

Quarterly essays (in English and French) on the theme "Querying economic orthodoxy"

No. 69 – April 2017

Europeans must cooperate

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The day will come when you France, you Russia, you Italy, you England, you Germany, all you nations of the continent, without losing your distinctive qualities or your glorious individuality, will form an intimate union in a single superior entity, and you will constitute a European brotherhood, as completely as Normandy, Brittany, Burgundy, Lorraine, Alsace, all our provinces, have joined together in France.

Victor Hugo, speech for the opening of the Congress of Peace in Paris, 21st August 1849.¹

We have seventy years of peace and stability behind us, an era without precedent . . . The process of European unification is a success with no equivalent in history.

Frank-Walter Steinmeier, *The Union is our strongest asset in the face of globalisation* in *Le Monde* (Paris), 6th July 2016. The writer is president of the German Federal Republic.

The fact that we have succeeded in giving birth to a community under the rule of law in Europe is a major achievement of civilisation.

Andreas Vosskuhle, interview in *Le Monde*, 22nd October 2016. Herr Vosskuhle is president of the German Federal Constitutional Court.

Europe is not merely a big market. It is above all the continent where men and women must be assured of respect for their rights.

Viviane Reding, interview in *Le Monde*, 8th September 2012. Madame Reding is a member of the European Parliament and a former vice-president of the European Commission.

The European Union must find a better balance between the freedoms it provides and the protections it offers.

Luuk van Middelaar, *L'Europe doit amorcer une triple conversion* in *Le Monde*, 19th March 2017. The writer is a former adviser to Herman Van Rompuy, the first president of the European Council.

A new model of international cooperation

Europe is in the course of building something completely new. This is a community of nations among which cooperation, peace, civilised order and the rule of law are guaranteed by a common democratic regime, not by the domination of one nation over others.

In the past, among groups of diverse nations or peoples, peace and the rule of law were enforced, during all too rare periods of good international order, by means of empire. The Romans imposed on Europe and its environs the *Pax Romana*, which is reckoned to have lasted a little over two centuries; the Roman Empire itself lasted much longer, but was often far from peaceful. The British created the *Pax Britannica*, which covered a much wider area; it lasted some two centuries in India, but less elsewhere.

In an empire, one powerful state dominated many others. Such a regime could maintain peace by suppressing habitual conflicts between tribes or peoples; but imperial dominance provoked, sooner or later, rebellion by the subject peoples and ultimately dissolution of empire.

The European project rejects the domination of many nations by one, in favour of ordered cooperation among many nations, considered as equals before the laws of Europe. *Cooperative order* replaces *imperialist order*. It is a better way of escaping the curse of international anarchy that, throughout earlier European history, has wrought such terrible damage.

The European Union is too often seen as merely a free-trade area: the *Single Market* as they say in Brussels, the *Common Market* as it was called in its earlier years. Yet, as Madame Reding reminds us, the European Union is far more than a big international market. It is an association of countries which share certain essential civilised values: democracy, tolerance, solidarity, respect for the rule of law. What the peoples of Europe need today, but still too often lack, is *cooperation*, not the divisive spirit of separation and national self-assertion preached by the eurosceptics.

Benefits of cooperation

The European Union has eliminated barriers between nations, thus encouraging the various European peoples to know each other better, to build cross-border friendships, collaborations, studies and exchange of ideas. They can travel between countries without border formalities and (within the euro zone) without the bother and cost of money-changing. They can trade freely among themselves and thus enjoy duty-free access to each others' produce: Spanish pomegranates in France, Scotch whisky (at present) in Italy, Greek *feta* in Germany.

The *Erasmus* programme,² born thirty years ago, is a major European success. It is best known as an inter-university project providing grants for students who wish to study at foreign universities in Europe. Recently, more than a quarter of a million students have participated each year. The programme is very popular and continues to expand; it is pleasing to note that the budget for the seven years 2014 - 2020, at 14.7 billion euros, is 40% higher than the budget for the previous seven years.³ More than four million people, mostly young, are expected to benefit over this current period.

In fact, Erasmus (now known as Erasmus +) is not only for university students. It also caters, for example, for staff and pupils in schools as well as universities; for apprentices and trainees; for young people looking to take part in voluntary services. It aims to help reduce unemployment by providing new learning and training opportunities.⁴

Upholding European standards on human rights

The *European Court of Human rights* (ECtHR), founded in 1959 and based in Strasbourg, is distinct from the European Union and has many more participating countries: a total of 47, including Russia, Turkey and Ukraine. Lawyers tell us that, while Brexit would remove the United Kingdom from the jurisdiction of the European Court of Justice, which is an organ of the European Union, it would not alter the fact that Britain, as a member of the Council of Europe and a signatory to the European Convention on Human Rights, is subject to the jurisdiction of the ECtHR. However, some retrograde English eurosceptics would like Britain to disengage from the human rights convention too.

This Court deals mainly with complaints (*applications* in the language of the Court) by individuals who have suffered violations of human rights, as defined by the Convention, and who have been unable to obtain redress from the courts in their own countries. The Court can require a defendant state to pay compensation to an applicant (plaintiff). Moreover, *a well-established interpretation of the terms and notions of the Convention, given by the Court, forms part and parcel of the Convention.*⁵ Since the Convention itself is binding on signatory states, it follows that the Court's well-established interpretations of the Convention become binding on those states. They create obligations on signatory states to adapt their own laws and practices, so as to bring them into line with the Convention as interpreted by the Court. The Convention is seen not as a static document, but as a *living instrument*, that develops and adapts in response to changing circumstances and shifts in public opinion.

As Professor Gerards explains,⁶ *national courts generally are expected to follow the Court's interpretations in their own judgements, although they can, of course, adapt them to the concrete circumstances of a case.*

This is what raises the eurosceptics' hackles; they grumble that "our laws are being altered by a foreign court". But it is not a foreign court; it is our Court, belonging to all of us participating countries, with judges and staff from each of them. The need for each country to accept its authority is a natural consequence of our cooperation. Sovereignty, instead of being an exclusive national possession, is now a resource to be shared. As Lord Mance, one of the judges of the British Supreme Court, has said, *at the international level, the Convention has been a positive inspiration for - and an impetus for*

*lifting standards of treatment of - Europeans across the wider continent.*⁷ If every country in Europe were to go its own way on human rights legislation and practice, is it likely that they would try to outdo each other in imposing higher standards? Or is it perhaps more likely that they would outdo each other downwards, on the basis that lower standards would attract fewer immigrants?

One might imagine that the authoritarian Russian government would take no notice of the Court of Human Rights' jurisprudence. Yet apparently it does, to some degree, take notice. According to Olga Chernishova, a Court official who manages cases concerning Russia, *concrete changes in Russian law show the ECtHR is making a difference . . . a compensation system has been introduced for those affected by the non-execution of domestic judgements . . . there are new laws on prison overcrowding . . . people are telling us all the time that things could be much worse without this court.* Moreover, she says, *Russian constitutional court rulings now routinely make reference to ECtHR judgements.*⁸

Many applications concern lack of fair trial or inordinate delays in court proceedings. Others concern police brutality, torture or other degrading behaviour, and maltreatment of asylum-seekers. The Court is busy - too busy! Applications roll in at the rate of around 50,000 a year, a sad indication of the obstacles many people face in asserting their rights within their own countries. These people need help from an external authority; that is where international solidarity comes in. The full national sovereignty demanded by eurosceptics and extreme nationalists would deprive them of such help.

The principle of external intervention was expounded by Pope John Paul II in his message for the World Day of Peace, 1st January 2000:

*The duty of protecting these [human] rights extends beyond the geographical and political boundaries within which they are violated. **Crimes against humanity cannot be considered an internal affair of a nation.***

But some people still do not agree with this. They would surely reject the notion that a business, college, church or other organization, which commits crimes against its own members on its own premises, should be exempt from external interference by the police and the magistrates. Yet they imagine that what a national government does to its own citizens within its own borders is strictly its own business; it should not attract interference from outside its borders, however outrageously the government misbehaves. They call this *national sovereignty*. If sovereignty has that meaning, we are better without it.

Common problems, common solutions

We need cooperation, because many of the problems that afflict Europe cannot be tackled effectively by nations acting independently. The threat of catastrophic climate change, caused largely by emissions of carbon dioxide, means that every country needs urgently to convert its industries, its buildings and its transport, from carbon-burning energy to electricity generated by renewable methods (wind, solar and water power). This conversion may increase costs; we have to accept these higher costs, since the alternative to conversion is disaster. But if one country alone raises its costs, this will divert businesses to countries with lower costs, unless the countries concerned agree to convert on a common timescale. A Europe of cooperating states, with a central leadership capable of pulling them all in the right direction, can achieve this. A Europe that is a medley of states going their independent ways may delay conversion till it is too late; no state wants to be the one that suffers from making the first move.

Moreover, environmental degradation knows no boundaries. Atmospheric pollution crosses borders, so does pollution of river and ground water, and disease-causing exposure to products containing toxic chemicals. Pan-European standards required in all EU member countries can avoid disputes between member states and promote overall high standards. Last February, the European Commission sent 'final warnings' to France, Germany, Italy, Spain, and Germany concerning non-compliance with the EU's limits for emissions of nitrogen dioxide. If these warnings are ignored, the Commission may take the governments concerned to the European Court of Justice, which may impose hefty fines.

If countries have widely differing standards for wage levels, working conditions, redundancy compensation etc., then businesses will tend to migrate to the countries with the lowest standards - a form of unfair competition and a "race to the bottom". A more cooperative Europe could impose minimum, or less divergent, standards to mitigate this problem. Likewise, European product quality standards can help to prevent races to bottom, and can restrict cheap imports (*dumping*) of low-quality goods from outside Europe, that undermine our industries.

Health insurance in Europe is financed mainly by taxes and other obligatory contributions. Likewise, cultural and educational institutions need support from public funds. But competition between countries, to attract businesses by cutting back tax and contribution rates, can lead to cutbacks in public services. The departing British government proposes to cut company and other taxes with a view to attracting businesses away from the Continent. But this uncooperative behaviour may lead to deterioration of public services in Britain, and loss of some business activity on the Continent. Both sides could lose out.

Avoidance of the international plague of tax avoidance calls for close cooperation and fiscal harmonisation between countries. It is useless for the French government to tighten up rules about transfers of cash into tax havens, if French individuals or businesses that don't want to contribute their fair share can simply move their money into a neighbouring country that has weaker rules. The rules need to be pan-European, in other words cooperative.

The need for European countries to work together closely to resist terrorism and other external menaces, is surely self-evident.

Many countries have worked long and hard towards making Europe a continent of cooperation; this is a work in progress, there remains much to be done. It is deeply regrettable that many people today seem to have lost interest in this noble project, to hanker after the old regime of "sovereign" nations going their own ways, pursuing their own interests rather than Europe's common good and, in consequence, too often quarrelling or fighting among themselves. Let us hope that the Scots and the Northern Irish will have the good sense to break free from this miserable tendency and remain with our European partnership.

References

¹ This speech is published in *Douze Discours* (Librairie nouvelle, Paris, 1851), page 18, and in editions of Victor Hugo's complete works. Notice that Hugo's vision of a united Europe includes Russia, and that England is considered as a 'nation of the continent'.

² The programme takes its name from the famous Dutch scholar Erasmus (1469 - 1536); the name is also an anagram for *European Region Action Scheme for the Mobility of University Students*.

³ See http://europa.eu/european-union/topics/education-training-youth_en

⁴ See http://ec.europa.eu/programmes/erasmus-plus/individuals_en

⁵ Janneke Gerards, *Advisory Opinions, Preliminary Rulings and the new Protocol no. 16 to the European Convention on Human Rights*, in *Maastricht Journal of European and Comparative Law* (2014, vol. 21, no. 4), page 635. The author is Professor of European Law at Radboud University Nijmegen (Netherlands).

⁶ Ibid.

⁷ Lord Mance of Frogal, speech at the World Policy Conference, Monaco, 14th December 2013. See <https://www.supremecourt.uk/docs/speech-131214.pdf>

⁸ Olga Chernishova, interview with Jon Henley in *The Guardian* (London), *Why is the European court of human rights hated by the UK right?*, 22nd December 2013.