

Order and Justice Beyond the Nation State: Europe's Competing Paradigms

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Should global capitalism be tamed? Can we seek global justice in the absence of a global super-state and if so, would we risk shattering the existing world order? There is little doubt that the end of the cold war has led to a re-framing of the tension between order and justice that is at the heart of international relations. While international order during the cold war was classically seen as prior to justice, a goal in its own right, the end of the cold war generated a new exploration of the order-justice relationship along more liberal lines.¹ In this view, these two imperatives are not independent or even contradictory. On the contrary, order would best be realized by meeting the demands of justice expressed around the world. Has a 'just world order' become attainable, we asked, and should the pursuit of global order and justice thus be seen as two sides of the same coin? A decade on, there is cause for scepticism. The realist view is alive and well among world elites, for whom order must prevail and is predicated on a stable inter-state system. At the same time, the idealist or cosmopolitan view that considerations of order are never value-free, that the problem of justice cannot be assumed away, while it is not new, has certainly gained in relevance in a world where principles such as 'the duty to intervene' or 'the duty to provide global public goods' are increasingly sold on the basis of both order and justice imperatives. This book explores both the overall contours of this universal debate and the diversity of views among states, societal and institutional cultures.

What, if any, is the European Union's approach to the fundamental tension between the pursuit of an orderly and a just world, and how might this approach have changed in the last decade? Within the context of this book, the EU is, of course, a very special case. It is both an international institution

We would like to thank Ailish Johnson for research assistance, Vivien Collinwood for her editing work, and Rosemary Foot and Andrew Hurrell for their insightful comments.

¹ Rosemary Foot expands on this argument in her introduction to this volume.

with distinct norms, policy frameworks, and practices, and a collection of actors with heterogeneous traditions and views. These actors are, above all, member states, ranging from older nation-states like France and Britain, irremediably attached to the classical attributes of statehood, to Northern 'liberal internationalists' and the Southern populist states of the Mediterranean. Together the states speak for the EU as an institution, alternately in harmony or in conflict with its supranational components, namely, the Commission, the Parliament, and the European Court of Justice. Increasingly, however, it has become impossible to apprehend this Union without taking into account independent voices of transnational European actors—from trade unions to non-governmental organizations (NGOs) and business groups—whose distinct views and competing notions of order and justice undoubtedly influence intergovernmental policy-making. This chapter cannot do justice to the multiplicity of actors which comprise the Union. Its more modest aim is to analyse ideal-typical views and to indicate how EU practice can be assessed against such views.

How, then, has the EU confronted the balance between order and justice goals *as a Union*? At its origin after the Second World War, the European project was about creating a new regional order on the war-torn continent: one of perpetual peace sustained by orderly commerce and a stable Franco-German axis. A core question, recurring since the creation, has been whether the economic order thus engineered ought to be flanked by a security order and, if so, how. In this vision, the EU has been a modern echo of the Peace of Westphalia, a minimal set of norms and institutions to establish and sustain an enduring order between the sovereign nation-states of western Europe. One could argue that this 'equilibrium', negotiated and renegotiated throughout the seventeenth and eighteenth centuries, constituted the very origin of the political significance of the term 'Europe'. And yet the EU has become more than an advanced instance of international cooperation or a regional United Nations. With the acceptance of a majority of its population it has now ventured into the core areas of sovereignty of the nineteenth-century nation-state—army, police, and money—and, more reluctantly, and with much less support, into the core domain of the twentieth-century sovereign functions of the state, namely, the welfare state. As a result, it has become a polity in its own right—indeed, a polity now engaged in a fascinating process of self-definition, one aspect of which involves competing notions of social and political justice.² Whether characterized as a federation in the making, a federation

² In analysing notions of justice in the EU context we need to distinguish between national standards that may be convergent enough to be mutually recognized—welfare state provisions, administration of justice, civic rights—and harmonized or common standards, policies, or rights—from redistributive policies to the Charter of fundamental rights.

of nation-states, or simply a new kind of post-modern Union of peoples, the EU today is unquestionably more than an assembly of states.³

This evolution makes the EU unique in another way, which is the starting point for our argument. For any polity or political community, how are approaches to order and justice prevailing *within* the polity related to those practised *externally*? Is there continuity between the two or are there separate logics operating for 'us' and for 'the Other'? This question is pertinent for China, India, Russia, or the United States, as discussed elsewhere in this volume. The difference with the EU is that it is already a miniature world, an experiment in bringing together different peoples that have vowed to remain such. In this light, the tensions and dilemmas present in externalizing notions of justice from the realm of a single polity, where a sense of solidarity is taken as given, to a multi-polity setting are already at play *within* the EU itself. This internal EU experience has more grounds for being relevant to the international realm than, say, internal notions of justice in the US or China. In short, all the arguments about the feasibility and desirability of the pursuit of justice *beyond the state* or *beyond the nation-state* have been rehearsed inside the EU context among both scholars and policy-makers. To be sure, these two types of 'externalization', from the state to the EU and from the EU to the world, follow different logics and belong to different disciplines. Nevertheless, we believe that there are implicit assumptions that can be profitably extrapolated from one realm to the other. We seek to make these assumptions explicit and to draw out their implications for order and justice debates in international relations.

We argue that there exist two core paradigms in Europe, combining both positive and normative arguments regarding the kind of 'community' that the EU represents and the possibility for a 'just order' both within the EU and beyond it. These two paradigms—the 'national' and 'post-national' paradigms—constitute the focal points for debates in political theory, but also lie at the heart of much political discourse on European affairs. They underline fault-lines and party alignments in the domestic public sphere. Beyond their relevance to the *internal* EU debate, however, we argue more tentatively that they correspond to two different visions of the EU's external role. Should Europe exist globally through power-projection or attraction, as a 'hegemon' or as a 'beacon', as a 'superpower' or as a 'model'? In the first instance, enhancing order externally is an end in itself, while in the second, it may or may not be a precondition for enhancing the consistency between the internal and external pursuit of greater justice. In the former case, the international relations of the EU should be conducted on the assumptions of the classical realist state system, while in the latter, international institutions can, and

³ This is true irrespective of the theoretical framework adopted to understand its decision-making dynamic, whether intergovernmental, neo-functional, institutionalist, or supranational.

should, play a key role in mediating relations between states. From a theoretical standpoint therefore, we seek to relate the internal European debate over identity and justice beyond the state, to broader debates about justice and order in the realm of international relations. But our theoretical scope is modest and our approach bottom-up, that is, centred on intra-European debates. Links with ideal normative theory are therefore left mostly implicit.

This chapter is organised as follows. In the first section, we discuss the two paradigms and their implications. In the second section, we provide a brief historical overview of the EU's relative focus on justice and order in its international relations, and ask to what extent the end of the cold war has led to a reframing of this balance. In doing so, we ask whether and to what extent the post-national paradigm has taken hold in the EU's recent external strategy, and argue that the key evidence here is whether consistency between internal and external EU policies has been sought and—at least partially—realized. In the third section, we fine-tune our argument by showing that, in practice, EU institutions and the member states they represent implicitly 'balance' imperatives of order and justice differently in different policy areas, but are usually far from achieving consistency between internal and external policies. We explore three issue-areas: human rights and citizenship; enlargement; and global governance.

1. JUSTICE BEYOND THE NATION-STATE? THE NATIONAL VS THE POST-NATIONAL PARADIGMS

The central goal of any polity, beyond mere survival, is the pursuit of some kind of a just order. In Western democracies, at least, this has for decades been based on principles of political freedom, equal participation, democratic self-determination, and social solidarity. Political theorists have long sought to tease out which is the 'we' that can legitimately proclaim and define applicable principles of justice among individuals with different notions of the good and right life.⁴ What, however, of the attempt to arrive at a 'social contract' for international affairs? If such principles are meant to apply beyond bounded political communities—in Europe, say, or indeed universally—on what grounds can they be extrapolated? In his *Law of Peoples*, John Rawls argues that an ideal theory of justice, as put forth for the domestic level in *Principles of Justice*, could not be extended as such to the international level.⁵ Only representatives of 'peoples' rather than individuals in the domestic context could be called to adopt principles of justice behind a 'veil of ignorance'

⁴ For an overview of the relevant literature, see Chapter 1.

⁵ John Rawls, *The Law of Peoples* (London: Harvard University Press, 1999).

at the global level, and, if they did, they would call for basic principles of coexistence such as interdependence, equality, non-intervention, and the entitlement to defend oneself, short of waging war; in short, a 'morality of and for states'.⁶ Thus, Rawls suggests that the potential for justice among 'peoples' cannot extend to considerations of individual claims vis-à-vis humanity as a whole, nor can it entail enforcing egalitarian principles meant to empower individuals vis-à-vis their community.⁷ However, as even Rawls recognizes, and as his critics stress, there is always possibility for change. 'The relatively narrow circle of mutually caring peoples in the world may expand over time and must never be viewed as fixed.'⁸

Has the EU created the basis for one such circle of mutually caring people? Is it possible or even desirable to pursue a 'just order' in Europe without assuming away the plural nature of its polity and of its peoples? What of the horizon of justice beyond Europe? The debate within Europe has been framed by two broad types of responses to this question.

The Horizon of Justice in the Nation-centric Paradigm

The first response to the question of justice beyond the nation-state in Europe is that of self-styled 'national republicans' in France⁹ and 'liberal nationalists' in Britain,¹⁰ who consider the nation to be the ultimate horizon of political community. They stress how, in the last two centuries, various forms of nationalism, based on various degrees of 'constructed' historical consciousness, have moulded collective identities that, in turn, have functioned as the basis for civic responsibility and the building of the state. National consciousness then sustained solidarity based on shared citizenship, leading strangers in 'imagined communities' to feel responsible for one another and ready to make sacrifices for their political community, be it as taxpayers or as soldiers. Moreover,

⁶ S. Hoffmann, *Ideal Worlds*, Working Paper 62 (Cambridge, MA: Centre for European Studies, Harvard University, 1995).

⁷ For a forceful critique, see for instance contributions in T. Pogge, *Global Justice* (Oxford: Blackwell, 2001).

⁸ Rawls, *The Law of Peoples*, 112–13; quoted in Andrew Hurrell, 'Global Inequality and International Institutions', *Metaphilosophy*, 32/1–2 (2001), 40.

⁹ J.-M. Ferry and P. Thibaud, *Discussion sur l'Europe* (Paris: Calmann-Lévy, 1992); R. Debray, *Le Code et le glaive. Après l'Europe, la nation?* (Paris: Albin Michel, 1999); E. Todd, 'Gauche des dominés, gauche de la nation?', *Le Banquet*, 7 (1995); E. Todd, *Essai sur la stagnation des sociétés développées* (Paris: Gallimard, 1999); D. Schnapper, *La Communauté des Citoyens: Sur l'Idée Moderne du Nation* (Paris: Gallimard, 1994). For a discussion of the French national republicans, see J. Lacroix, 'Les Nationaux-Républicains de Gauche et la Construction Européenne', *Le Banquet*, 15 (2000) and C. Laborde, 'The Culture(s) of the Republic. Nationalism and Multiculturalism in French Republican Thought', *Political Theory*, 29 (2001).

¹⁰ D. Miller, *On Nationality* (Oxford: Clarendon Press, 1995); D. Miller, *Citizenship and National Identity* (Cambridge: Polity Press, 2000); A. D. Smith, *Nations and Nationalism in a Global Era* (Cambridge: Polity Press, 1998).

the welfare state as the systematic institutionalization of mutual economic sacrifices was created in this national context.

While this historical analysis is relatively uncontroversial, what does it imply today? For the nation-centric school, the nation-state remains the largest social construct compatible with redistributive sacrifices. Dissociating historical and cultural membership from political membership is mere utopia. Its proponents do acknowledge that modern democracy is defined by universal principles; but even then the nation is the only unit in which a 'limited form of universal'¹¹ has come to acquire practical significance. The *ethnos* can be turned into the *demos* only at the national level, as this is the only level where the values of liberty, civic responsibility, and political justice acquire true meaning. It is indeed this double-edged construct of *demos* and *ethnos* that led to the subjective internalization of the very idea of 'borders' and to people's notion of what it means to 'be in the world', as Hannah Arendt would say, through exclusionary belonging. But it is also this very same construct that has linked the notion of *universality of democratic right* with national belonging.

Thus, democracy and nation are linked, above all, because in our modern world only national identity has managed to foster the kind of identification with the common good which defines a true political citizenship: one founded not only on some abstract recognition of equal individual rights, but on a sense of responsibility for the public interest. How else could such a sense of responsibility develop if not through identification with the political community and its history? 'Where do we owe obligation without affiliation?'¹² Citizenship and nationality are intrinsically intertwined. Without citizenship, nationality would not lead to a future-oriented civic project. Without nationality, citizenship would lack the kind of substance that emanates from the sense of a shared world.

More importantly for the argument here, a shared national identity would be the only basis for substantiating aspirations towards greater social justice. To the extent that today the state is expected to provide 'positive freedoms' in the form of collective goods, what better framework than the nation-state? As Beveridge stressed in his famous 1942 report, social insurance requires 'a sense of national unity above and beyond any kind of class or sectional interests'.¹³ If social justice cannot simply be based on the kind of low-key altruism one may feel for humanity as a whole, if it is the stuff of polity rather

¹¹ P. Rosanvallon, 'Les Conditions d'un Nouveau Contrat Social: La Citoyenneté et ses Différences', *Témoin*, 9 (Summer 1997), 43–4.

¹² A. Finkelkraut, *L'ingratitude. Conversation sur notre temps* (Paris: Gallimard, 1999), 112–13.

¹³ A. Wolfe and J. Klausen, 'Identity Politics and Contemporary Liberalism', in K. Hinrichs, Herbert Kitschelt, and Helmut Wiesenthal (eds), *Kontingenz und Krise: Institutionenpolitik in kapitalistischen und postsozialistischen Gesellschaften* (Frankfurt: Campus Verlag, 2000), 29.

than charity, and if it is to be consensual rather than coercive, it requires a level of mutual commitment compatible with the sharing at stake.¹⁴ Only the kind of pan-German feelings elicited by the fall of the Berlin Wall could justify the sacrifices born by West Germans for their East German compatriots.

In this light, what does the national-sovereignist vision imply for the nature of the European construct and, at the same time, for Europe as an actor on the international scene? If the link between nation, democracy, and social justice is not only historically contingent but also conceptual, it follows that only a 'nation-like' EU could be the basis for the systematic pursuit of justice on the European continent. This could then lead us to two possible viewpoints.

First, one could argue, along with the majority in the national school, that, in spite of growing interdependence between civil societies in Europe, citizens continue to identify symbolically and politically with the national rather than the European level. As Renan put it a century ago, 'communities of interests create trade treaties, but a *Zollverein* does not make a nation'.¹⁵ Thirty years ago, Raymond Aron similarly argued that the fundamental mistake of the founding fathers had been to ignore Hegel's distinction between members of civil society and citizens.¹⁶ Since it is not a nation, the EU cannot aspire to the pursuit of justice. Its core function is the creation and maintenance of order both internally and externally. The difference between the two is one of method: internally, the order agenda needs to be shaped by consensus between sovereign member states—as is the case in the realm of the 'Third Pillar' of Justice and Home Affairs; externally, shaping world order is a function of power projection.

Alternatively, a number of national sovereignists do not exclude the possibility of a true political European order in the long term, most likely in the context of a general mobilization against a common enemy.¹⁷ Nevertheless, if such a development were to occur, it would not imply the end of the national logic and form. If allegiances were to shift from the national to the European level, this would not mean that the EU had paradoxically replaced the nation-state, but 'that it has become itself a nation-state on a larger scale'.¹⁸ This is the only outcome with which national-sovereignists would feel comfortable. It is worth stressing, then, that the national logic is not monopolized by the opponents of European integration. There is actually a clear intellectual convergence between nationalism and supra-nationalism, or between the most

¹⁴ M. Canovan, *Nationhood and Political Theory* (Cheltenham: Edward Elgar, 1996), 30.

¹⁵ J. E. Renan, *Qu'est ce qu'une Nation?* (Paris: Presses-Pocket, 1992), 52.

¹⁶ R. Aron, 'Is a Multinational Citizenship Possible?', *Social Research*, 41 (1974).

¹⁷ Canovan *Nationhood and Political Theory*, 79; Debray, *Le Code et le glaive*, 116. See also R. Debray, 'Des Européens et des Européistes', *Le Monde* (16 February 2001), 13, and Schnapper, *La Communauté des Citoyens*.

¹⁸ Canovan, *Nationhood and Political Theory*, 119.

extreme anti-Europeans and the more radical pro-Europeans. They all consider the nation to be the ultimate horizon of democracy, either within the borders of existing nation-states or within those of a new 'European motherland'. Thus, they share Ernest Gellner's 'nationalist paradigm': 'a principle which states that the national unit and the political unit should be congruent.'¹⁹ Suffice to stress how the symbolic terrain upon which European leaders and Eurocrats tried to construct the new Europe in the 1970s and 1980s—by resort to European myths, to European history, the introduction of a new flag, and a new anthem—was precisely that upon which the nation state has traditionally been founded,²⁰ reproducing a century later the national 'invented traditions' of the nineteenth century.²¹

Most importantly for our purposes, this convergence is reproduced in the way in which the nation-centric and supranational schools both support the prospect of 'Europe as a superpower'—Debray's '*l'Europe puissance*'. At a minimum, the EU's international role lies in projecting or, even better, *magnifying* the power of individual member states in shaping international order; this is the Gaullist conception of the EU. Or, if it is to claim an international identity, or 'actorness',²² it should do so in ways similar to those sought by national powers as seen through the traditional realist lens by opposing or at least balancing a common enemy or competing power. A widely shared assumption among both nation-centric and supranational views is indeed that, if the EU is to achieve international significance, it must challenge the US and eventually be assessed on similar terms to its rival across the Atlantic: as a shaper, not a taker, of 'world order', through coercive means if necessary.

What does this imply for the prospect of justice beyond the European level? In short, if order can be projected 'outside', justice continues to belong 'inside'. The imperative of justice remains circumscribed by 'national' boundaries, be it within the traditional nation-state or possibly, in the long term, within a new European nation. This is, after all, the dichotomy that prevailed in Europe throughout the colonial era and beyond. We could label it the 'Tocquevillian model', with reference to the political philosopher's contrasting views on how European nations could perfect democracy *à l'Américaine* on the one hand, and how, on the other, France ought to implement a 'torched earth' policy of systematic repression against 'locals' to bring order to its

¹⁹ E. Gellner, *Nations et Nationalismes* (Paris: Payot, 1989), 11.

²⁰ C. Shore, 'Inventing the People's Europe. Critical Approaches to European Community Cultural Policy', *Man*, 28/4 (1993), 791.

²¹ E. Hobsbawm and T. Ranger (eds), *The Invention of Traditions* (Cambridge: Cambridge University Press, 1983).

²² C. Hill, 'The Capacity-Expectations Gap, or Conceptualizing Europe's International Role', in S. Bulmer and A. Scott (eds.), *Economic and Political Integration in Europe: Internal Dynamics and Global Context* (Oxford: Blackwell, 1994).

Algerian colony.²³ All sides in Europe today may have moved beyond such a hierarchical and schizophrenic world view, but the essence of the tension remains the same.

In the end, under the nation-centric paradigm, the survival and promotion of the states system is not only the basic underlying condition of order but also of the pursuit of justice. If justice is attainable only inside state-like borders, then both international order and justice are predicated on the preservation of norms of sovereignty and non-intervention. To be sure, European or global action might be necessary to preserve states' capacity to act for the promotion of justice inside their borders: for example, preserving states' income-raising capacities or control of immigration. Hence, the so-called 'Chevenement group' of sovereigntist parliamentarians from different EU member states has been pressurizing national parliaments into requesting ever more stringent compliance with EU-level rules of Justice and Home Affairs, especially in matters of asylum and immigration. This does not mean, however, that the nation-centric school has abdicated the global justice agenda. On the contrary, they argue, it is the very existence of circumscribed communities that makes it possible to envisage a universal approach to justice, not one so abstract and detached as to be unable to elicit significant solidarity and sharing of wealth. At best, such 'unrooted', 'decontextualized' cosmopolitan justice expresses itself through generalized guilt where 'one feels responsible at once for all of the world's misery and for no misery in particular'.²⁴ Is this a fair characterization of the alternative view of justice beyond the state?

The Post-national Paradigm: Justice Within and Justice Beyond

There is, indeed, a second, post-national response to the question of justice beyond the nation-state in the European context. Building on Habermas and, more generally, the universalist or cosmopolitan tradition of international political theory, it holds that European integration provides an opportunity for a profound renewal of the classical categories of political thought, thereby allowing for a dissociation between the juridical order of the political community and the cultural, historical, and geographical order of national identities.

Here, the nation-centric argument is turned on its head. It is precisely because we cannot deny the centrality of the nation-state to the European project that we need to move into another categorical realm at the European level.

²³ See A. de Tocqueville, 'Travail sur l'Algérie' and 'Rapports sur l'Algérie', in *Oeuvres Complètes* (Paris: Gallimard, Bibliothèque de la Pléiade, 1991). For a recent discussion, see O. Le Cour Grandmaison, 'Quand Tocqueville légitimait les boucheries', *Le Monde Diplomatique* (June 2001). See also T. Todorov, *De la Colonie en Algérie* (Brussels: Complexe, 1988) and *Nous et les Autres* (Paris: Seuil, 1989).

²⁴ Ferry and Thibaud, *Discussion sur l'Europe*. See also Miller, *On Nationality*, Ch. 3.

It is neither realistic nor desirable to suppose that the secular phenomenon of nation-building could take place at the European level and that the EU, divided as it is between many national and sub-national cultures, be associated with any mythic European 'motherland'. Indeed, under the national paradigm the 'natural' character of the nation is often opposed to the 'artificial' character of European integration, overlooking the fact that most European nations were built by the artifice of internal and external force; nations are not natural, organic entities, historical amalgamations of archaeological-like strata of deeds and memories. Whatever the primary material, they are constructed, both by visionary leaders and by social forces. Needless to say, no one would suggest at this point building a European nation by force. But those who defend a 'post-national' view are not satisfied with even a peaceful strategy of identity-building at the European level which would draw on the commonalities amongst European traditions and cultures. '[S]uch a chauvinism of European unity would mean duplicating the nationalist principle at the supra-national level.'²⁵ Europe should have no ambition to replace national bonds.

This is because the initial fusion of nation with democracy and justice should not be granted *normative* significance. After all, the nation-state established only temporarily the close link between the *ethnos* and the *demos*.²⁶ What is at stake in European debates is precisely the need to radically question the contingent equation between the nation, social justice, and democracy. Post-national thinking does not deny the importance of local, national, and regional identities. It merely claims that neither cultural factors—namely, the reference to Judeo-Christian ethics, to Roman law, to Germanic freedom, and so on—nor communitarian impulses—membership of a historical community with shared values—are necessary or sufficient to underpin a modern polity dedicated to the pursuit of justice. Rather, such a community should serve to enhance the coexistence between diverse pre-political identities, and the *ultimate* motives for our attachment to it ought to be rooted in a common allegiance to shared principles of political and social justice flowing from a liberal political morality and a common set of political institutions through which these principles can be realized.²⁷ In the twenty-first century, this ought to be true regarding our national loyalty as well—a theme Habermas developed under the label of 'constitutional patriotism'.²⁸ Indeed, constitutional patriotism is not an oxymoron—combining the cold juridical with the warm emotional—because we live in an age where the love of justice can lead, and has

²⁵ J.-M. Ferry, 'Pertinence du Post-National', in J. Lenoble and N. Dewandre (eds), *L'Europe au Soir du Siècle. Identité et Démocratie* (Paris: Esprit, 1992), 53.

²⁶ J. Habermas, *L'Intégration Républicaine* (Paris: Fayard, 1998), 22.

²⁷ C. Laborde, 'From Constitutional to Civic Patriotism', *British Journal Of Politics and International Relations* (forthcoming)

²⁸ J. Habermas, *The New Conservatism. Cultural Criticism and the Historians' Debate* (Cambridge: Polity Press, 1989).

led, to extreme sacrifices. Constitutional patriotism differs from Nicolet's 'legal patriotism'—the attachment to the abstract principle of democracy and of the rule of law—in that it rests upon a relationship to one's history; and from Renan's 'historical patriotism' in that it rests on a *critical* relationship to one's history.²⁹ Its core imperative—that, after the holocaust, national histories and traditions could not be left unexamined—extends beyond Germany to all European nations.³⁰ Thus, at the European level, constitutional patriotism requires that states and the peoples of these states move away from their self-centred national memory and recognize the Other by recognizing the crimes committed against him or her.³¹ European identity is not about forgetting, as Renan would have it, since, from the very beginning, it was founded on the permanent remembrance of its internal conflicts and thus on mutual responsibility. 'The Other' for Europe is Europe itself.

The tension between unity and diversity or universality and the respect for differences³² is, then, at the core of the post-national paradigm. Solidarity in political contexts beyond the nation-state requires a double commitment: to a shared allegiance to universal values and to sharing diverse political cultures and institutions. It may be the case that the quasi-impossibility of sustaining the 'right' balance between these two requirements is responsible for the utopian character of much cosmopolitan political theory. In the European context, the implication of the post-national paradigm on this count seems to oscillate between two poles. For Habermas and his followers, the core of constitutional patriotism ought to be the same throughout Europe and can become the basis for a common political culture.³³ In another variant of post-national thinking, mutual identification ought not to be equated with a sense of common identity. Aside from communities of identity, there can be communities of interest and indeed communities of fate that borrow from, rather than merge with, participating political cultures to address common problems or pursue common dreams.³⁴ Thus, the European project requires the mutual recognition of the various political subcultures that constitute it, leading in time to a progressive opening of national public opinions to one another through political debate and confrontation.³⁵ Building a just order in Europe

²⁹ J.-M. Ferry, *La Question de l'État Européen* (Paris: Gallimard, 2000), 168.

³⁰ Habermas, *The New Conservatism*, 223.

³¹ Ferry, *La Question de l'État Européen*, 177.

³² Andrew Linklater, *The Transformation of Political Community: Ethical Foundations of the Post-Westphalian Era* (Cambridge: Polity Press, 1998).

³³ J. Habermas, 'Pas d'Europe sans Constitution Commune', *Le Point*, 1491 (13 April 2001), 102.

³⁴ R. Howse, 'Searching for a Plan A: National Unity and the Chretien Government's New Federalism', in H. Lazar (ed.), *Canada and the State of the Federation* (Toronto: Queen's Institute for Intergovernmental Relations, 1998).

³⁵ K. Nicolaidis, 'Conclusion: The Federal Vision beyond the Federal State', in K. Nicolaidis and R. Howse (eds), *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union* (Oxford: Oxford University Press, 2001), 473.

does not call for the emergence of a homogeneous community where the solemnity of law is grounded in the will of a single *demos* but calls instead for instituting a discipline rooted in, and emanating from, a community of Others.³⁶ Critically, the post-national logic calls for a certain type of mutual recognition, very different indeed from that prevailing in classical international law where recognition is purely formal and which authorizes what can be seen as the kind of 'moral autarchy' that accompanies strict sovereignty rights. This more holistic form must include acknowledgement not only of the past violence inflicted by nations or groups on one another but also of the mutual contributions made to each other's political, economic, and moral progress precisely by retaining an unassailable share of difference. In this light, pinning down through constitutional projects the trade-offs required by the pursuit of justice may not be desirable, whether in Europe or, even more so, as a means of strengthening international regimes.³⁷

What does the post-national vision imply beyond Europe? Most fundamentally, it speaks against the reification of the European boundary, whatever it may be. If the core dynamic is one of *shared* political and cultural identities rather than *common* identity, there is bound to be a spillover effect from the transformation of regional to global community, from our relationship to the other European to our relationship with the non-European Other. To be sure, communities of interests do not have to be purely instrumental. Shared challenges and projects can create *communities of fate*. But these will be understood in a very different way from those who refer to fate as a link between a collective origin and a collective destination, a common journey based on the constant moulding of national consensus. Instead, a community of fate through a post-national lens refers to the common uncertainties that peoples may have to face together. Understood in this way, there is again no radical separation between a European community of fate and a universal community of fate, only a gradation in the amount and range of common uncertainties to be faced and managed, and therefore in the magnitude of calls for solidarity. This does not imply equating the EU's pursuit of justice within its borders with that beyond its borders, but it does imply that the *consistency* between them should be of paramount concern.³⁸

³⁶ J. Weiler, 'Federalism and Constitutionalism: Europe's Sonderweg', in K. Nicolaidis and R. Howse (eds), *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union* (Oxford: Oxford University Press, 2001). See also J. Weiler, *The Constitution of Europe* (Cambridge: Cambridge University Press, 1999).

³⁷ Howse and Nicolaidis, *The Federal Vision*.

³⁸ This formulation does not in itself allow adjudication between different degrees of global solidarity and redistribution, which are related to the *substantive* criteria for universal or transnational justice. It is consistent with the cosmopolitan *minimal* claim that 'a domestic project of justice cannot be conceived without a conception of transnational justice' since 'internal justice cannot be established on the basis of external injustice' (R. Forst, 'A Critical Theory of Transnational Justice', in T. Pogge (ed.), *Global Justice* (Oxford: Blackwell, 2001), but it may or may not encompass more extreme cosmopolitan views stressing the causal role played by the

It is through this consistency requirement that the post-national view opens up a space for a new international discourse and practice for the EU. In many ways, the EU is still far from being the first 'post-Westphalian' international society as some cosmopolitan analysts argue.³⁹ But, exploring new forms of solidarity beyond the state, the EU can be seen as a beacon for the rest of the world, highlighting ways in which the pursuit of justice can break the bonds of the homogeneous community. In short, the EU becomes the potential means of externalizing a certain European tradition of justice. It can aspire to be more democratic and just than its nations of origin, working as it were from a blank slate or at least a slate where the weight of national designs may come to cancel each other. In this light power is based on influence not coercion, engagement rather than threats, economic rather than military might. It would be inconsistent for a project based on the peaceful pursuit of internal order to pursue international order mainly through military means. Under a post-national logic, hard power is not an end in itself, and the 'EC does not need and has not needed to acquire state-like qualities to exert an important influence in the world'.⁴⁰ Military power should be used, if at all, to bolster a global justice agenda under the flag of collective security rather than as part of alliance politics. Thus, at the global level, the post-national paradigm is consistent with a belief in strong international institutions and shared sovereignty. From a normative viewpoint, however, it does not assume that the EU's internal policies *actually* constitute an optimum of any sort. The EU may be a pioneer but not necessarily a model. And internal-external consistency may or may not serve alternative *substantive* conceptions of global justice. In short, if our two paradigms clearly differ regarding the *rationale* for pursuing justice beyond the nation-state, drawing out their respective implications in terms of *outcome* is a much more tentative enterprise.⁴¹

2. FROM THE NATION-STATE TO EUROPE, FROM EUROPE TO THE WORLD: EXPORTING ORDER? INSPIRING JUSTICE?

We now turn to the concrete political and policy implications of these two paradigms, with a brief overview of the EU's record on the order and justice

global economic order of which Europe is part in the reproduction of poverty in the Third World. See for instance T. Pogge, 'Priorities of Global Justice', in Pogge (ed.), *Global Justice*.

³⁹ Linklater, *The Transformation of Political Community*.

⁴⁰ Hill, 'The Capacity-Expectations Gap'.

⁴¹ In this vein, see for instance Rawls's discussion on the conceptual versus concrete difference between his 'duty of assistance' and a global egalitarian principle of redistribution. Rawls, *The Law of Peoples*, 115–20.

agenda and an assessment of how the end of the cold war has affected this equation. We then ask which of the two paradigms more accurately describes the EU's trajectory and its current philosophy.

Europe During the Cold War: The Making of a 'Civilian' Power

Throughout its history, the very idea of Europe has fluctuated between a hegemonic notion, first promoted by the French monarchy, a Great Power system codified in the Congress of Vienna, and a more egalitarian view of Europe, both as a system of states and in terms of civilian rights, as promoted in the eighteenth century by the British and the Dutch. Hegemony or Great Power concert implied joint surveillance by powerful states of movements of population and minorities; the latter, in line with Kant's democratic and cosmopolitan ideal, corresponded to a more open vision of Europe as an integral part of a world federation of republics.⁴² The European balance of power and the notion of popular national sovereignty were intrinsically linked to Europe's hegemonic position in the world throughout the colonial period. In the nineteenth century, political boundaries within the European space, self-conceived as the centre of the world, were also the basis for dividing the rest of the world. European nation-states exported the very form of the border—the geography of the European regional order—beyond Europe's boundaries as a means of creating a world order in their own image. Paradoxically, in the era of the EU the reverse dynamic has become true. Europe has, to a great extent, become a micro-cosmos, a reflection, on a regional scale and perhaps in more acute form, of global realities—from the projection of global diversity onto the European space to the regional management of the multi-faceted constraints and opportunities of globalization.

As noted earlier, the EU has since its inception carried connotations of regional order: bringing stability, security, and peaceful entanglement to the nations of Europe. This is the dimension of the EU project emphasized by realists, for whom 'it is clear that the notion of the EC/EU as an island of stability, and a piece in the jigsaw of the Cold War, is tied closely to the constitution of a geopolitical boundary between the Community/Union and the disorderly or threatening world outside'.⁴³ There is no denying that the EU has played a central part in establishing a presumption of order in the western part of the continent, including by sustaining the division of Europe—a role Joffe described as 'America's European pacifier'.⁴⁴ In short, the EC, at

⁴² E. Balibar, *Nous Citoyens d'Europe: Les Frontières, l'État, la Peuple* (Paris: La Découverte et Syros, 2001).

⁴³ M. Smith, 'The European Union and a Changing Europe: Establishing the Boundaries of Order', *Journal of Common Market Studies*, 34/1 (1996), 14.

⁴⁴ J. Joffe, 'Europe's American Pacifier', *Foreign Policy*, 54 (1984).

the time, was the institutional anchor of regional order in the cold war era, and it sustained this order both as an 'island of stability' and as the most prominent ally of the USA in the bipolar contest. By channelling existing disagreement between member-states—often France vs the rest—over the extent to which Europe should rest content to play second fiddle to the USA, the existence of the EC dampened potential transatlantic rifts and enhanced the predictability of its member states' foreign policies. This became even more the case after the first enlargement to include Britain, Denmark, and Ireland in 1973. Over time, successive French governments managed to rally more forces to their view, from the German left to the new members of the 'club med', to civil society groups demonstrating against US missiles. But the EC consistently provided not only the European but also the transatlantic 'glue'.

To the extent that the EC did exist internationally, it was as a civilian power focused on managing the external dimension of its internal market and its potentially negative externalities. Its own dedication to maximizing the wealth-creating effect of economic interdependence made it hard to ignore the demands for justice emanating from the rest of the world, especially from newly independent states. The EC both inherited the post-colonial guilt of its member states and provided an institutional 'venue' to assuage that guilt, a venue that would be less vulnerable to accusations of post-colonialism than individual member states' 'development' ministries. The EC Commission, in particular, sought early on to interpret its role as 'guardian of the Treaties' including a commitment to export the benefits of 'managed trade' beyond its internal borders. As a result, and perhaps paradoxically, it started to shape a highly original and ambitious approach to development assistance, above all through the Lomé Conventions, which quickly became the most important source of aid in the Third World. It also engaged in the progressive and long-term institutionalization of its relationship with countries from the South, including with Mediterranean countries, ASEAN, Central America, and Mercosur. As a result, member states collectively and individually became by the late 1970s 'the rich countries most likely to win trust and exert influence in the South particularly Africa'.⁴⁵

Nevertheless, the EC's contribution to global justice in these years should not be exaggerated. Aside from a handful of countries, most of the Asian, Caribbean, and Pacific states (ACPs) could not sustain growth simply on the basis of price-indexed aid for their primary commodities—their share of the budget devoted to such support was after all only 3 per cent of the overall EC budget—and, if EC protectionist lobbies happened to be offended, it was always clear what policy option would be chosen. Unsurprisingly, 'justice beyond' remained secondary at a time when the EC itself was operating under

⁴⁵ Hill, 'The Capacity-Expectations Gap'.

a mainly nation-centred paradigm, where its *raison d'être* was 'designed to maintain order between independent political communities rather than to realise shared normative commitments such as greater justice'.⁴⁶

After the Cold War: Superpower as a Means to an End?

The end of the cold war did not spell the end of the Union's order agenda; on the contrary. But it did affect the balance struck between order and justice imperatives both within Europe and in European foreign policy. The end of bipolarity, combined with post-cold war *disorder*, led to growing consensus over the Union's role as a potential exporter of order not only around Europe but also *beyond* Europe. But through what means, and to what ends? The tension became more acute and explicit between those who envisaged a truly 'Western' rather than US hegemony, based on the rule of law and the expanding jurisdiction of international institutions, and those intent on balancing 'the sole remaining superpower'.⁴⁷ Throughout the 1990s, European leaders explored ways of shifting the EU's focus from the maintenance of internal *political order* to the shaping of *geo-political order*, while retaining consensus among member states. While it was clear that this could not be done short of endowing the EU with an autonomous military capacity, there was wide disagreement as to the ultimate function of an EU security apparatus independent of NATO. The theme, of course, was not new. In 1983, Hedley Bull reflected a widespread sentiment when he argued that the EU would never be a player in the world without its own defence.⁴⁸ A decade later, the alleged gap between the EU's *capacity* and the *expectations* it had created was still far from closing, since the EU was yet to gain 'dimensions of sovereignty to acquire a federal foreign policy ... which would give it the external quality of a state (and *ipso facto* superpower status)'.⁴⁹ Nationalist, anti-Atlanticist, and supranationalist pro-Europeans were joined in the late 1990s by pro-Atlanticist Britain in a bid to play a leading role in a new, albeit familiar, prospect of 'Europe as a superpower'. Thus, the 'capacity-expectation' gap was narrowed through the progressive formalization of a new Common Foreign and Security Policy incipient at Maastricht (1993) and confirmed at Amsterdam (1997), St Malo (1998), and Nice (2000). Ambiguities remained, however, as to what ought to happen in case of US-EU disagreement over the desirability of intervention.

⁴⁶ Linklater, *The Transformation of Political Community*, 207.

⁴⁷ R. Keohane, J. Nye, and S. Hoffmann, *After the Cold War: International Institutions and States Strategies in Europe, 1989–1991* (Cambridge, MA: Harvard University Press, 1993).

⁴⁸ H. Bull, 'Civilian Power Europe: A Contradiction in Terms?', in L. Tsoukalis (ed.), *The European Community: Past, Present and Future* (Oxford: Blackwell, 1983).

⁴⁹ Hill, 'The Capacity-Expectations Gap', 316.

Europe's Competing Paradigms

141

More fundamentally, critics on the left and within NGOs deplored the old-fashioned logic of a force-centred approach to power and the fact that it would detract from the core economic and social functions of the Union. In any case, since it would be impossible to match US levels of defence spending, why divert resources better deployed on aid, technical support, institution-building, and trade liberalization? Perhaps most fundamentally, how could a political entity so successful at creating order *within* through the logic of interdependence now turn to the old logic of coercive action externally? If it had to intervene through force, then the EU had better stick to areas of comparative advantage, such as conflict prevention, peacekeeping, and post-conflict management—a view dominant in the EU Commission and with Scandinavians. Moreover, they argue, the EU could aspire to be a ‘superpower’ externally only to the extent that its actions would reflect the hierarchy of states within the Union, a condominium of big member states. And that, in turn, would fundamentally betray ‘the community spirit’. ‘Civilian Power’ thinking ought not to be abandoned as if it had been a second best all along, but reinvented to fit new international circumstances.

In spite of the controversy surrounding what kind of power it ought to be, there was a widespread sense in European capitals at the beginning of the 1990s that the EU was poised to become the *fer de lance* of a new international politics—a ‘just’ new world order. By the beginning of the twenty-first century this sense had been dampened but not obliterated. Three kinds of institutional/ideational arguments can be invoked here. First, by the early 1990s, Europe had become the most institutionally dense environment in the international system.⁵⁰ This meant that existing European habits of cooperation and institutional frameworks could be built upon in tackling global issues. Freed from cold war strategic constraints, the EU now had the necessary room for manoeuvre to mould other regional organizations and international institutions in ways more congenial to its own vision of justice. The open question was and still is whether the rest of the world shares the EU’s emphasis on institutionalism, and whether institutions can in and of themselves affect rather than reflect global imbalances of wealth and power.

Second, and more substantively, the unique political character of the EU gives it a significant comparative advantage in shaping challenges at the global level. While European nation-states in the colonial era exported their political models, economic structures, and internal conflicts, Europe has now become the place where many of the world’s problems crystallize and get ‘played out’: refugee inflows and socio-ethnic tensions, transnational economic inequalities and calls for redistribution, the controversial balancing of social standards and trade liberalization, the two-edged sword of free movement of people, product,

⁵⁰ Keohane *et al.*, *After the Cold War*.

and capital—'goods' versus 'bads'—and the tension between liberal and conservative values in coordinating police and justice systems. So, European political systems have not only the institutional capital but also the substantive know-how to promote a shift in the global agenda. The reason for caution on this count is the lack of ambition of the EU's own internal justice agenda, including on economic redistribution, due to its nature as a regulatory state and the dismal size of its budget: 1.24 per cent of the EU's GDP.

Finally, the argument goes among powerful actors in the international system, the EU has the most credibility in playing such a leading role. In spite of its prospective military mantle, the EU still stands for civic statehood, peaceful coexistence, and the promotion of the rule of law in the realm of inter-state relations. One could argue that precisely because of its origins and its essence as a civilian power it is this feature, more than military might, that enhances its potential for 'actorness' on the international scene. The EU is about politics, influence, and persuasion, not coercion. In this sense, the European version of Joseph Nye's soft power, of 'power without weapons', may lie precisely in its mastery of politics as a continuation of war by other means.⁵¹ Opponents of its new security plans stress that the EU's reputation as a civilian power, rather than its potential military might, makes it a credible mediator and peacekeeper in conflict-prone regions around the world. Its claim to impartiality, if not always neutrality, is all the more credible given that EU states have often found themselves on different sides of a conflict on historical grounds. Such impartiality is bolstered by acting through the EU, an organization that has allegedly both incorporated and transcended these differences. Moreover, this reputation is strengthened by the rising prominence of, and access to decision-making by, NGOs in the EU and their insistence that internationally agreed norms must reflect ethical imperatives. Most prominently, the EU's main self-defined mission in the 1990s has been to promote these values of civic statehood and law across the European continent.

Indeed, since the late 1980s the EU has significantly increased its global presence on two counts: development assistance and peace-building. It has greatly increased its aid budget and scope of action—it now gives 55 per cent of world aid while progressively abandoning aid 'tied' to specific imports from the donor countries—and has been at the forefront of advocating 'sustainable development' strategies on the part of international organizations like the World Bank. To be sure, order and justice rationales are not easy to disentangle here. Part of the rationale for development assistance is the prevention of conflict, mass movement of people, and generalized unrest spreading beyond national boundaries. Regional order in Africa or Latin America affects world order and depends in turn on sustainable growth, which rests *inter alia*

⁵¹ J. S. Nye, *Bound to Lead? The Changing Nature of American Power* (New York: Basic Books, 1990).

on enhancing the perception and reality of greater equity in the distribution of wealth. Similarly, the EU's increasingly assertive role as a mediator and peace-builder reflects the notion that the 'rights of people' and not only the 'rights of states' need to be protected at the level of international society. In the last decade, EU representatives have engineered new approaches to post-conflict nation-building in a number of war-torn societies, from the Balkans to Central America and the great lakes of Central Africa, through, *inter alia*, the funding of institution-building and NGO action on a previously unprecedented scale.

But there remain numerous points of contrast and tension between the two foreign policy paradigms, ranging from defining the objectives, targets, and scope of interventionism abroad to the fundamental assessment of the character and meaning of borders. We can only indicate succinctly here how to tease out some of these differences.

3. THE EU'S SHIFTING JUSTICE AND ORDER AGENDA: HUMAN RIGHTS, ENLARGEMENT, AND GLOBAL GOVERNANCE

If a post-national agenda had taken hold in Europe, we would expect to see a significant degree of consistency between internal and external goals and policies. This final section examines how far this is in fact the case in relation to three important issue areas: human rights and citizenship rights; enlargement; and global governance.

Human Rights and Citizenship Rights Within and Without

Despite the fact that the original constituent Treaties did not refer to the protection of fundamental human rights, the European Court of Justice began in the late 1960s to rule that respect for such rights was part of the legal heritage of the Community. National actions incompatible with fundamental human rights were deemed to be incompatible with the Community legal order. It took a long time, however, for the EU to even start to match such legal prohibition with a proactive human rights policy in the face of resistance from a number of member states. To this date, it is not clear whether the Union possesses adequate legal competence in relation to a wide range of human rights issues, both internal and external.⁵²

Nevertheless, the 1990s were a period of significant consolidation in this field, propelled by both internal and external sources. Internally, after completing the

⁵² P. Alston and J. Weiler, *The European Union and Human Rights* (Florence: European University Institute, 2001).

internal market, leaders were realizing the need to move the Union into areas closer to their citizens' concerns. Externally, the end of the cold war had removed the Soviet human rights bogeyman and turned the spotlight back onto the West. Thus, under the 1997 Amsterdam Treaty, any member state violating human rights in a 'serious and persistent' way can lose its rights under the Treaty; Austria came close in 1999. In the same period, EU lawmakers have taken notable initiatives in a wide range of fields, from gender equality to racism and xenophobia. Significantly, this heightened justice agenda has come in tandem with the enforcement of a much more systematic 'order' agenda for the Union, including through the coordination of police and control of movement of people in a borderless Europe. Under the heading of 'Justice and Home Affairs' introduced at Maastricht and revisited at Amsterdam, the goals of order and justice come together in the commitment to 'provide citizens with a high level of safety within an area of freedom, security and justice'. However, no specific mention is made of achieving these objectives within a framework that fully respects the human rights of all, including non-citizens, and EU institutions continue to be largely cut off from the administration of justice within member states.

On the external front, the EU has also considerably increased its emphasis on human rights in the last decade. Arguably, it has unique potential to spearhead a global human rights agenda, given its emphasis on positive forms of incentives in its foreign policy-making and its financial resources to back it up. The move, described in Chapter 2, towards greater emphasis and concerns with individual rights and democracy is certainly prominent in the evolving EU approach towards development aid, political cooperation, and the promotion of democracy. Close to home, it has insisted that states seeking accession must satisfy strict human rights requirements, including minority rights. Other governments wishing to enter into cooperation agreements with the Union or to receive aid or benefit from trade preferences must commit to respect human rights. Various types of human rights clauses are included in over 50 Community agreements, and are especially prominent in supporting countries in transition to democracy and in post-conflict peacemaking situations. But critics point out that the Union does not go far enough in this respect, in terms of the scant attention paid to home-grown monitoring institutions, to the lack of clear procedural rules for the suspension and termination of external agreements, and to the prevailing hands-off approach to regulating the practices of EU-based multinationals.

In this context, the Union's human rights policies, or lack thereof, have come under increasing scrutiny in the post-cold war era, culminating in particular in the events to mark the 50th anniversary of the Universal Declaration. Echoing many others, Alston and Weiler have argued:

The irony is that the Union has, by virtue of its emphasis upon human rights in its relations with other States and its ringing endorsements of the universality and indivisibility of human rights, highlighted the incongruity and indefensibility of combining an

active external policy stance with what in some areas comes close to an abdication of internal responsibility. At the end of the day, the Union can only achieve the leadership role to which it aspires through the example it sets to its partners and other States. *Leading by example* should become the *leitmotiv* of a new EU human rights policy... Our analysis thus makes no fundamental distinction between the internal and external dimensions of the Union's human rights policy. To use a metaphor, it is clear that both must be cut from a *single cloth*.⁵³

In short, they conclude, 'as long as human rights remain a suspect pre-occupation within, their status without will remain tenuous'.⁵⁴ There are numerous examples of such inconsistency. Thus, the EU provides funding and expertise to assist governments in third states to establish national human rights commissions, but such commissions have not been set up within most EU countries. EU policies are dominated by 'securitarian' or 'order' agendas, at the expense of the very human rights values promoted by its representatives in international fora.⁵⁵ Member states continue to apply widely differing interpretations in implementing common asylum measures, provide inadequate safeguards to protect the obligation to ensure *non-refoulement*, have applied widely differing interpretations of who constitutes a refugee, and have not always complied with common EU rules.

To be sure, the right of states to regulate or exclude immigrants or refugees is a source of intense ethical controversy among politicians and philosophers in Europe as in the USA. National-sovereignists would argue that the law of peoples entails a conception not only of what the legitimate political units are but also who is entitled to become a citizen. But for the post-national critic an inclusive conception of European citizenship is needed, capable of bridging the gap between exclusionary and nation-centred concepts and a diffuse, but inconsequential, notion of universality. In the spirit of Hannah Arendt's 'right to rights',⁵⁶ the treatment of such extreme cases as those who suffer exclusion to the point of threat to their survival becomes the very test of universal justice. In the words of Etienne Balibar, representative of the most radical post-national view, today: 'European citizenship is not conceived as a recognition of the rights and contributions of all the communities present in Europe, but as a post-colonial isolation between "autochtone" and "allogenes" populations, which in turn reinforces communitarian exclusionary patterns.'⁵⁷ Under this radical view, the Maastricht Treaty was significantly flawed in that it transformed the status of the foreigner in Europe by making European citizenship

⁵³ Alston and Weiler, *The European Union and Human Rights*, 12. ⁵⁴ Ibid.

⁵⁵ S. Lavenex, 'The Europeanization of Refugee Policies', *Journal of Common Market Studies*, 39 (2001). This article contributed to the international report of 'wise men', *Leading By Example* (Florence: European University Institute, 2001).

⁵⁶ H. Arendt, *The Origins of Totalitarianism* (London: Allen & Unwin, 1958).

⁵⁷ Balibar, *Nous Citoyens d'Europe*, 307.

an addition of national citizenship. While within each country 'the Other' can still be considered as a member of another sovereign state, benefiting from mutual recognition, at the Union level he or she becomes excluded from within. Followed to its most radical conclusion, the post-national ethos has led various activists and intellectuals in Europe to argue that there is inside the EU a regime of quasi-apartheid which has led to replacing the traditional outside enemy with the figure of the enemy from within.⁵⁸ According to many human rights groups, exclusionary nation-centred constituencies are calling the shots, promoting an exclusionary logic in the EU, using borders as a means of police control, social exclusion, and exclusion of individuals from basic means of survival. They argue, without much success, that the EU should define itself as a community of *accession to citizenship*, albeit shared citizenship. In light of such demands, but even in light of the more moderate views expressed in *Leading By Example*,⁵⁹ if the status of the foreigner in Europe is to be used to gauge the consistency test, the nation-centric logic has not been superseded, be it as reflected in member states' or EU-level policies.

Managing Europe's Borders in the Context of Enlargement: The Politics of Inclusion and Exclusion

Shamefully, in the eyes of many, EU enlargement to the newly democratic countries of eastern and central Europe did not become an immediate imperative after 1989.⁶⁰ How could western Europe not want to share with great urgency the fruits of four decades of growth and freedom? How was it possible not to want to export east of Europe the benefits of enlightenment, reform, and democratization? Speedy accession and generous conditions were from the very beginning of the decade presented as a 'moral imperative' in most political and intellectual discourse. In practice, however, moral imperative gave way to other priorities on the EU's post-Maastricht agenda, from monetary union to creating a common judicial space and institutional reform. Geo-political concerns about maintaining or restoring order in Europe's periphery continued to be paramount, albeit without granting a sense of historical urgency to the issue. This led in 1993 to the formal offer of membership to the first wave of candidate countries: Hungary, Poland, and the Czech Republic. Above all, the explosion of conflict in the Balkans greatly increased the awareness of risks of destabilization from lingering nationalism. Tellingly, the first concrete conditionality programmes put in place by the EU throughout eastern-central

⁵⁸ Balibar, *Nous Citoyens d'Europe*, 308.

⁵⁹ See n. 55.

⁶⁰ See for instance Timothy Garton Ash, *History of the Present* (London: Vintage paperback edn, 1991), 289 ff.; for an early discussion on the politics of enlargement see K. Nicolaidis, 'Eastern European Trade in the Aftermath of 1989: Did International Institutions Matter?', in Keohane *et al.*, *After the Cold War*.

Europe, the so-called 'stability pacts', were aimed at internal or cross-national tensions related to the treatment of ethnic minorities. A paramount concern on the part of the EU leadership at this point, and indeed to this day, was to forestall mass inflows of temporary or permanent migrants from the east. In short, even while the EU may have helped to create circumstances within these countries that ultimately served the interests of the disenfranchised, the immediate rationale was certainly order on the European continent.

In this there was both continuity and change between pre- and post-1989. For much of its existence the EU was based on a 'politics of exclusion' and, in its current form, is still a 'daughter of the cold war'. Once Gorbachev's 'common European House' and other such continent-wide projects were buried in the immediate aftermath of 1989—and with them any real options to renegotiate borders and alliances on the continent—there was no possibility for the re-foundation of Europe on all-inclusive terms. EU decision-makers seem to have wanted to preserve for as long as possible the advantages of the existing division of labour between zones of unequal development, and furthermore to postpone any rethinking of European identity as emanating from the successive episodes of the 'European civil war'.⁶¹ The new vision in the West, if it can be so called, was that of the 'real Europe' as opposed to the 'outside Europe' which would need to be 'Europeanized'. This notion of Europeanization only superficially echoed the slogan, so popular in the east in the early 1990s, of 'the return to Europe'. Europeanization as practised in the context of enlargement resembles 'internal colonialism'—to pick up on Timothy Garton Ash's expression referring to the West German's attitude to their eastern compatriots⁶²—and it goes along with a militarization of Europe to maintain the existing order both within and at its margins. Vaclav Havel's 'return to Europe' refers to a Europe whose culture, politics, and historical identity borrow from all sources, 'from the Atlantic to the Urals'—a striking end to 80 years of continental civil war. With policy firmly defined by the first view, the *reunification* of Europe has given way to *access* to the EU as the guiding imperative of the decade.

On what grounds, then, is accession conducted? Albeit under an assumption of fundamental asymmetry between the two sides of Europe, the EU has moved some distance in the post-cold war era towards a 'politics of inclusion'. Yet this evolution is far from unambiguous or complete.⁶³ Although it used to be clear what it meant to be inside and outside—a complex web of association agreements codified the hierarchy of relations between the EU and most of the outside world—that conceptual clarity has been lost. Moreover, the

⁶¹ E. Hobsbawm, *The Age of Extremes: The Short Twentieth Century, 1914–1991* (London: Abacus, 1995).

⁶² T. Garton Ash, *In Europe's Name: Germany and the Divided Continent* (London: Vintage, 1994).

⁶³ Smith, 'The European Union and a Changing Europe'.

geo-political boundary of the EU has changed from the straightforward security blanket of the cold war to a more multi-layered reality. Countries associated with the EU gain access to numerous types of status, following both the movement towards convergence and the distance left for achieving membership. With the EU a constantly moving target, the two are not necessarily correlated. In order to provide 'objective' criteria for establishing such degrees of accession, the EU Council has designed extensive conditions layering the path to membership.

But there is little attempt, it seems, to deal with accession conditionality in a way consistent with the internal dynamics of the EU. This is paradoxical given that accession is supposed to be first and foremost about economic and political convergence. In its forceful advice to the candidate countries' governments, the EU Commission has not applied the kind of arm's-length approach that has benefited member states, insisting on the application of 'accession economics' rather than development economics in countries that ought to concentrate on a development agenda.⁶⁴ Thus competition policy standards are often applied in more uncompromising ways than within the EU, even in environments which do not yet have fully functioning markets. Exigencies of compliance with the *acquis communautaire* far outstrip the kind of compliance expected from existing member states. Most paradoxically, convergence to an EU where mutual recognition of laws, regulations, and standards has become the norm, these countries are meant to converge to a 'European model' which, to some extent, is a utopia in the fertile minds of Brussels eurocrats.

It could be argued that the EU's enlargement strategy may at times contribute to *disorder* in the region. For one thing, its rating of actual or potential candidates creates signals for the rest of the world—from investors to neighbours and allies—making the implied link between non-EU status and disorder a self-fulfilling assessment; this is especially for the second and third wave of applicants. Moreover, the unpredictability, inconsistency, and complexity of the EU's conditions is not conducive to the creation of a common political culture and policy forum, and the accession game has become a source of division as states in the periphery start to compete for inclusion. It may be the case that the EU's enlargement to the other half of Europe, along with the costs that it entails, testifies to the Union's ultimate commitment to creating, on the continent at least, a zone of greater justice. Yet the post-national critic would point out that the EU's lack of attention to the spillover effect of its own internal policies—from agriculture to justice and home affairs—and to the redistributive impact of the policies dictated to the candidate countries betrays a much more conservative agenda, at least in the short run.

⁶⁴ H. Grabbe and K. Nicolaidis, *Fostering Social Inclusion in Central and Eastern Europe: The Role of EU Accession Conditionality*. World Bank Working Paper, 39 (Washington, DC: World Bank, 2000).

Ultimately, the tensions and contradictions associated with EU enlargement are reflected in the most fundamental question of all: who ought to be included in the new European order? This question came to a head with the prospect of Turkish membership. Under the nation-centred or 'communitarian' logic, Turkey is not part of Europe historically and culturally defined, for example, by Roman law, Christianity, humanism, or liberalism. People in the EU cannot realistically envisage building a just order predicated on such an assumption. Here the exclusionary approach to defining 'who is us' applies consistently to outsiders within and without. Hence, German Christian Democratic leaders consistently link their position on Turkey's membership with Turkish immigrants in Germany.⁶⁵ Similarly, in 1998 the left wing of the Social Democrats and, maybe more significantly, their Green allies brought to government an ideology of cosmopolitan inclusiveness and multicultural tolerance with implications on both the internal front—reform of the German nationality laws—and the external front—support for Turkish formal candidacy in the EU. More generally, the conflicts in the former Yugoslavia have led to the beginning of a questioning, if not redefinition, of the historical boundaries of Europe. The dominant cultural paradigm for European identity has lost its hegemony, and there is an increasing sense that European citizenship can be based on a commonality of *political* agendas. In short, there is an emerging definition of European citizenship that is much more inclusive and fluid than its previous, more implicit incarnation. As a result, the EU may come to focus less on the maintenance of boundaries and more on their continual redrawing and redefining.

The EU's Promotion of Global Governance

The shift from talk of 'a new world order' at the beginning of the 1990s to that of 'global governance' ten years later is symptomatic of the ascendancy of the justice agenda on the world stage. And the EU, through its bilateral relations and its representation in international institutions, has proclaimed itself to be the advanced guard in promoting many aspects of such an agenda, from economic redistribution to 'fair trade', sustainable development, democratization, and domestic institution-building. The term 'governance' and the *praxis* it represents is especially popular in the EU both because it offers an alternative model to classical party politics and because it seems to erase the divide between public and private management of collective affairs. On the one hand, 'governance' conveys the importance of including multiple stakeholders—which undoubtedly increases the prominence of justice claims, albeit often

⁶⁵ K. Nicolaidis, 'Europe's Tainted Mirror: Reflections on Turkey's Candidacy Status After Helsinki', in D. Keridis and D. Triandaphilou (eds), *Greek Turkish-Relations in the Era of Globalization* (Dulles: Bassey's, 2001).

inconsistent ones. On the other hand, critics contend that the term 'governance' is a bureaucratic, apolitical construct meant to convey the notion that all problems can be resolved through technical fixes without the need for addressing fundamental political conflicts and choices.

In a new version of Europe's 'narrative of projection', the European Commission and its supporters suggest that the EU has a particular role to play in fostering new more legitimate modes of world governance, in part by exporting its own institutional experience.⁶⁶ As a result, there is great emphasis on the creation or maintenance of international institutions as well as on the new flexible modes of cooperation EU leaders are currently experimenting with under the umbrella of 'open method of cooperation'. Indeed, short of a world state or a world government, a theory of international justice needs to address the *methods* states adopt in their relations, an issue that is lacking in theories of international justice expounded by political theorists. This does not mean, however, that such relations should necessarily be anchored in stronger institutions. Indeed, the EU experience itself could suggest otherwise, a model of 'global subsidiarity'.⁶⁷ But the nation-centred and post-national schools provide different readings of what global subsidiarity entails. For the former, the EU should not be bound irrevocably by international commitments; subsidiarity stands in as a rationale for sovereignty. For the latter, the notion of subsidiarity should be interpreted in a subtler manner, as calling for non-hierarchical modes of governance, an emphasis on process and checking power and on the mutual recognition of laws and regulations as well as of identities. In this view, interactions and cooperative endeavours may be intense, but they do not necessarily imply centralized coercive decision making and enforcement.

When it comes to applying such reasoning to the EU's policies on development, we are still a far cry from an ideal global theory of justice that could reach principles comparable to those of Rawls's *Theory of Justice*, including a global 'difference principle' dealing with the huge economic and social inequalities that exist in the world. Yet, even under a minimalist view, natural and historical contingencies have prevented 'the poorer and less technologically advanced societies of the world from attaining historical and social conditions that allow them to establish just and workable institutions' that would

⁶⁶ See for instance the 'Contribution of the EU to Global Governance' by Commission working group on Global Governance, *White Paper on Governance* (Brussels: EU Commission, July 2001). For a discussion, see "'This is my Utopia"—The EU, the WTO, Global Governance and Global Justice: Synergies of Crisis, Narratives of Projection', with Robert Howse, in Joseph H. H. Weiler, John Peterson, and Iain Begg (eds), *Integration in an Expanding European Union: Reassessing the Fundamentals* (Oxford and Malden, MA: Blackwell, 2003).

⁶⁷ Howse and Nicolaidis, *The Federal Vision*; R. Howse and K. Nicolaidis, 'Legitimacy and Global Governance: Why Constitutionalizing the WTO is a Step too Far', in R. Porter *et al.* (eds), *Efficiency, Equity, Legitimacy: The Multilateral Trading System at the Millennium* (Washington: Brookings Institution Press, 2001).

in turn allow them to take advantage of global economic integration.⁶⁸ It is thus incumbent upon more favoured societies to help them counteract such contingencies by providing them with the incentives and means to set up such institutions at both the governmental and non-governmental levels. While international society has evolved in this direction in the last decade, the EU alone has moved decisively in this direction—in particular in Africa—doing away with tied aid and narrow macroeconomic conditionality. Aid policy may come to mirror, on a much more modest scale, redistributive policies to poorer regions in the EU. But the current bargains over the latter in the context of enlargement act as a stark reminder of the importance of the recipient country's bargaining power in shaping these policies.

In the trade realm, the agenda of the US and Europe in the GATT-WTO has consistently been to promote a liberal economic order in their image, with safeguards, exceptions, and exemptions shaped by their internal societal bargains, from the voluntary export restraints of the 1970s to the trade linkages of the 1990s. The blanket Third World opt-out of the 1960s and 1970s was followed by irresistible pressures to liberalize in the wake of the debt crisis, the Washington consensus, and the bargains of the Uruguay Round. Perhaps, most recently however, EU representatives have been more prone than the US to champion a Third World agenda, albeit with gaping exceptions, especially in agriculture. As the redistributive implications of the Uruguay Round agreements have become more obvious—for example, the creation of winners and losers between countries and not only within countries—EU negotiators have had to reconsider the 'justice' implications of their positions. In the post-Uruguay Round era, the EU's emphasis has been on seeking ways of shaping a more equal, or just, economic order, without paying much attention to requirements of procedural justice. While, as John Toye argues in Chapter 4, procedural justice will not make up for substantive justice because states do not enter into dispute settlement procedures similarly endowed, it is noteworthy that the EU has dismissed the demands of NGOs for transparency in dispute settlements even more readily than the USA. Even on substantive grounds, the EU is loath to endow the WTO with 'constitutional authority' to adjudicate once and for all on fundamental political trade-offs. Hence, in its positions regarding trade disputes, in particular with the US, the EU Commission appears consistently to argue that the lack of converging national preferences points to the limits of international dispute resolution. There may be first-order conflicts⁶⁹ unamenable to compromises—for example, hormones in beef, the banana regime—that simply need to be left unresolved. When such conflicts arise reflecting differences in fundamental values regarding 'fairness', the distribution

⁶⁸ Rawls, *The Law of Peoples*, 52–3.

⁶⁹ A. Kojève, *Outline of a Phenomenology of Right* (Oxford: Rowman and Littlefield, 2000).

of risk, social needs, or the legitimacy of domestic contracts, EU lawyers have pursued a minimalist institutionalist line. Accordingly, we need to accept that conflict will go unresolved and that the system is about managing such sustained differences rather than creating 'order' at all costs. The coexistence of economic justice and political diversity is at that price.

4. CONCLUSION

Where does the EU stand, and where is it headed, on the order and justice agenda? Are justice concerns projected from the national to the EU levels now more systematically extrapolated to the global level? According to Balibar, 'we are now in an untenable in-between: *after the end* of classical national sovereignty (but not of national identities as echoes of history), *before the beginning* of a post-national sovereignty'.⁷⁰ But perhaps this 'in-between' is precisely what makes Europe so relevant to global debates on this issue.

We have discussed how, under the nation-centric paradigm, the EU can be seen as magnifying the logic of the inter-state system and should be used as such. On the alternative view, it helps transform and subvert this logic. In the first case, the Union is the forum in which European states negotiate continuously to maintain order among and around themselves, as sovereign states would in an 'anarchical society', simply more intensely. In the second view, the Union is a polity in which European peoples are inventing new norms of justice and solidarity beyond the state. In so doing, they constitute a laboratory not only for other regional endeavours but more importantly for global forms of cooperation.

The end of the cold war has brought the tension between these two models to the fore. During the cold war, the EU served as a mechanism by which European states managed the implications of bipolarity and systemic competition and thus focused on maintaining their internal version of world order. By the 1990s, however, the removal of the superpower overlay made it clear that 'the mosaic of "medieval Europe" with highly fragmented and often localized power sources would put into doubt the notion of an EU based on an identifiable power structure and consequent behavioural patterns'.⁷¹ The EU that is emerging is a complex animal indeed. It aims to speak with a single voice on the world scene, but its internal dynamics increasingly contradict such ambition.⁷² As

⁷⁰ Balibar, *Nous Citoyens d'Europe*, 293.

⁷¹ Smith, 'The European Union and a Changing Europe', 8.

⁷² S. Meunier and K. Nicolaidis, 'EU Trade Policy: The Exclusive versus Shared Competence Debate', in M. G. Cowles and M. Smith (eds), *The State of the European Union: Risks, Reform, Resistance and Revival*, v (Oxford: Oxford University Press, 2001).

a result, the EU may have the capacity to shape an 'order and justice' agenda beyond its borders, but its members still need to agree on one. Moreover, they need to view the choices that they make internally as having a direct effect on their external standing. This implies addressing the 'unfortunate, although perhaps inevitable, element of schizophrenia that afflicts the Union between its internal and external policies'.⁷³ It is also a powerful argument against the transformation of the EU project into a state rather than into a truly transnational and decentralized federal construct with universal appeal.⁷⁴

To be sure, while a majority of people and leaders in Europe still seem to think of pooling sovereignty as a concession made to the quest for regional order, a post-national paradigm is emerging in Europe that consists in part in laying the foundations for developing a 'justice' agenda beyond the state. Ultimately, this normative paradigm ought to point to the concrete channels and the practical ways by which such an agenda can be pursued. The role of institutions is crucial in this regard in that they can shape and not only reflect perceptions of a common interest in dealing with global justice claims,⁷⁵ thereby helping to create 'communities of interests' or 'communities of fate' at both the regional and the global levels. If it is partly a function of the strength of such communities and the institutions which shape them, the 'boundedness' of the quest for justice can be subject to change. But such a quest by political communities at any levels of aggregation cannot be based solely on institutions, procedures, and legal niceties; it needs a minimum degree of mutual identification.⁷⁶ This message, elaborated by the nation-centric school, has the merit of forcing the post-nationalists to come to grips with the moral and political underpinnings of their own advocacy of justice beyond the borders of the nation. There is indeed a middle ground between the straight dichotomous Tocquevillian logic underlying the first paradigm and the utopian cosmopolitanism model of a borderless world polity. The post-national school recognizes the power of collective identification but also the fact that there can be different grounds for creating a community of justice. Political communities may rest on bonds of solidarity in the face of harm and uncertainty without necessarily requiring bonds of common identities. They may rest on deep mutual recognition of identities—identification in a minimalist sense—rather than on their homogenization.

In the realm of *praxis*, many will argue that the EU needs to become a military superpower in order to support its ambitious justice aims. But if one takes a stricter consequentialist approach and adopts an outsider's view of the EU, then it is less relevant to ask what kind of entity it *is* than what it *does*.

⁷³ Alston and Weiler, 'The European Union'.

⁷⁴ Nicolaidis, 'Conclusion: The Federal Vision beyond the Federal State'.

⁷⁵ Hurrell, 'Global Inequality and International Institutions'.

⁷⁶ M. Telo, *Démocratie et Construction Européenne* (Paris: Calmann-Lévy, 1996).

And on that count, it can be argued that since the early 1980s it has exercised a 'variable and multidimensional presence'⁷⁷ in international affairs that is less easily described in terms of power than in terms of presence and influence, be it in international organizations, in zones of conflict and mediation, or in the context of development. This influence has increased in the last decade, even short of a security arm, simply because non-military modes of intervention, including through economic incentives and political networking, often seem better suited than force to the post-cold war world. In this light, the post-national school would argue, the EU can play a distinctive role, pertaining to a different logic altogether from the classical realist emphasis on competition and relative strength. As a civilian provider of international order, the EU is better poised at the beginning of the new millennium to adjudicate credibly between justice claims in different parts of the world and to project power as a means of bolstering this more neutral, mediatory role. In the end, however, who could deny that the tensions and contradictions of the past between the order and justice rationales in international policies are still with us today? Europeans, like their American counterparts, still find themselves choosing to promote unjust peace and are, perhaps less often, prepared to pay the price for disorderly justice.

⁷⁷ D. Allen and M. Smith, 'The European Community in the New Europe: Bearing the Burden of Change', *International Journal*, 47/1 (1990).