

BOOK REVIEWS

Luuk van Middelaar, *The Passage to Europe* trans. from Dutch by L. Waters. New Haven: Yale University Press, 2013. 352 pages. ISBN: 9780300181128. GBP 25.

Terms matter. Speaking of “European integration”, of the “European project”, or of “the European construction” carries with it important assumptions about the way we understand the European Union, its structure and dynamics, its political context and legal system. This book brings into the consciousness of the actors and scholars of Europe the interpretive and structuring force of the entrenched vocabulary they use. Luuk van Middelaar’s ambition is to escape “the prison of the existing language”. His hypothesis is that the available narratives of Europe have overlooked something essential. The historiography of contemporary Europe is full of soothing stories describing the great work of great characters, the great success of ambitious projects, “the moral triumph of European unity over the evil forces of division”. Similarly, fierce critics of the European construction (let’s dare to employ the term) rarely offer a general view of the distinctive features of this achievement, contenting themselves with attacks (many of them justified) on the way the European institutional machine works. Luuk van Middelaar’s book, *The Passage to Europe*, is therefore a book to prize, if only as a unique specimen of a rare species which attempts a complete yet critical account of European Union history. To do so, it relies on the “historicity of politics”. The original sub-title in Dutch is significant: it refers to the *history of a beginning*. The author is keen to stress that the subject of the book “has no final outcome”. He is interested in the continuing emergence of a new political creature. According to van Middelaar, politics is ontologically an experience of time, a “passage”, a course of things, made up of facts and events. Quoting John Pocock, he endorses the idea according to which “politics is the form in which a society deals with unexpectedness”. The challenges posed by historical social, political and economic events to the creation of a new political entity are the driving force to the advent of a common political will. The ability to respond, react, and adapt to a moving reality is the way in which Europe has become and still is becoming a Union. Unsurprisingly, then, the appeal of the book lies in the way it picks up events and convinces the reader that these are crucial moments of transition, decisive steps towards the shaping of a European polity. In this regard, his fresh interpretations of the 1965–1966 empty-chair crisis or of the 1985 Milan summit are particularly compelling.

However, the significance of this book is not only to offer a new account of the “European experience” (a term the author would favour). This book is probably the most comprehensive effort to expose the fallacies involved in the classic effort to conceptualize Europe as a supranational phenomenon, governed by new principles of representativeness, which are different from the representation of States in international relations, while postulating the absolute precedence of the Union’s institutional framework in the defence of the common interests of the Member States and their peoples. This was a vision fashioned in particular by Pierre Pescatore, an actor as well as a distinguished scholar of the European phenomenon, in his book *The Law of Integration. The Emergence of a new phenomenon in international relations, based on the experience of the European Communities* (Sijthoff, Leiden, 1974). Assuming a realist point of view, van Middelaar condemns this effort as an illusion. Europe does not work as an integrated “whole” embodied by “Brussels”, the European institutions and their agents. It no longer relies on an equilibrium between a normative regime, which raises the authority of Union law by making it a sovereign federal type legal order, and a Union decision-making regime controlled by the Member States acting jointly and severally, as famously depicted by Joseph Weiler in *The Transformation of Europe* (*Yale Law Journal* (1991)). Europe has exited from the institutional framework laid down in the Treaties. The European Union makes more sense as an “ensemble of States”. Not a collection of isolated sovereign States which cooperate

in matters of mutual interest, but a club of Member States, a self-organized club taking responsibility to speak “on behalf of Europe”, in the name of the peoples of the Member States.

There is something strongly appealing in this idea that both supranationalist/functionalist and intergovernmentalist accounts of European integration have disregarded a fundamental feature of it. Just as the composition of the Universe consists mainly of “dark matter”, a substance largely unknown and different from the atoms and the normal matter that constitutes the physical nature, Europe has its dark matter, indispensable to make sense of the course of things, yet different from the institutional structures and interests we are familiar with. Van Middelaar calls this “Fortune” – as Machiavelli did. The “tribunal of events”, not law or diplomacy, shapes the Europe we live in. The author discloses a hidden base for the emergence of a European polity while remaining vague about what it really is. He makes little effort to solve the riddle of what this ghostly fortune is made of. His main effort, however, is to construct an alternative theory of representation for Europe. Aware of their degree of interdependence but often reluctant to use the constraining means of supranational Europe, the EU Member States have developed alternative mechanisms of cooperation, thereby creating an original sphere of joint action, a true political space outside the Union’s institutional framework. The author emphasizes the essential, yet often invisible and inaudible character of this “intermediate sphere”, which arises between the internal sphere of the Community/Union’s institutions and the external sphere of the sovereign States acting to further their interests in the international realm. Whilst apparently weak, “the weakness of the intermediate sphere conceals a strength. Its ‘on behalf of Europe’ is the strongest – when it speaks at all”. This sphere of action has some distinctive features: it relies on the basic fact of mutual membership; it is indifferent to the formal division of powers between the Union and its Member States; it is best represented within the Union’s institutional framework by the European Council and more particularly by the president of the European Council. “Ultimately, the circle of members comes before the Union”. The circle formalized within the European Council assumes a real political authority; it shoulders responsibility for Europe in the world, it speaks in the name of both the Union – as its members represent countries which are each a part of the whole – and the multiple national citizenries – for its members have been chosen by their respective peoples. Undoubtedly then, it constitutes the most legitimate embodiment of the European Union.

The book can readily be seen as a long and detailed justification of the rise of the European Council, of the authority and legitimacy of its president. It is indeed through this channel that the Union is supposed to rally the support of the peoples. Van Middelaar considers that all the methods used so far by the Union’s institutions to make Europeans get a sense of “we, Europeans” have failed. He identifies three basic strategies designed to that effect. The Greek method, relying on the “parliamentarization” of the Union, elections and referendums to give citizens a voice and a choice on central issues, has proved itself to lead to a political deadlock. The Roman way, defined by clientelism in which voters are considered as clients who are interested in Europe only for the possible benefits it could bring through subsidies, funding and protection, has revealed itself to be insufficient. Ultimately, the German approach, based on the reminder of a common cultural, historical and linguistic background to create a feeling of belonging to a society which shares common grounds, has been ineffective. Europe episodically experiences crises of legitimacy without providing a convincing way out. In this context, the most promising “passage to Europe” would be to provide the peoples with “visible drama”, sources of excitement about Europe, and the appropriate arena for this is, in the author’s view, the club of the national political leaders meeting in the European Council.

There can be little doubt as to the importance of this institution in the current European landscape. It seems difficult, however, to argue that it actually operates in a way that lives up to the expectations and requirements stemming from mutual membership. This is not, however, where we see the core of the message of Van Middelaar. The book signals a shift in the foundations of the Union’s power and, subsequently, in the structure of the European legal argument. The idea that Member States are internal parts of a “whole”, a global system driven by a grand design towards political unification, embodied by the European Court of Justice which would play the role of “pseudo constituent power”, converting the ultimate objectives of

integration into functional means of action and interpretation, is no longer tenable. The European institutions and EU legal orthodoxy must recognize the role of the collectivity of Member States and accept the existence of two legitimate subjects of representation, the Member States' peoples alongside the Union's interests. Similarly, the German Constitutional Court and national legal orthodoxy must admit that Member States are part of a club, the "European club" which they cannot dissociate from. In a discussion on the Union's constituent power, the author gives a twist to Karlsruhe's famous expression "Herren der Verträge" stating that "the Member States as a whole are a single 'master of the treaty'".

This message is particularly suited to political as well as legal conditions of our time. The "intermediate sphere" has gained scope in the context of Europe's economic crisis with the development of Joint Member States' actions outside the framework of the Treaties where, according to them, the Union is supposed to make use of its own powers. Similarly, van Middelaar's emphasis on the importance of mutual membership seems vindicated when the disputes between Member States (Hungary and Slovakia about the status of the Hungarian community in Slovakia, UK and Spain on the status of Gibraltar, Germany and Greece on the scope of financial solidarity) or between political communities within the States (Scotland within the UK, for example) appear to be at the forefront of the European agenda.

It is certainly disturbing to learn that lawyers have contributed so little to the fashioning of contemporary Europe, despite their cleverness and claim to have done so. Responding with classic "EU law" arguments that the current developments lack legal basis and legitimacy is certainly insufficient. Whether the rising generation of EU lawyers will have any impact in this regard will depend on their efforts to liberate themselves from the supranational legacy, whilst being able to remain loyal to a certain idea of Europe.

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