the Council itself congregate. They in turn are flanked by the Eurogroup of Eurozone finance ministers, who meet monthly, and whose president may also attend the Council when so invited, as too the high representative of the (considerably less important) Foreign Affairs and Security pillar of the Union. Though the supreme political authority of the Union, the European Council does not itself legislate: laws are lower-order matters for the tractations of the trilogues beneath it. Its business is with the big decisions of the Union: essentially, crisis management, treaty revision and foreign policy. That is, urgent economic and ‘security’ (viz refugee) problems; constitutional questions (the word is banned by the Treaty of Lisbon, but the thing remains); relations with other powers (and the periphery of the EU, where enlargement lingers in the Balkans). These are where the ‘alarums’ arise that call for the valiant ‘excursions’ of van Middelaar’s tales of the Union. Notable examples: handling Greek delinquency; utilising Turkish venality; riposting to rejection of the Draft Constitution with a recension of the same at Lisbon; punishing Russia for annexation; and Britain for desertion.

In principle, the weak link in the Council’s jurisdiction of *Chefsachen* is economic, since it has no authority over the ECB, whose independence is absolute and power over the economies of the Union unrivalled. In practice, the Eurogroup provides informal liaison, a representative of the bank attending its meetings, which are even more confidential than those of the Council itself, not least since the presence at them of the bank, in derogation of its independence, requires a veil of discretion. By training and outlook finance ministers tend to be like-minded, as Varoufakis discovered in his brief stint with the Eurogroup. Disagreements are more frequent in the Council. Before its meetings, participants can stake out contentious positions, while during and after them, leaks – typically garbled soundbites for media consumption – will report clashes of opinion, victors and losers in argument, to the taste of the leakers. But the proceedings themselves remain concealed from the public, and issue in decisions which are virtually always announced *nem con*, in keeping with common practice across the institutions of the EU.

In the case of the Council, more is at stake in such displays of unanimity than the generic omertà of the European political class. For the truth behind them is uncomfortably at odds with the formalities of its composition, in which all member states are technically equal, and can block decisions in conflict with what they believe to be vital national interests. The reality, of course, is that with vast disparities between countries ranging in population from eighty million to half a million, two states – Germany and France – de facto command the proceedings by reason of their size and power. Of the pair, heirs of the treaty that de Gaulle sealed with Adenauer, Germany is

now the stronger and larger economically. But though this advantage makes it *primus inter pares*, its margin of superiority, and relative weight within the Eurozone as a whole, is too limited to give it the hegemony its bolder theorists claim. France remains militarily stronger and diplomatically more seasoned, in a relationship on which each depends in equal measure. Since they do not always agree, and when they do, may not always insist, not every decision of the Council is a translation of their will. Simply, without need for any hint of a veto, no proposition that is not to their liking has any chance of passage, while any proposition behind which they unite with joint force may be inflected, but will not be resisted by the other two dozen or so states of the Council. The Treaty of Maastricht was the fruit of a pact between Mitterrand and Kohl; the Treaty of Lisbon, between Merkel and Sarkozy; the current Covid Package, between Macron and Merkel. In each case the initiative came, unstoppably, from Berlin and Paris. In each case, the details were adjusted to accommodate lesser states, without its direction being altered.

The only occasion when a major proposition on which Germany and France insisted met intransigent opposition, the Fiscal Compact vetoed in 2011 by Britain, lit up the realities of the structure of power in Europe. Without delay, Berlin and Paris simply bypassed the Council with an international instrument outside the legal framework of the EU, the Treaty on Stability, Co-ordination and Governance, to which all the other member states dutifully signed up. The effect was exactly the same. Cameron was left to complain that Merkel and Hollande had not even bothered to respect appearances, stitching together this arrangement on Union premises in Brussels. The lesson is clear. Should the two European hegemons encounter – post-Brexit – similar obduracy in a matter to which they attach importance, they can respond with a bilateral (or multilateral) international treaty, making an end run round the obstacle in the same way. It is scarcely a coincidence that Jean-Claude Piris ended his 2012 book, *The Future of Europe*, by pointing out how convenient and fruitful the resort to such 'additional' treaties might be. As things stand, however, with Britain out of the way, there is little call for the device. One incongruous fact alone is enough to bring home the outlook, and power, of the Franco-German duo. There have been three presidents of the European Council since the office was created in 2010. Of these, two have been Belgian – a country with just over 2 per cent of the population of the Union. Why? Because inconspicuous politicians of a weak state, handily placed between France and Germany, can be relied on not to cross either, but to help out the good intentions of both.

It has often been remarked that the institutional ensemble of the EU is *sui generis* as a polity, a creation more easily defined negatively than positively. It is not, obviously enough, a parliamentary democracy, lacking division between a government and an opposition, competition between parties for office, or accountability to voters. There is neither a separation between executive and legislative powers, along American lines; nor a connection between them, along British or Continental lines, in which an executive is invested by an elected legislature to which it remains responsible. Rather it is the inverse that holds: an unelected executive holds a monopoly of legislative initiative, while a judiciary, self-invested with an independence subject to no constitutional audit or control, issues decisions that are effectively unalterable, whether or not they conform to the treaties on which they are nominally based. The rule of the Union's proceedings, whether they are presided over by judges, bankers, bureaucrats, deputies or prime ministers, is secrecy wherever possible, and their outcome, unanimity.

In the words of Majone, its most clear-sighted liberal critic, the world the Union inhabits is one in which 'the language of democratic politics is largely unintelligible'. Unique in modern constitutional history, he observes, 'the model is not Athens but Sparta, where the popular assembly voted yes or no to the proposals advanced by the Council of Elders but had no right to propose measures on its own account.' The political culture of Union elites resembles that of the European Restoration and its sequels, before the reforms of the franchise in the 19th century, 'when policy was considered a virtual monopoly of cabinets, diplomats and top bureaucrats'. The

mental and institutional *habitus* of Old Regime Europe is still alive in the 'supposedly postmodern system of governance of the EU'. In sum, the order of the Union is that of an oligarchy.

The historically minded can reply, yes, but the Restoration brought peace to Europe that lasted for forty years, or on a looser reckoning a century. Hasn't European integration, however undemocratic in structure, achieved the same for three-quarters of a century, after the terrible internecine wars of 1914 and 1939? In the official credo of the EU, probably no other claim is repeated so insistently, and movements questioning the Union are frequently attacked as carriers of the bacillus of future wars. The truth, of course, is that after 1945 there was never any risk of another outbreak of hostilities between Germany and France, or any other of the countries of Western Europe, because the Cold War made the whole region an American security protectorate. Nato, not the EEC, laid the military conflicts of the past to rest. As Albert Hirschman once caustically put it: 'the European Community arrived a bit late in history for its widely proclaimed mission, to avert further wars between the major Western European nations.' A beneficiary of the Pax Americana rather than a progenitor of it, the Union faced its first test as an actual keeper of peace in Europe after the Cold War. It failed miserably, not preventing but stoking war in the Balkans, as Germany backed Slovene secession from Yugoslavia, the starting gun for successive murderous conflicts that the EU, dragged in the wake of Helmut Kohl, proved incapable of moderating or bringing to halt. It was once again not Brussels but Washington that finally settled the fate of the region. Even the enlargement of the Union to include the former countries of the Warsaw Pact, its major historical achievement, followed in the footsteps of the US, their inclusion in Nato preceding their entry into the EU.

Human rights are another *point d'honneur* in the public relations repertoire of the Union. The Council of Europe, which contains twenty states not part of the EU, including Russia, Turkey, Georgia and Azerbaijan, established a Convention on Human Rights and a court to protect them back in 1953, whose provisions were essentially reproduced in 2000 in the EU's Charter of Fundamental Rights, much as the EU would purloin the Council's flag as its own. As elsewhere, proclamation and observation of such rights are not the same. Ordinary police brutality is certainly less than in the United States, where prison conditions are also worse, and inmates far more numerous. But this scarcely distinguishes the EU, the same holding for Canada or the countries of Western Europe that don't belong to the Union. More pointedly still, when America required European co-operation in renditions, EU members complied with assistance in kidnappings and supply of torture chambers on Union soil, documented and denounced by a Swiss prosecutor to the Council of Europe, without a finger being lifted by the EU to bring those responsible to book. Where infractions of its charter come from governments it dislikes, as currently in Hungary and Poland, the Union will threaten sanctions. Where they come from governments with which it wishes to keep on good terms, it will turn a blind eye, or seek to render them acceptable, even if the infractions are far more extreme – as in the long-standing military occupation and ethnic cleansing of Union territory in northern Cyprus; let alone in Eretz Israel, early in the history of the Community invited to consider membership, and more recently described by the Union's first high representative for foreign affairs as an honorary member. As for refugees, the record of European inhumanity in the Aegean and Libya speaks for itself. Migration has largely become a security question.

Solidarity, another important term in the EU lexicon, refers to two features of its self-image. The first emphasises the structural and cohesion funds, the 30 per cent of the Commission's budget dispensed to poorer countries and regions of the Union for transport, environmental and other projects. Though not always well spent, these are genuinely redistributive and have historically had a significant impact on the biggest beneficiaries: Spain, Greece, Portugal and Ireland. Larger is the Common Agricultural Policy, which disburses more than 40 per cent of the budget and is regressive, with the great bulk of the money going to the richest farmers, above all in France,

though titled millionaires in Britain have collared the largest bonanzas of all. Combined, the equity effect of the two kinds of expenditure is probably neutral, possibly negative. The second sense of solidarity refers to European 'social policy', broadly defined as measures to reduce the vulnerability of wage-earners and their families, and less well-off citizens in general, to the vagaries of the market. Wolfgang Streeck has traced the evolution of these from the 1960s to the present. Originally, they comprised attempts to alter capital-labour relations by promoting industrial co-determination that would give workers rights of representation on company boards, resisted by business. The Vredeling Directive giving form to these hopes was ditched after the passage of the Single European Act, and attention shifted to questions of health and safety and equal opportunity.

At the insistence of Delors, proclaiming the need for a Social Europe, the Monetary Union created at Maastricht was accompanied, in the thicket of adjacent and subsidiary clauses in the treaty, by a Social Chapter promising enhancement of labour rights, from which Britain opted out. So little came of this piece of symbolism, Streeck remarks, that its later adoption by New Labour 'did nothing to prevent the rise of inequality, the decay of collective bargaining and the deterioration of employment conditions in the UK over the years that followed'. EU-wide, these were years in which businesses successfully attacked public service provision in the name of competition law, while the Court of Justice dealt successive cold blows to trade-union rights. The current European Pillar of Social Rights, announced in 2017, does not redress the trend: as a uniform set of injunctions amid huge differences between member states, it is largely a dead letter. In public and academic arenas, Streeck comments, talk of a Social Europe has faded as the EU becomes identified primarily as a vehicle of 'universal peace, human rights and civilised speech, rather than as an alternative to unbridled capitalism'. His conclusion: 'What seems clear is that the project, reaching back to the 1970s, of a supranational European Welfare State giving political definition to a "European social model" has come to an end.'

What about European economic growth, in that case? While the GDP of Western Europe grew at some per 2 per cent a year between 1900 and 1950, it bounded forward at 5 per cent a year from 1950 to 1973, a speed without precedent in its history. But how far was that due to integration? In those years, West Germany and Italy grew by 5 per cent annually, France 4 per cent, Belgium 3.5 per cent and the Netherlands 3.4 per cent. But outside the ECSC and EEC, Austria averaged an annual growth rate of 4.9 per cent, Spain 5.8 per cent, Portugal 5.9 per cent and Greece 6.2 per cent. Pent-up prewar demand, state intervention and international co-operation all played a role. Given that the boom started a decade before the EEC, integration alone cannot explain these fast growth rates. The EEC's impact on the boom has never been subject to research of real accuracy. But if it existed, in these years it was small and may even have been negative. In Patel's view of this period, there was 'virtually no public pressure to present a clear account of the economic achievements of the integration process'. The Community was not at this stage particularly neoliberal, as sometimes later alleged. While competition policy may have been shaped by German ordo-liberals in the 1960s, their impact was still highly selective, without incidence on most of its budget, which was dominated by concessions to French farmers they abhorred. Structurally, European integration was 'born technocratic', as it has remained. For its citizens, the Community was what Patel terms an 'adiaphoron': that is, according to Stoic philosophy, 'a matter having no moral merit or demerit'. Such was popular indifference to it that by the end of the 1960s only 36 per cent of its inhabitants could correctly name all six members of the EEC.

How has the Eurozone fared since 1973? In 2000 the Lisbon Agenda of the European Council promised productivity gains of 4 per cent a year, about double the US rate. In reality, they increased at somewhere between 0.5 and 1 per cent a year. As for overall growth, here are the figures.

GDP GROWTH IN THE EURO ZONE

Years	Average GDP growth
1973-79	2.7
1984-94	2.5
1994-98	2.3
1999-2003	2.1
2004-08	1.8
2012-19	1.2

In other words, a steady decline since 1973, even before the collapse of 2020, when in the first six months of the year, GDP fell 15.7 per cent. As for the contribution of integration to the record, Barry Eichengreen and Andreas Boltho – two economists committed to the benefits of European unity – reckoned in a 2008 paper that over the long run, from the time of the ECSC to that of the EMU, 'European incomes would have been roughly 5 per cent lower today in the absence of the EU.' Hardly a momentous achievement. Nor has intra-EU trade increased greatly since the Union, the over-valuation of the euro favouring imports from the US, China and other countries, while diverting trade from within the EU. More generally, the socio-economic and geopolitical heterogeneity of the fifteen members of the Union in 1995, further stretched by the arrival of another twelve over the next decade or so, made it decreasingly possible to arrive at common Pareto-efficient decisions. In practical terms, enlargement to the East rendered 'Social Europe' as conceived by Delors impossible, since the average income of the new members of the Union was only 40 per cent of the average of the fifteen West European members. EU resources were insufficient to close the gap.

The contrast between West and East has not been the only fracture in the Union. For Bolkestein on the right, the single currency was afflicted with a birth defect. Its fatal weakness, he told an audience in 2012, lay in

> trying to serve two groups of countries that differed greatly in their economic culture, lands of the North that respected rules and discipline and lands of the Mediterranean that sought political solutions to economic problems. The first group – Germany, the Netherlands, Finland and others – wanted solidity; the second wanted solidarity, which means other people's money. [Laughter in the auditorium. Bolkestein did not laugh.] That could not and did not go well. Herman Van Rompuy was right to call the euro a sleeping pill: the Mediterranean countries could enjoy artificially low interest rates, which they did abundantly, dreaming of a *dolce far niente*.

For Claus Offe, on the left, it is clear that 'the euro has rendered European democratic capitalism more capitalistic and less democratic,' disembedding financial markets from states and exposing states to their vicissitudes, in a system that Offe judges no more favourably, if for opposite reasons, than Bolkestein. 'The euro under the ECB's regime over-generalises monetary policy across widely diverging economies and their given position in the business cycle. Instead of "one size fits all" we are left with a situation where "one size fits none" due to the institutional incapacity of monetary policy to respond to the specifics of countries and their situations.' No sooner has he casually said this, however, than he soberly retracts it. For there is one country of which this judgment does not hold: his own. Given the huge advantages that Germany derives from the euro, Offe writes,

> any conceivable German government will do everything in its power to keep the common currency intact by avoiding the default of any member of the Euro club. For this currency allows the German government to live in an ideal world where pleasure is not followed by regret, meaning that an export surplus is not followed, and its continuation thus limited, by the appreciation of the currency of the country.

Matters are otherwise, of course, on the receiving end of such appreciation. The Southern and Eastern belt of states are paying the price of a misconceived currency union that cannot now be reversed. Even if 'the introduction of the euro into a fundamentally flawed currency zone was a huge mistake, the same applies by now simply to undoing that mistake,' since the dissolution of the Eurozone would be 'equivalent to a tsunami of economic as well as political regression'. Hence the 'trap' Europe is in – it can neither move forwards, nor backwards.

Fritz Scharpf, to whom Offe looks for counsel, is less categorical. Also as of 2015, he concluded that the EU decision to rescue the single currency rather than dismantle it was creating an economically repressive and politically authoritarian euro regime that was enormously counter-productive. By forcing member states in trouble to adopt fiscal austerity and internal devaluation, reducing labour costs with the beggar-my-neighbour effects of a permanent downward pressure on wage incomes, social transfers and public transfers, official policy was 'utterly devoid of democratic legitimacy'. In future, Scharpf argued, much of the Community's *acquis* would have to be de-constitutionalised, returning it to the ordinary conditions of legislative re-examination and revision. For the moment, no responsible politician regarded this as feasible. But if a second big shock, comparable to the impact of the global financial crisis, hit the system, European democracy would have to be rebuilt from the bottom up, restoring the necessary barriers to market interference with it at both supranational and national levels.

The last and bleakest word comes from Dani Rodrik. Might the closest historical analogy to the euro, as we know it today, be the Gold Standard as it existed prior to the First World War, before there was any developed welfare state or counter-cyclical policies? Both of these now exist and complicate the tasks before the Union. Can democracy, sovereignty and globalisation be happily combined? Regrettably, an EU-wide democracy does not exist, and the reforms adopted since the crisis of 2008 – banking union, stricter fiscal oversight – have made the Union more technocratic, less accountable and more distant from European electorates. What American examples show is that European elites must make a choice, opting either for political union at the cost of national sovereignty, or for national sovereignty at the cost of political union. Intermediate solutions – a little democracy at national level, a little more at EU level – won't work. The reality, Rodrik concludes, is that it may be too late to take the first path, in the hope that a European *demos* will ultimately emerge to correspond with a European federation. If that is so, it is hard to see how a single currency can be reconciled with multiple democratic polities. It may be better to jettison the hope that one day economic union will prove compatible with democracy as eventually reconstituted, and ask instead what degree of economic integration is compatible with democracy as currently instituted.

So if we look for silver linings in the overall performance of the EU since Maastricht, it is not easy to find them. International peace, human rights, social solidarity, economic growth: the cupboard is pretty bare. Yet, as defenders can point out, it is not completely empty. Two features of the EU that make a genuine difference to the lives of many of its citizens are plain. The first is the convenience of travel without a passport in the Schengen zone, which still excludes Bulgaria, Romania, Croatia, Cyprus and Ireland of the EU, but includes Iceland, Norway, Liechtenstein and Switzerland from outside the EU. More generally, there is the variety of products on supermarket shelves that followed the single market, the Union interpellating its citizens as consumers rather

than political subjects. Loss of low-key facilities of this kind would not pass without protest; habit is a powerful force in human affairs. In this century, too, political expectations in advanced societies have declined nearly everywhere. If the Union's advertisements for itself, on which it spends a fortune in euros every year, meet no more than a listless acquiescence, rather than active endorsement from the populations over which it presides, that is sufficient for its purposes. Fear of the unknown is the more important integument.

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Footnotes

* See the remarkable portrait of his grandfather, Gustav Krukenberg, by Peter Schöttler in *Du Rhin à la Manche: Frontières et relations franco-allemandes au XXe siècle* (2018).