

A time to mourn

How I learned to stop worrying and quite like the European Union

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Introduction

Like most of those who think about Europe, I used to be troubled by its lack of democracy. There are plenty who try to cleverly argue their way out of the so-called democratic deficit, but none who entirely succeed. The fact remains that the EU is too far away, too policy-focussed, too convinced of its own importance and rightness, and too independent to really conform to modern ideas of properly subservient government.

The mystery seemed to me why we allow this to be so. It is not so very difficult to see what is apparently wrong with Europe from a democratic perspective. Why has there never been enough public pressure to bring it properly under control?

And then I realised that while the EU is imperfect, so are Europeans. They struggle with integration, as they struggle with globalisation, liberalism, immigration and social change. They cannot bring themselves to embrace it with enthusiasm, but are clear-sighted enough not to turn their backs either. Giving Europe the institutions that would make it decent would give it solidity too, and so we circle around the inevitable with a sulky half-heartedness.

The EU is just a mirror, and a conversation partner, to mix metaphors horribly. On the one hand its gaps and limitations reflect our blind spots and unresolved struggles. Criticising it is possible, but more interesting is to use it to analyse the real state of Europe, and of integration, meaning integration as a substantive process occurring within and between individuals and communities. As a corollary, any criticisms can be passed on through the EU to those individuals and communities; the buck stops with us.

On the other hand, by looking in this European mirror we get feedback about ourselves, and join a dialogue with ourselves about all the policy problems of modern societies. Like a therapist, by letting us see ourselves, the EU helps us get on.

Which led me to the thought that even, or especially, the EU's failings are helpful. For a continent in transition, and with strong and recurrent urges to lapse into a sentimental and nostalgic nationalism, there is a value in being confronted with our democratic and logical inadequacies. This is the EU as agent of truth and of change, and its most important aspects are then precisely those where it satisfies least. So I came to appreciate the EU for everything that is wrong with it, and to see the persistence of its problems and controversies as a sign that the continent, at last, is not running away from the hopelessly difficult questions about power and freedom that government always brings. We may not have solved them yet, but we are not ignoring them either.

This essay therefore concentrates on the downside of European integration, in particular the loss of local autonomy which it entails. It suggests that whether or not this is worthwhile - and this is not a Eurosceptic essay - it is painful for states and peoples, and that pain is too often ignored by everyone except foaming-at-the-mouth Europhobes. Borrowing some ideas from psychology and social science, the essay suggests that if the EU wants to be more loved it needs to acknowledge and recognise this pain that it is causing. Some concrete suggestions are made for how laws and courts could be changed with this end in mind.

Using the theme of loss, the essay interprets recent referenda, notably the Irish, as reflecting less hostility to Europe than difficulty accepting its consequences, an unprocessed grief at the partial death of the nation state. The EU needs to help people through this bereavement, instead of ignoring it. Still, on the bright side, it is notable that despite all the apparent political problems of recent years the EU keeps on working. In fact circumstances around the Constitution and the Lisbon Treaty are like a stress test to see what the EU can withstand, with the most deeply encouraging results one could imagine: despite the grumpiness, the disagreements, and the political road accidents, we just keep on coming back to Brussels to solve our problems. There must be a surprisingly deep commitment to some kind of EU.

Ireland

Ireland is a small country but its vote on the Lisbon Treaty was a large blow to those who thought that the Treaty mattered to the future of Europe. That blow is made all the more painful by the fact that it is not obvious at the time of writing this essay that Lisbon or its reforms will in fact be instituted any time soon. Other matters have pushed it down the agenda, to the advantage of those who would see it put away for good.

The Irish referendum nevertheless serves to reveal aspects of the current state of Europe which are of longer lasting importance, and far greater interest, than the relatively technical improvements found in the Treaty. It tells us something about the relationship between Europe and its people, and gives us clues about how that relationship may and should develop in the future.

The starting point is to ask why the Irish voted as they did. The most distinctive argument made is that they did not understand the Treaty, and voted no as a default reaction. This is not something that one hears often in electoral contexts - was not, for example, a prominent explanation for the French or Dutch referendums - and so deserves a closer look.

Assuming that the explanation is correct, and this was indeed an important part of the reason for a majority no vote, there are three, superficially contradictory, points that should be made as a result:

1. The Irish vote was the most revealing and important of the three recent referendums, because it is the only one that was rational, was really about Europe.
2. There is no reason to think that the Irish are hostile to Europe.
3. There is nevertheless a lack of trust between the Irish and Europe.

The Irish vote was rational

Most policy issues are a mixture of preference and technocracy. The question of what should be done depends partly on what people want, and partly on what measures will in fact achieve that goal. The first part of this is measurable by polls such as referenda. However, the second part is hostile to democracy. There are many technical issues where the experts really do know best, and the fact that a popular vote might support, e.g. building more roads to reduce traffic jams, does not mean that the action is any more likely to lead to the desired result.

An ideal situation might involve a clear separation of preferences and methods, the one determined by the public, the second by the experts. This would be a technocratic democracy as described by some well-known theorists of Europe.¹ We choose growth, a clean environment, social peace and good services, and the experts work out how to achieve that.

Unfortunately the worlds of means and of ends are often not separable. We may have rational preferences about how our goals should be achieved as well as about what the goals should be. Methods bring costs; more roads might reduce traffic jams, but would also reduce the available countryside. The balancing of costs and benefits is something that is once again a question of preference properly placed in the hands of the people.

Yet complicating things is the fact that experts are unreliable, certainly in areas such as economic and social policy. What they think will happen often does not. This adds another layer to the cost-benefit analysis. More roads might be acceptable if this would certainly reduce traffic jams, but the cost may not be worth bearing just for a *chance* that jams will be reduced.

Voters are therefore required to make choices about technical policies, even though they are not in a position to meaningfully assess the content of those policies. The way to do this is not to play the amateur expert, or take a guess on technical issues, but instead to

form a view on the people offering the different options. That view is partly an assessment of the reliability of those in question – will they get it right? However, it is also a more global view on their values and attitudes – assuming they don't get it right, as so often happens, will they respond to the new circumstances in a way that I would approve of? Are they people I feel comfortable with? Voting is made personal, but also accessible and rational, since the judgment of character is not a fully-functioning science, and is as well-placed in the hands of citizens as of officials or experts. There is not yet a professional monopoly on wisdom about people.

Voting is therefore about our own personal values, and about our judgment of the character and ability of those we vote for. By contrast, if we try to vote on which policy will achieve the best results we are as irrational as a patient who overrules their doctor on a question of medicine or a house-owner who overrules their electrician on a question of wiring. To say 'I don't trust you' or 'I am not prepared to have those side-effects for this chance of a cure' – that is rational. To say 'I think this treatment will work best' – that is delusional.

The oddity of the French and Dutch referenda was that, to read the analyses, in so far as they were not about domestic politics, they were about the content of the proposed Constitution itself. The population debated the text and its meaning, what it would mean for their country and themselves, and formed a view.

This was a wildly silly way to approach the referendum questions. Those who spend their careers studying these texts are usually unable to agree on what their consequences will be, but at least know that the relevant factors are diverse and complicated and cannot be mastered in a few months of public debates. Whatever the public may have thought about the content of the Constitution, they had no idea what they were talking about. The Dutch and French referenda are political road accidents which take us little further either in policy or in understanding.

The Irish, however, seem to have taken the more rational approach. They realised that the text of the Lisbon Treaty was impenetrable and that they were not in a position to judge it in any meaningful way. They were therefore forced to vote in the way that we normally do when complex policy is involved: by judging not the proposal, but the applicant. The question before them was ‘should I give him what he wants?’

If this is how many Irish people voted, then the referendum was a worthwhile one. While the Treaty itself was never a suitable subject for a popular vote, the subjective relationship between the EU and the people is. How the public feel about Europe and its representatives is a matter which a poll is well suited to revealing, and which is important and interesting to know.

The Irish are not necessarily hostile, but there is a relationship problem

Refusing what one does not understand is not necessarily a hostile act. On the contrary, accepting change which one does not understand demands a very high degree of trust. It is not surprising that referenda tend to produce conservative results.² The instinct to stay with the status quo in the absence of overwhelming reasons to change is understandable. Why should we let every politician with a theory upset the world we know?

All we know from the referendum result is that the EU does not enjoy enough trust or credit in Ireland for the voters to give it what it was asking for. That does not tell us that they trust it less than any other political body, or that they feel hostile to it. They may have felt that what it was asking for was a very great deal, and simply wanted to say ‘not right now’. Indeed, since the EU made the mistake of selling both the Constitution and the Lisbon Treaty as very important, a voter listening to the EU might rationally have thought that these entailed important changes. Then the vote may simply be a ‘not now’ vote, not an anti-European one. This is something only time and research will tell.

Nevertheless, a problem remains. It seems as if the EU wants to go further than the Irish, and quite possibly other populations, feel comfortable with. A lack of balance can be as

fatal to a relationship as outright animosity. If she wants to hold hands and he wants to go further, they may in fact both have warm feelings for each other, but the frustration and humiliation which results from the disparity can blow things apart. So there is no basis for drawing dramatic conclusions about a rejection of Europe, but there is a very real reason for concern. Somehow the EU has made errors of judgment which have led it to ask for too much, and push the public onto the back foot. Now it needs to find a way to show that it is not just greedy for more, and win back trust.

Empathy is more important than efficiency

The diagnosis here is not original: the bond between the EU and its people is not as strong or as balanced as the EU would like. Somehow it has not earned the feelings it wants, and that subjective failure now risks impacting on objective policies. Democracy is biting back, creating a consequent need to worry relatively less about technique and relatively more about preferences.

A key part of restoring relationships is empathy. If the EU wants public support it needs to start by considering what it is that the people are going through and what it is that they are feeling. It needs to look from their point of view.

It is often hard to see the EU doing this. The tendency of its masculine, technocratic, and performance-oriented institutions is to prefer data to feelings, and objectivity to subjectivity. The question that Europe asks when it feels rejected is a self-regarding one; 'how can we make the EU better?' That question leads to experts, and prescriptions for better policies and better explanations.

Perhaps these do work, and perhaps outcomes are improved on the scales that the experts use. That's nice, but will not solve the problem if it is not what the people want. Are they distressed about a lack of output legitimacy (the technical name for successful policies) or a lack of transparency? Even if the EU addresses accountability, and seeks to make its institutions more democratic and open and reactive to the population, this will not

necessarily solve the problem. Are democracy and accountability what populations feel is lacking? The most admirable changes to the EU are likely to be beside the point if they do not flow from an understanding of what it is that people are looking for.

The risk is that one ends up with an efficient, democratic, accountable, transparent EU that is nonetheless not legitimate. For legitimacy, unlike those other virtues, is subjective. An institution or system is legitimate when it is accepted as such by the people, since it is that acceptance which *constitutes* legitimacy. We may expect acceptance to be increased by better, opener, more accountable policies and institutions, but it is not a rule. The people have no obligation to value what the engineers of the system would like them to value, and sometimes, being people, they may be idiosyncratic, complex, even interesting. There may be far more subtle matters at stake than European political discourse has yet addressed.

Integration as a process of loss

The loss of autonomy

European integration is a process of loss. As states pool their sovereignty and hand over policy- and decision-making power to the institutions in Brussels they lose autonomy. For individual Europeans that means power moves further away from them, from their familiar national institutions to supra-national ones that they, rightly or wrongly, may perceive to be less accessible, less responsive and less interested in the things that matter to them.

In practice, increasing the scale on which decisions are made does inevitably mean that each part, including each individual, counts for less in the whole. Europeans are correct if they think that their preferences carry less weight in an integrating Europe than they would in a nation state. With time that may change: each citizen is of miniscule importance to policy in any case, even within a city, let alone a continent. Our power comes if we are part of a group, and removing national borders may enable pan-European

political or pressure or identity groups to form which will re-order the hierarchy of preferences, and so, for some citizens at least, cause an increase in personal power. The minority opinion-holder within a state may discover he is part of the European consensus. However, this process is a long term one, and before it is realised the old national order will see its role diminished, and the citizen will see policy move further from his ballot. The national role in crucial areas such as immigration, the environment, and economic and monetary policy is ever more marginal in comparison to the European one, while hot topics in political discourse and the political pages of the media – headscarves, state aid to banks, extending maternity leave, funding health care, terrorism, renewable energy – are often governed or at least bounded by EU rules. Why should the individual voter not feel that power is slipping away?

The death of myths

There are also other kinds of psychic costs imposed by integration. We lose certainties and comforting myths. Integration, for example, is an admission that the nation state cannot provide the prosperity and security that citizens want. After a long history, unfettered sovereignty has come to the end of the road, and has little more to offer. If a new and better Europe emerges it may yet come to be seen by future historians as a glorious end, but from a national perspective today it looks more like the sad fading away of an idea that turned out not to have quite the potential we had hoped for. So long, fair states. You tried.

But the state is still a major source of group identity, and the focus of many myths of collective self-worth. Most nations have their traditions of self-glorification, whether of institutions, traditions, values, or all three, fuelled by politicians, populists, ceremonies and festivals, and departments of constitutional law and history. Whether one actively agrees with the message behind all these is almost beside the point: they are formative. We use them to bond with our fellow citizens and reassure each other that we are a group. That does not require us to seriously believe the official message, but it does perhaps require that it does not become ridiculous. Humiliation of the state encourages the

disintegration of the people as a whole and the alienation of individuals. Integration is like telling a child Santa Claus does not exist. Even if he knows it really, he may feel sadder for hearing it said out loud. A fairy tale is gone forever, and the citizen turns to face a lonelier world.

The loneliness of freedom – the stressfulness of choice

On a more mercenary note, the EU brings with it freer markets which lead to new kinds of loss. The market is often presented as the consumer's friend, providing him with more choice, more quality, and more wealth. This is, financial crises notwithstanding, almost certainly generally true, but is not enough to conclude that markets improve the quality of life. Choice is not always something we want.

In popular discourse it has become a buzzword, a label for a more consumer friendly system. Choice is presented as empowerment of the individual, a good in itself. On the contrary, in many situations choice is a burden, something that is tiring and stressful, that we would happily be free of. We want the best product or service, but who would not rather have someone else work out which one that is? Is there really pleasure in analysing the terms of contracts and policies to see which suits us most?

The reason for choice is that there is no-one we can trust enough to make that decision for us. The state is seen as having failed in that role with the victory of the West over the Soviet world. Choice is a central part of how regulators think and markets work not because it is a privilege for consumers, but because it is a way of making them work. It decentralises decision-making, placing the burden of responsibility on millions of individual shoulders, because on the whole this leads to better decisions. Being able to choose is being able to participate in government. However, this paradigm does not address the costs of choice itself. It assumes that if it results in better products and services then it is worthwhile. But are they so much better that they justify the stress, energy and anxiety which accompanies having to look out for ourselves?

It may be that they are, but each transition from monopoly to market will be experienced as a new weight by citizens, and with the coming of markets in all kinds of services and products, from telecoms to health care to education, we lose a little of the innocence that comes when someone else looks after us, and acquire a little of the sadness arising when we realise that the world is only as good as we can make it. Autonomy is loss too, in precisely the same way as leaving childhood behind and growing up is. It is rational of European citizens to feel nostalgia for a time without difficult choices, when material wealth was less but responsibilities were less too.

These costs of integration do not mean that it is bad, just that it has two sides. However, when the EU feels under pressure from public negativity or Eurosceptic attacks it rarely concedes this simple point. Official literature and statements, political and even academic writing, explain why policies are good for Europeans, or how they could be even better. There is however little attention to the downside. Many things that the EU does are worthwhile, but should nevertheless be done with a measure of regret: change brings benefits, but is also loss. That regret is visible only in the words of the EU's opponents. It is rarely conceded from the European side.

If one ignores the effects of one's actions on others, one has a small chance of becoming popular. If courtesy consists in trying to make others feel comfortable, and empathy consists in understanding what others feel, then the EU is defective in both. It may be working hard for the good of Europeans but it refuses to see or acknowledge what they are actually feeling.

The Kübler-Ross stage theory of grief

The psychologist Elisabeth Kübler-Ross studied the way individuals experience shocking news, in particular of bereavement or the news that they do not have long to live.³ She suggested that they typically go through a series of five stages. Initially they experience denial, which consists in disbelief. The news is simply not accepted as true. This cannot be so! There must have been a mistake! This stage is succeeded by one in which the

dominant emotion is anger. Individuals are furious at their doctors – how could they have let this happen? – at the dead person – how selfish! – at those around them – it’s because of them that life was not what it could have been – and so on. Anger then gives way to bargaining. In this stage the individual tries to buy off fate, making implausible but comforting deals in their own mind: ‘if only he recovers I’ll never be mean to him again’, ‘I’ll change my life and live better from now on if only it can be not true’. The fourth stage is depression. The various forms of defence against the facts have failed, and the individual succumbs to sadness. This is the stage that I have referred to in the title of this essay as ‘mourning’. Finally, the depression is replaced by acceptance. The individual may not be happy about what has happened or is going to happen, but they are able to face it and continue living and functioning – to move on.

Kübler-Ross’s theory has been adapted over the years but continues to be used. On the one hand it is rarely maintained that all individuals go through all stages, or even in the standard order. Rather, the stages are seen as typically occurring phases which are often found in individuals suffering loss. However, each individual may show a unique pattern, missing some, or following the stages in an atypical order. On the other hand, the theory is often applied outside of the sphere of impending death or bereavement, as a more general explanation of how individuals process any severe shock or loss, something Kübler-Ross intended. The shattering of an important certainty, or the deprivation of an important feature of one’s life, may lead to a bereavement-like process such as she described.

Where are we now in Europe? Europeans are human, and have suffered loss. There is no reason not to look for typical features in their reaction to this, and ask if public behaviour and discourse show any or all of the five stages. Has there been denial or anger? Are we yet mourning?

It is easy to interpret the first forty years of the EU as largely about denial. The scope of national sovereignty was fundamentally redefined without this attracting great attention outside of academic journals. The public may have been simply unaware, but politicians

at least refused to see what was right before their eyes. In the last decade or so it is possible to point to an important role for anger and bargaining: anger showing itself in the growth of Euroscepticism, and resistance to the spread of European competences, in failed referenda. Yet the constitutional project and the Lisbon Treaty are equally products of bargaining. No-one who studies them can think that they could live up to the hopes placed in them, that through these textual amendments the EU could discover a role in the world, act with focus and determination, define itself precisely, and manage its relations with states better. The idea of these texts as a solution to the EU's challenges smacks of the 'if only' reasoning from desperation that characterises the bargaining phase. If this amendment can just restore the fortunes of the EU then we'll all be co-operative and positive for evermore...

Depression is perhaps more recent, and evidence may lie in the reduced venom in the media by comparison with even five years ago. Europe has won few hearts but there seem fewer people bent on destroying it too. The mood is more sullen than angry. It is as if populations, perhaps influenced by the security and economic crises of recent years, are unable to fight the need for Europe any more, but not yet able to accept it wholeheartedly. We are struggling on the edge of acceptance, but it would be over-optimistic to say that we have arrived.

Recognition and acceptance

Whatever the accuracy of the speculations above, the question for the EU should be how it can promote acceptance. How can it help European citizens process their loss-based resistance and put it behind them? Here the work of a social scientist, Charles Taylor, suggests some avenues to explore.

Taylor emphasised the importance of recognition to co-existence.⁴ For groups to get along with each other it is sometimes as important that they publicly acknowledge the needs or beliefs of the other, as that they actually act in a way that furthers the other's interests. Feeling recognised by those around us for what we are is important to our self-

esteem and feeling of comfort in society. We may prosper, but if we are not acknowledged by the wider society we will feel alienation which may slide into hostility.

This has echoes of Socrates' observation that 'the unexamined life is not worth living'. It is not enough to be. There is a human need to be seen, both by ourselves, and by others. Reflection, both Socrates and Taylor say in different ways, is part of what gives human life value.

More concretely, Taylor reminds us of the insight that train companies and other service providers have arrived at in recent years; one can get away with a lot if one only says sorry afterwards. The recognition of another's problems has a powerfully diminishing effect on their anger. In Clintonesque terms, if the EU wishes to make itself accepted by the people, it needs to show it feels their pain. It must recognise their loss.

Two concrete steps

A feeling of control over one's life is important to happiness. If communities have lost autonomy, the EU needs to address this. Of course, centralisation should not happen any more than necessary. However, sometimes it is necessary. Recognition entails in this context not doing away with EU acts, but taking the loss of autonomy at national and sub-national level seriously. The EU needs to publicly demonstrate that it values local autonomy, and that respect for it is built into decision-making processes and policies. When new acts are considered it needs to be weighed in the balance. The message to be sent is 'if we sometimes have to limit your freedom, we do not do so lightly'.

A principle of respect for local autonomy

I suggest that a principle of respect for local autonomy should be entrenched in political decision-making and in law, and be enforceable by courts. It should require that centralisation only occurs where the gains justify the cost in local autonomy, and the

harm to local preferences. Judgments and legislation should be required to explain the reasoning and evidence behind the balance that has been made.

There are difficulties with this: difficult judgments to be made, but also difficulties with the gathering and weighing of evidence. How highly do particular states value their control over a particular policy area? How does one balance that against the gains from uniformity? However, these things get decided in implicit silence now. The issue cannot be avoided, merely covered up. It would be more honest, and more effective in winning back public trust, if the cost-benefit analysis behind centralisation was made more sophisticated and explicit.

The reader familiar with EU law will be thinking; but is this not a restatement of subsidiarity, or perhaps proportionality? They do this work, don't they? The answer is a categorical no.⁵ Subsidiarity is exclusively concerned with the question of who will carry out EU policies. Should they be implemented fully at the centre, or can parts of the process be delegated to local institutions and laws? It is to do with efficiency of implementation, and limits centralisation to what is necessary to achieve EU goals. However, it has no place for valuing local preferences or autonomy, and provides no basis at all for a balancing process between the advantages of achieving EU goals fully, and the corresponding disadvantage of losing local autonomy. It is simply not about this.

Proportionality does involve balancing costs against benefits, and could lend itself to the role described here. However, it has not been used in this way. There is almost no precedent for EU action being limited because it is just not worth it, because the costs in local freedom are too high. Courts could develop proportionality into a fully fledged principle of respect for local autonomy, or they could treat that principle as an independent one. It hardly matters. What matters is that the principle does not in practice exist, but it should.

Moving the Court of Justice to the centre

A second proposal is to make changes to the Court of Justice. Currently the Treaty charges it with, alongside the other institutions, carrying out the tasks of the Community (not the EU, since it is largely a feature of policies which fall within the EC Treaty rather than the EU Treaty).⁶ That is wrong. It should be neutral between the EU and the Member States. Can one imagine the US Supreme Court being presented as a tool of the federal government, or a national supreme court being entrusted with the goals of the national government? Courts should be factually and symbolically separate from the executive, and it is an anachronism that the role of the ECJ in European integration is bundled with the roles of the other institutions, such as the Commission and Council, as if all of them are working together. On the contrary, courts should be structurally in tension with substantive policies. They need not be obstructive, but they are there to constrain government as much as to assist it. Since disputes about EU law ultimately determine the proper scope of competence of the EU, for the Court to be a neutral adjudicator it must have as much distance from the ambitions and goals of the EU as from the ambitions and goals of the other party, be that a state or a private individual or organisation. It should be apart. The Lisbon Treaty is in fact slightly better on this score, amending the wording of the relevant article to at least acknowledge interests other than those of the EU, but it is not good enough.⁷ There is still nothing in the Treaty unambiguously providing that this court, which decides the boundaries between the EU and states, stands between these two parties, instead of on one side of the fence.

This may seem like a minor point – does it really make a difference? Yet that is an argument in favour of the change too – if it's no big deal, then let's do it. Judges take texts seriously. We should think about the texts we give them. Right now we tell them to take sides.

Many commentators have suggested a new constitutional court, dealing with cases of constitutional importance, as a different kind of response to the sort of concerns about structural bias addressed above.⁸ A constitutional court, it has been felt, would more

easily distance itself from day to day EU policy and be less likely to marginalise national concerns. Yet the problem is that all EU law cases are constitutional. In interpreting EU rules every case defines how far EU power extends, and it is not always the headline articles in the Treaty or the best-known legislation that turns out to have the most impact. There is no obviously clear or coherent line between constitutional EU cases and others.

Worthwhile integration

It is easy to argue that the proposals here are no more than a step backwards. They are de-integration. As such they are hostile to the EU and its mission.

I reject that. For one thing, taking autonomy seriously does not mean it always prevails. Much of the value of the proposals here is in making public a process of reasoning and weighing. The outcomes do not always need to change for that to have a purpose.

More fundamentally, it may be time to reassess what integration is about. Is it about gradually creating a broader, tighter and more uniform structure of law and policy, or is it about bringing peoples and states closer together? The two are related, but will not always follow the same path. Mutual trust and respect, with less law, may be more of an achievement than uniform law, without trust and respect. The policy aim should be integration which actually improves the lives of Europeans.

What kinds of integration are in fact worthwhile? A starting point is that removing borders loses much of its value if what is on the other side is the same. Economies of scale remain, enabling more of the same for less, but there are none of the intellectual, cultural or economic benefits which arise precisely out of the confrontation of different visions and systems. The contrasting policies resulting from national autonomy lead to experiment and mutual learning, even productive competition, and stimulate progress and ideas.

This positive view of decentralisation is embraced by the EU with open arms when it concerns the world of business. There it is accepted that a diversity of providers of goods and services leads to experiment, feedback, and improvement in quality, and greater consequent consumer satisfaction than would a central monopoly. The essence of market economics is that consumers know better what they want than central authorities do, and giving them freedom to select the product they want will increase satisfaction. Decentralisation of decision-making, in the name of quality and efficiency, is all the rage.

Yet when it comes to policies that argument is avoided. This is strange because the case for it remains good: decentralised policy is closer to the wishes of the public, and is likely to be more adaptable and innovative. States are affected by each other, and come under pressure to adapt if their policies are less successful than those of their neighbours. This may be because individuals and companies migrate, or because the media reports that the grass is greener elsewhere and creates political pressure to adopt best practices or to innovate. However, monopolies are bad for quality in the same ways where policy is concerned as where products are, and diversity has analogous quality-improving effects.

The problem with policy decentralisation is that it conflicts with trans-national EU policies. Differences between rules in different states can obstruct trade and migration between states, and can affect competition between businesses, making the (illusory) ‘level playing field’ less level. The effect can be that competition between businesses in different states is reduced, as national rules have a certain market closing effect.

There is a difficult choice to be made. Respect for national autonomy entails a readiness to compromise on the creation of an economically and socially borderless Europe. Competition between states (regulatory competition) entails a readiness to accept less of the ordinary competition between businesses. One cannot compete on all levels all of the time. Current EU thinking is that economic competition must be prized above policy competition – one is good for Europe, the other is not.

Yet competition, as a mechanism for delivering products, is ideally suited to those products where there is a need for constant innovation and responsiveness, and where tastes may be fluid and diverse. Here decentralisation brings its maximum benefits. This sounds like a description of social policy, at least as much as a description of standard markets for goods and services. Competition would seem to be at least as suited to the former as the latter. Thus if we cannot have total competition on all fronts, and have to allocate freedom to compete, then we may have to ask ourselves this: which do we need more – better goods or better policies?

Coping with change

The value of the EU is that it confronts Member States with the need to change. That need does not come from Europe, but from changes in society, technology, and global relations. The EU is a messenger and a catalyst. Are states responding? Are they beginning to accept the message and see themselves in a new light? Ireland suggests the process of change and integration is going pretty well.

It is sometimes said, particularly where EU foreign policy is concerned, that Europe must ‘speak with one voice’, as if this is a test or condition for success. This is invariably just a dishonest attempt to silence other views. Speaking with one voice is not only a symptom of a boring society, but also of dictatorship. Free societies have many discordant voices, and long may it be so. A single view shared by every Member State would be a chilling and depressing development, and is a disreputable ambition.

Of course states may have to work together. While speaking with different voices is eminently practical, taking different decisions simultaneously is sometimes impossible. One cannot simultaneously be yes and no. At times Europe will have to take one decision, and those opposed will have to abide by it, even though we may hope that they continue to have enough spirit and civic responsibility to keep saying why it is wrong.

This is an achievement: passionately disagreeing, and still working together. Apart from making for a more dynamic and creative society, it shows the commitment of those involved. If you keep coming back to the table with those who seem to disagree with you on every point, and you respect the majority decisions even while you publicly tear your hair out – then one can speak of a mature democracy and deeply-rooted institutions.

This is what the Irish no and the other referenda display to us. Despite anger and frustration at the apparent sabotage of a project to which many states were, at least at the political level, committed, we will see that that consequences of the referenda are small. The EU continues to function, to make policy and law, to react to global and local events, and all states, even those that may be bitterly facing each other down in other contexts, continue to work together. We have gone beyond the simplistic and tentative stage where disagreement means divorce. States are bonded on many levels, and those bonds go deeper than most political accidents do.

At the end of the day, the Lisbon Treaty reforms never mattered very much, and the bits that are most useful will probably be brought in one way or another. If the only question the referenda answered was about the Treaties they would not deserve to be front page news for more than a day. But they answered another question, where the answer was less clear and more important: what happens when we apply some pressure to the system? The answer should encourage all those who think integration has something positive to offer. Nietzsche said ‘what does not destroy me makes me stronger’.⁹ That may be worth pondering in the context of the EU.

I would like to say a few words of thanks:

Ten eerste, Marjolein

Het is een druk jaar geweest. Het had onmogelijk kunnen zijn. Dat het niet zo was kwam voor een groot deel door jou. Niet tenminste omdat jij beter dan ik kan zien waarover het nuttig is gestrest te worden, en waarover niet. Maar ook onze gesprekken over, bij voorbeeld, het verschil tussen denken en voelen waren nuttig. Jij hebt mij niet altijd overtuigd, maar zoals vaker het geval is, wel beïnvloed.

The second person I would like to thank is my promoter (the supervisor of my PhD), Professor Laurence Gormley. As well as giving me my first breaks in academia, he now serves as my role model in how to run a good department, how to keep standards up, and how to find the right mix of humour, scepticism, and pragmatism when faced with the consequences of the latest idea to have infected the fevered minds of the powers-that-be. Laurence, you are a voice of sanity in a surprisingly wacky academic world, and you continue to be a guide, in many, if not all, ways.

Ten derde moet ik de leden van mijn sollicitatiecommissie bedanken voor het vertrouwen dat zij mij hebben gegeven, en mijn sectie, afdeling en faculteit voor de vriendelijk en steunende ontvangst die ik heb gekregen. Ik heb met veel mensen gesproken over plannen, de toekomst, onderwijs, onderzoek, en zelfs het recht. Vooral aan jullie, voor ideeën en tijd, bedankt.

Ik heb gezegd.

Amsterdam

26th June 2008

Notes

¹ See G. Majone *The Dilemmas of European Integration* (OUP, 2005).

² D. Butler and A. Ranney *Referendums around the World* (American Enterprise Institute, 1994), 4.

³ E. Kübler-Ross *On Death and Dying* (Routledge, 1973).

⁴ C. Taylor 'The Politics of Recognition' in *Multiculturalism: Examining the Politics of Recognition*, edited by Amy Gutmann (Princeton University Press, 1994).

⁵ G. Davies 'Subsidiarity: the wrong idea, in the wrong place, at the wrong time' (2006) 43 *Common Market Law Review* 63.

⁶ Article 7 EC provides that 'The tasks entrusted to the Community shall be carried out by the following institutions:... a Court of Justice..'

⁷ The Lisbon Treaty would repeal Article 7 EC and have a new Article 9 in the reformed EU Treaty which would provide

The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions.

The Union's institutions shall be:

....

the Court of Justice of the European Union

....

⁸ J. Weiler 'The European Union belongs to its citizens: three immodest proposals' (1997) 22 *European Law Review* 150.

⁹ F. Nietzsche *Twilight of the Idols*, (1888) 'Maxims and Arrows', 8.

Samenvatting in het Nederlands

Een tijd om te rouwen. Hoe ik mij minder zorgen leerde te maken over de Europese Unie, en haar te waarderen.

Europese integratie kan niet plaatsvinden zonder verlies: van autonomie, van oude zekerheden, van het idee dat de staat alleen in de wereld kan staan. Psychologen hebben gemerkt dat mensen verlies verwerken in stappen. Zij gaan van ontkenning tot boosheid, zij proberen te onderhandelen, zij rouwen, en uiteindelijk accepteren zij het verlies. Er is zeker boosheid en ontkenning te zien in de wijze waarop Europese burgers en landen op de EU reageren, maar ook tekenen van depressie, alsof de rouwfase is begonnen. De EU zou zich moeten afvragen welke rol zij kan spelen in het bereiken van acceptatie.

Een aanpak is om Europese burgers te laten zien dat de EU de effecten die Europese beslissingen op het leven van de burgers hebben serieus neemt. Een dergelijke erkenning van wat een ander voelt heeft een machtig effect en vermindert conflict en vijandigheid. Dit zou in de praktijk kunnen plaatsvinden door beter en duidelijker respect te tonen voor lokale autonomie in het rechtssysteem, en door verdragsaanpassingen waardoor de positie van het Hof van Justitie van de EG meer neutraal wordt. In plaats van steeds te zoeken om de doelen van de EU te bereiken, zoals nu het geval is, zou het Hof deze doelen moeten afwegen tegen andere belangen, bijvoorbeeld die van de lidstaten.

De EU is imperfect, te dol op centrale controle, te onafhankelijk van de politiek. Dat is echter niet de fout van Brussel, maar van ons, de burgers. Wij twijfelen ook over wat wij ervan willen, en kunnen daardoor Europa moeilijk onder controle krijgen. De EU werkt dus als een spiegel waarin Europa haar eigen twijfels, tekorten en zwaktes terug kan zien. Zo bekeken zijn de fouten van de EU haar meest belangrijke kant – hiervan kunnen wij leren. Dit is niet de EU als staat, maar als katalysator, die Europa helpt te veranderen.

De laatste jaren zijn dan ook positief voor de EU geweest. Het belang van de referenda is niet dat er nee is gezegd; zij waren deel van een gesprek tussen burgers, staten en EU dat nog niet af is, en er is geen gesprek als iedereen het met elkaar eens is. Af en toe moet er een nee komen. Te veel eenheid is eng. Echter, het belang van de referenda is dat ondanks de nee'en, de landen blijven samenwerken. Ruzie over een klein ding – een verdrag – laat een groter ding zien: dat er een Europese unie bestaat die veel dieper gaat dan de dagelijkse problemen. Er is dus vooruitgang geweest. Misschien is het minimale effect op de bredere EU van de beslissingen in Ierland, Nederland en Frankrijk een teken dat de staten en burgers van Europa langzaam klaar zijn met het rouwen over het verleden en dat zij reeds zijn begonnen een andere toekomst te accepteren.