

CHAPTER 14

Coal, Steel and Spirit. The Double Reading of European Unity (1948-51)¹

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Introduction: European Reason and its Other

In an often-evoked sequence from the *Lectures on the Philosophy of History* (1822) G.W.F. Hegel (1770-1831) assembles all the major figures of world history into a single, unified movement of dialectical rationality. From Napoleon to Charlemagne, to Caesar, to Alexander, to Genghis Kahn, all collaborated knowingly or unknowingly in one selfsame human drama: the unification of existing "civilisation" through the deployment of Universal Reason in the concrete reality of ordinary lives. Or, to put it in a more Hegelian fashion, through these world-historical individuals the movement of Reason rediscovers itself in humanity's evolving historical self-rationalisation. The universality of Reason becomes real through its inscription in the particularity of human experience, the particularity of experience playing a decisive role in forging the concrete form for the ultimate and inevitable triumph of Reason².

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² Hegel, 1970-1979 [1832-1845]. Bd 5-6.

In the century and a half since Hegel's death both the audacity and the arrogance of his theory of universal reason have been exhaustively explored. In many regards the Hegelian system may be understood as a kind of end-point for the ideology of modern rationality, a hyperbolic final spasm of the self-exhausting promise of "universal reason" and, more generally, of the applicability of any *general* principle to any *particular* context. At the same time, a more sympathetic reading of Hegel could among other things underscore the powerful connection between the dialectic principle of identity and non-contradiction, and the social and political consequences of the notion of collectivity. Hegel must at the very least be credited with articulating a completely coherent theoretical system that unifies the *rational* foundation of modern thought since Descartes, and those *social* and *political* principles, which, though in many ways flawed and dated, still hold uncanny currency today³.

At the opposite end of the spectrum from this idealistic and romantically inspired conception of European history we can identify what might be called the "instrumental-rational theory" of European integration. Closely allied with traditional functionalist theories, it addresses the question of European unity both with respect to its strictly *formal* aspects and with respect to the function of those aspects. According to this theory, a certain structure of European unity best serves the formal interests of a Europe at large. A certain structure of European unity guarantees that the instruments, the mechanisms, the framework necessary for the *substance* of European unity is indeed already in place at the moment when the *actual* work of unity is to begin. Here the normative nature of the claim to European integration is of a different nature⁴. Though neofunctionalist theories of the 1950s

and 1960s like those of Haas and Lindberg soften to some degree the hard instrumentality of first-generation functionalism, and Groom's early neo-neofunctionalist position goes a long way in developing and analysing the nuances in the failures of neo-functional theory⁵, our conceptual complaint remains the same: to measure European collective interests according to the logic of instrumental reason, which is the central tradition of social scientific or economic research, is to operate according to the logic of the natural sciences. Political economy understood in this sense as a purely empirical social science requires that one turn one's back on the necessarily non-empirical foundation of not only European affective dynamics of national and supranational belonging (brought to the fore by the sociological nationalism scholarship of recent years), but also on the *conceptual* scaffolding which renders that empirical material intelligible.

These remarks are intended to set the stage for a double reading of European integration. On the one hand, if nothing else, Hegel presents a radicalised version of one form of European political integration based on the primacy of the spiritual or ideational. His theory of "historical rationalism" ascribes to the project of European construction not only a rationalistic perspective, but also a certain set of ethical claims which accompany it: Unity is the ultimate rational – and thus normative – moment in identity theory. Given that the rational is *good*, it *should* therefore be pursued. On the other hand, the foundational institutions of European unity in the immediate post-war period rely on the concrete evidence of material realities and the material *interests* for which they form the basis.

It is possible to reconstruct a genealogy of Europe as far back as early Greek thought⁶. Europe has many roots and many identities: on the one hand, conceptually, as a set of values which issue from the Greco-Latin synthesis, as a constellation of ideas about the rights and obligations of human beings that emerged from the Renaissance, as a certain number of politico-moral principles which served as the motor for the American and the French Revolutions. In other words, the *spiritual* legacy of Europe is deeply rooted in two millennia of history of a continent in search of its spiritual identity. On the other hand, the

³ The most remarkable testament to this currency is the œuvre of Theodor Adorno, not the least, his masterwork of dialectical history of ideas *Dialektik der Aufklärung* (Adorno & Horkheimer, 1989 [1947]); also Habermas's early work seeks to situate *Gesellschaftstheorie* between continental dialectical theory and neopositivism. For example, in *Erkenntnis und Interesse* (Habermas, 1988, pp. 86-7); cf. also "Zur Dialektik der Öffentlichkeit (Hegel und Marx)" in Habermas, 1990, pp. 195-209.

⁴ In a now classic text from 1966 David Mitrany sets out the fundamental principles of functionalism: "Here we discover the cardinal virtue of the functional method – what one might call the virtue of technical self-determination. The functional *dimensions*, as we have seen, determine its appropriate *organs*. It also reveals through practice the nature of the action required under given conditions, and in that way the *powers* needed by the respective authority. The function, one might say, determines the executive instrument suitable for proper activity, and by the

same process provides a need for the reform of the instrument at every stage." (Mitrany, 1994, pp. 90-91).

⁵ Groom, 1978, pp. 15-28.

⁶ Rougemont, 1961.

consequences of the Industrial Revolution, first in 18th century in Great Britain, then in the early 19th century on the European continent lead to a sharpened sense of a shared European *material* reality. Already in 1814 Saint-Simon, on the eve of Vienna, and more than thirty years before the publication of the *Communist Manifesto*, wrote an impassioned plea for a European Parliament based on a conception of a Europe united by *material* conditions, as an arena in which mass industrialisation pitted the collective working class against a hitherto unheard of set of challenges, and which necessitated the representation of the interests of workers in an international context. Similar movements were proposed by Mazzini in 1834, Victor Hugo in 1849, and Proudhon in 1863⁷.

Those who first laid the premises of today's European Union did so in the wake of World War II, describing their aspirations in terms of pacifism, and a desire to assemble an ideology capable of opposing future war amongst the European nations. The ideology they chose was that of political economy, following in the footsteps of Keynes' famous inter-war plea for economic co-ordination in the name of European peace⁸. The general assumption was that the causes of the war were, if not simply economic, then at least reducible to some form of economic rationality. The most trivial confirmation of this form of economical rationalism is to be found in the documents of the Marshall Plan. With the benefit of hindsight it is clear that the Marshall Plan was motivated by a far more complex political agenda than the simple prevention of renewed war on European soil. Though it is clear that the best medicine for both Europe and Japan in the immediate post-war years was vigorous economic expansion, the long term intentions of American policy were aimed far more at a world economy of free trade, a form familiar to and already dominated by American economic interests⁹. The logical compliment of the Marshall Plan was the integration of a restored Europe as a part of an anti-Soviet alliance – NATO, inaugurated in 1949. France, realising that Germany could not ultimately remain partitioned and economically subdued, responded in 1951 with the Schuman Plan, the proposition of an intertwining of

French and German economic interests through the European Coal and Steel Community¹⁰.

This essay seeks to take a microscopic cross section of the development of the discourse of European unity, to map the contours of that section, and to underscore the force of its arguments and the implicit, necessary – and finally constructive – conceptual ambivalence of the European project¹¹. Its method is thus discourse-analytical. It aspires neither to a social scientific understanding of the *causes* of historical phenomena, nor to a psychologistic understanding of political "behaviour". Rather, it attempts to chart the conceptual presuppositions and structural logic, which renders understandable a certain conception of European identity. The conceptual horizon of this

¹⁰ Hobsbawm, 1994, pp. 240-41. At the same time, it is essential to recall the "principles" in the name of which World War II – at least unilaterally – was fought. Though it has been clearly shown that the *conditio sine qua non* of the German war enterprise was a certain class-based way of life – the capital interests which both profited from and fed the war machine – the ideological foundation, as well as the affective appeal of the war effort was a certain conception of European Civilisation. This fact already accounts to a great extent for the incapacity of the Western powers to form an alliance in order to confront the growing menace of German aggression from 1933 to 1941. "However, another thing wove the threads of national politics into a single international web: the consistent and increasingly spectacular feebleness of liberal-democratic states (which happened also to be the victor states of the First World War); their inability or unwillingness to act, singly or in conjunction, to resist the advance of their enemies. As we have seen, it was this crisis of liberalism which strengthened both the arguments and the forces of fascism and authoritarian government." (Hobsbawm, 1994, p. 147). While the Western powers calculated according to the instrumental rationality of *Realpolitik*, the German power build-up and organisational tactics were fundamentally ideological, even idealistic. Fascism, in the Nazi version, is based on a philosophical opposition to the principles of Enlightenment rationality and political liberalism. As Hobsbawm points out, it was the very crisis of democratic liberalism which was the primary cause of the inability of the Western powers to act in any effective way against the advances of the Germans. Thus the deep anti-rationality, anti-democracy, anti-Enlightenment, and anti-Western values philosophy of Nazism appears to have been self-fueling. The critic of Western liberal democracy at the basis of Nazi ideology is co-determinant with the actual crisis of democratic-liberalism. The crisis of liberal democracy during the war years 1933-1941 thus has much to tell us about European construction, about European culture, and about the hierarchy of legitimisation that organises the troubled relationship between European culture and the aspiration for European government.

¹¹ This "ambivalence" is what Charles Taylor refers to with the term "ethics of inarticulacy" (Taylor, 1989, pp. 53-92).

⁷ Mazzini, 1834; Hugo, 1882; Proudhon, 1959 [1863].

⁸ Keynes, 1924 [1919].

⁹ Milward, 1992.

essay is the first major post-war political agreement on European unity, the *Treaty of the European Coal and Steel Community*, signed in Paris on 18, April, 1951. And yet, the following does not attempt to frame the signing of the treaty of the ECSC as the *telos* of some great meaningful political narrative, nor will it be made the object of juridical consideration in the context of international law.

The Treaty of the ECSC sets the scene for our reading of the concept of European unity through the memoirs of the one of the central players in the development of the ECSC documents, Robert Schuman. Through a close reading of Schuman's writings on Europe, European unity and Europeanisation we will, in the first part of this essay, try to come closer to an understanding of the tensions inherent in that concept as well as of the dialectics of self and other, universal and particular, which characterise Schuman's understanding of the European reality.

This analysis will lead us, in the second part of the study, to one of the great thinkers of both Europe and of continental philosophy, Alexandre Kojève, who in the early years of his career in the late 1930s inaugurated a new epoch in European philosophy, and who, in the latter part of his career formulated some of the foundational ideas of European unity. Lastly, Kojève's dialectical understanding of European unity and the European Community in the 1960s will lead us to the famous debate on political liberalism between Kojève and Leo Strauss, contemporaneous with the formulation of the plans for the ECSC, in order to inquire into the relationship between cultural plurality and political liberalism. Finally we will attempt a cursory examination of a number of European policy formulations in light of these theoretical considerations. The hope here is to problematise the notion of *community*, both as an object of scientific inquiry, and as a polemical or ideological phenomenon, that is, as a basis for political, economic, and social action. It attempts at the same time to deploy the hypothesis that the concept of European identity is not only problematic but *self-problematizing* and thus that problematisation is the only tangible and intelligible attitude toward it¹².

basis of Niethammer's objection to the inflation of the "identity" discourse is indisputable, namely that it builds upon a contradictory or paradoxical foundation. We must not, however, thus hasten to the conclusion that the term is incoherent. For meaningfulness of this concept – or any concept for that matter – is not exhausted by the simple adequation of a given *content* with a given *empirical* object. Thus when Niethammer observes that "the concept has no content, only a function" he is absolutely correct. The question is whether the "function" – which in Niethammer's view, somehow bears only secondary consideration – contributes in any *essential* way to its "meaningfulness".

One response to this question is already given by the 19th century American tradition of philosophical pragmatism, represented by Charles S. Peirce (1839-1914), William James (1842-1910) and John Dewey (1859-1952). (All three are important precursors of Jürgen Habermas and, more circuitously, fundamental figures for the brand of sociological phenomenology developed in the wake of Edmund Husserl by Arnold Gehlen, Helmuth Plessner, Arnold Schütz, Thomas Luckmann and Peter Berger – and represented in this volume by Gerold Gerber.) For pragmatism, both principle considerations, theories and categories, predictions and theoretical necessities all take second place to consideration of the factual consequences, success and failure of any given activity. In this sense, the "truth" value of the concept of identity would be nothing more, and nothing less, than its function. This philosophical observation is supported by an analysis of what might be called the "politics" of identity. By this I mean that, in current debates about cultural identity, be they national, European, or other, it becomes quickly clear that the stakes of *what* an identity in any given context is, has far more to do with *who* ascribes that identity, who is the beneficiary of that ascription, and to what end the ascription of that identity takes place. In other words, it is the "instrumental" or "use value" of the concept of identity that bears meaning.

A second response may be argued from a sociological standpoint. From this point of view the role individuals play within not only social contexts and interpersonal relations, but also within institutional, governmental and juridical settings presupposes the specificity of the individual at any given time or place. "Personal identity" is indeed one of the foundational organising mechanisms of our civilisation. It structures all institutionalised systems, from the family to the state. It permits access to systems of political representation, employment, health and social services; it is the key to recognition in education and employment; and it is the basis of the notion of private property. Yet here again, on this sociological level, the ambiguity that Niethammer finds on the conceptual level is clearly operative. Already Rousseau – a newcomer to republicanism and by no means jaded by the inertia of democratic political systems – was capable of a kind of post-democratic resignation in his remark that democracy takes place only at the moment of the plebiscite, that it is nothing more than a virtual, instantaneous measure of the will of the citizens, a fleeting representation of an intensive self-presence of public opinion. It is, in other words, a transient expression of *political identity*, a momentary representation of a unity under constant mutation, but which nonetheless is absolutely necessary in order to have the basis for any *legitimate* political action at all. In the same way, personal identity never corresponds

¹² In his contribution to this volume, Prof. Lutz Niethammer constructs a genealogy of the term "identity" and argues eloquently and forcefully for a cautionary approach to its use. After carefully charting the nuances of the term "identity" through its various incarnations in the social sciences, historiography and literature, Niethammer draws the conclusion that "identity" is a concept in search of content. A conclusion to which I wholeheartedly add my agreement. This is because the

adequately to a given "person" (in the moral/metaphysical sense). And yet that "identity" is the entry ticket into the social, political, juridical systems with which European civilisation organises itself. Likewise, the concept of identity can be historicised, that is, made the object of a conceptual genealogy, only by historicising the institutions which ascribe and control it. This is the scandalous insight gleaned from Zenon's Paradox (a flying arrow, in order to be perceived and understood, must be imagined stopped in mid-air, in a kind of snapshot. Any flying arrow is thus an infinite series of still-standing arrows. Conclusion: a flying arrow is both static and dynamic).

Yet a third response – in my opinion, more central to the issue of identity – goes to a more fundamental level through a philosophical genealogy of the term "identity". I am referring to the question of the nature of concepts and of predication. It can be understood along at least two axes: pragmatic and logical.

(1) The pragmatic problem arises from the ethnographic-sociological-anthropological observation that any given person is simultaneously identifiable with any number of predicates. It is not at all surprising to find that one "identity", on one level incommensurate with another, is, on another level, compatible (some combinations of predicates are admittedly more surprising than others). The degree to which two predicates are in contradiction with each other, thus becomes a question of cultural interpretation. (Under what conditions can a Jew also be a Catholic, a teacher also a pupil, or a bus driver also a night-club dancer?) This type of reasoning is a continuation of the phenomenological approach profiled by Gerber in this volume.

(2) The logical problem is slightly more complex and perhaps more insistent. A certain genealogy of the concept of "identity" leads inevitably to the methodological considerations made by Aristotle in his development of principles of scientific investigation. In a famous passage in Book I, Chapter IV of the *Prior Analytics*, Aristotle sets out the "laws of syllogism", that is of logical reasoning. A "perfect syllogism" is a syllogism "if it requires nothing apart from what is comprised in it, to make the necessary conclusion apparent" (24 b 23-6). A perfect reasoning is thus self-same and self-evident. It is, logically speaking, self-contained, needing nothing external to it in order to be true. Its premises and conclusions are already within it. (The most elementary example is $A=A$, "A horse is a horse"). Aristotle does not use the term "identity". That usage arises first as a translation by St Augustine and other Latin writers. Rather, he uses the connector "is" (*est*) to associate two "forms of words" in a syllogism. The Augustinian reading of Aristotle posits two terms of "perfect syllogism" as "identical" (*idem*). The basis for this identity arises from Aristotle's formulation of the diverse types of syllogism, their functions rules and parameters and, in particular, what has come to be called the "principle of non-contradiction", (or the "principle of the excluded middle term"). For it describes, in effect, the limit of the identity between two terms.

When three terms are so related to one another that the last is wholly contained in the middle and the middle is wholly contained in or excluded from the first, the extremes must admit of perfect syllogism. By "middle term" I mean that which is both contained in another and contains another in itself, and which is the middle by its position also; and by "extremes" (a) that which is contained in an other, and

(b) that in which another is contained. For if A is predicated of all B, and B of all C, A must necessarily be predicated of all C. Similarly too if A is predicated of none of B, and B of all of C, it follows that A will apply to no C. (25 b 32 – 26 a 2).

To illustrate: if all cars are red and all red things are fast, then all cars are fast; and the inverse: if no car is fast, and all red things are fast, then no car is red. Or to boil things down a bit, a thing cannot be *completely* one thing and *completely* another at the same time. More than being mere platitude, the principle of non-contradiction goes a long way toward holding reality afloat for ordinary human beings. This is, incidentally – and, of course, among other things – the principle which permits Niethammer to quite reasonably understand the concept of identity as the selfsame.

As obvious as it may seem, however, the obviousness of Aristotle's principle of syllogisms has not had it easy on the long journey through the history of philosophy. In particular, the subjective philosophy of German Romanticism, beginning with Fichte (1762-1814) and no doubt completed through Hegel's dialectical vision of history has largely discredited identity understood as the self-evidence of the selfsame. One of the most forceful moments in Hegel's philosophy is his argument that by excluding the "middle term" Aristotle only lays bare his dependence upon it. In effect, the law of the syllogism requires the false or the "negative" of the excluded part in order to assure identity with the same. In other words, the selfsame is selfsame only in the shadow of the other. All identity implies the trace of the other which is excluded from identity (Kristeva, 1990 p. 26). The identity of any metropolitan Norwegian carries the trace of the absent, excluded, silent (or silenced) Pakistani. This is not merely accidental, argues Hegel. It belongs to the structure of intelligibility (*Verständlichkeit*) of any concept whatsoever. And identity – and indeed identity itself requires that exclusion in order to be identity. Identity requires what it is not in order to be what it is. The *other* of identity – non-identity – is thus, according to Hegel, necessarily present in identity. Or to quote Hegel's rather opaque formula: "The unity [of being] is the identity of identity and non-identity." (Hegel, 1970-1979 [1832-1845], Bd 5, p. 74).

Deconstructive theory merely radicalises this position: the formulation "The car is red" is only *meaningful* given the meaningfulness of the notion of a car which is not red, a notion which itself is bound in a network of otherness. The question of cultural identity is thus a particular case of the problem of identity. No identity is simply the sum of its predicates. It is always something more. Thus Derrida's reformulation of Hegel's logical theorem in a cultural-anthropological context: "The only universal property of culture is its non-identity with itself" (Derrida, 1990, p. 9; Benveniste, 1966). A culture can thus only be perceived in its integrity, that is, as completely unified (identical with itself) from a point of view which is different or beyond it, foreign to it (not identical to it). Yet from this position of foreign-ness and of difference its identity is compromised; it cannot be known absolutely, in its absoluteness. This *aporia* not only constitutes the field in which much of Derrida's thought has always operated, it is indeed the founding moment of occidental civilisation (Burgess, 1996, p. 26). "Pure difference", he writes in *Glas*, "different from (it)self ceases to be what it is in order to remain what it is. That is the origin of history, the beginning of the decline, the setting of the sun, the passage to occidental subjectivity." (Derrida, 1986, p. 240).

Robert Schuman and the Material Foundation of Spiritual Community

Robert Schuman was born in Luxembourg in 1886 of a French father and a Luxembourg mother. Schuman was himself a German citizen until 1918. Known as an "apostle of social Catholicism", he was elected as a Deputy from Moselle in 1919. During World War II he was imprisoned, escaped, then participated actively in the French resistance. Between the years of 1946 and 1952 he was a member of every single French government, from 1948 Minister of Foreign Affairs¹³. On May 9, 1950 Schuman proposed an active "construction" of European peace, taking its point of departure in a Cupertino in the market of coal and steel, under the control of a central European authority. Schuman's proposal, based to some degree on a similar proposal by Jean Monnet, resulted directly in the Treaty of Paris which founded the European Coal and Steel Community. The bulk of Schuman's political principles and theoretical positions are contained in his condensed memoirs, *Pour l'Europe*, published in 1964, one year after his death. Though the memoirs are not lacking in a certain brand of French chauvinism – the initiative taken on the 9th of May, 1950 is a French one, and it is France which is clearly credited with "choosing Europe" – at the same time Schuman sees this "choice" as the fruit of a collaboration of *spirits*. For the Europe chosen by France is a Europe "saved from Hitlerism by the indomitable energy of Winston Churchill, from Communism by the clairvoyant initiative of G. Marshall, delivered from its fratricidal and sterile battles, and which was engaging itself resolutely on the communitarian path, the guarantee of prosperity, security and peace"¹⁴. The construction of Europe is thus a *community* effort, a task which draws together and exploits the *common interests* of the major European actors, originally the Europe of the Six. The first step in the concretisation of Europe's common interest, in its community spirit, is the erection of a system of economic co-ordination and regulation based on the principles of market liberalism and the free flow of capital which have become the European *mantra* of today¹⁵.

¹³ Mioche, 1997.

¹⁴ Schuman, 1964.

¹⁵ For the questions of whether or not this common interest is a Catholic one, cf. Adam, 1998.

As we shall see, the construction of Europe is the construction of a *nexus*, an immense meeting place of two radically different – perhaps irreducibly different – orders of discourse: those of *cultural community* and *economic rationality*. From this point of view European construction must be understood as a kind of *negotiation* for the objective reality of Europe, objectivity itself being an object of contention. It is the goal of this essay to explore the scope, meaning, and consequences of space between the *cultural* Europe and the *juridico-economico-technocratic* Europe. Schuman's memoirs present a number of particularly clear formulations of the two-sided project of European construction. As it is Schuman who was among the first to propose the concrete form to be taken in the long arc of European construction, it is to Schuman's text we must return.

Universalism

Schuman does not hesitate in drawing a direct line of parentage between the *Declaration of the Rights of Man and Citizen* (1789) and the *Treaty of Paris* (1951). Through the Revolution, France made itself the "herald of a new regime of liberty, individual and political franchise"¹⁶. Though Schuman avows the Revolutionary methods used in 1789 and the struggles that followed, its soldiers were attributed a "conquering liberty" which not only touched the lives of peoples beyond the French borders, but also contributed to the "flourishing of the human person". Both the *Declaration* and the *Treaty of Paris* repose on the notion of a fundamental unity between universally ascribed and accepted *supranational* principles and the *particularity* of national cultural and political identities. "The supranational shall repose on the national assizes. There shall thus be no denial of a glorious past, but rather a new flourishing of national energies through their being put into the common service of the community supranational."¹⁷ By way of the French treaty of 1959 France once again presents itself as the "apostle of a new, revolutionary ideal". Schuman thus sees France as being uniquely equipped to formulate the new European priorities and to provide a philosophical framework for cultivation of European unity. The construction of Europe is, from a theoretical point of view, just one more concrete moment in an immense, unified movement of European history.

¹⁶ Schuman, 1964, p. 27.

¹⁷ *Ibid.*, p. 23.

It might be said that the only *self-evident* unity is that which is based on the *identity* of its elements. If all national members of a European collectively were identical, they would already be involved in undeniable universality. All would have the same collective origins, aspirations, interests and needs. The question of a tension between national or ethnic particularity and European universality would be meaningless. The reality, of course, is that the various nations and ethnies of the potential European community are different, more or less unique, with varying national pasts and geographical particularities, cultural and religious characteristics and political interests. Indeed, as Bo Stråth underscores at the outset of this volume, the question of European cultural identity can only be asked at the moment when the singularity of European cultural identity begins to decay, at the moment of the *crisis* of European cultural identity¹⁸. Europe has an identity thanks to the reality that it cannot decide what that identity is. Europe's experience of itself – in the realms of politics, culture, economics etc. – is the experience of a *question*, the question of Europe. At the same time, this reality should hardly surprise us, for what indeed is the function of politics, law, political economy, etc if not the continuous negotiation and re-negotiation of the objective reality of Europe as it “actually” is. Anything more “democratic” is unthinkable. The objectivity of the European question boils down to the question of European scientific objectivity. The nature or objective reality of the European community is neither self-evident nor spontaneous. What then motivates this mission to discover it? Do Europeans *belong* together in some metaphysical sense? Is there a European *spirit* as Schuman suggests, thus rejoining a long tradition of European idealism? Schuman's argumentation is in particular marked by a rhetoric of the *spirit*, and informed by a kind of politico-Christian missionary stance with respect to the challenges of European construction.

It is clear that Schuman's argumentation is also motivated by one conception or another of European *interest*, interest in constructing something which does not yet exist. Yet interest is the notion that there remains unfulfilled interest. Indeed the mission of a European community is to somehow overcome national particularities in the interest of European universality. Universality is the *mot d'ordre* of European modernity. Schuman argues for a Europe based on just such

a principle of universality. The *notion* of the universal is viable only when non-political, non-ideological, non-cultural etc. The universal is that which is free from determinations whose legitimacy is based on certain social situations, certain times, certain histories, certain geographies. Universality is objectivity itself. This is indeed what provides the *moral* anchor for Schuman arguments: in the best 20th century positivistic tradition, the true is the objective, the disinterested, the non-partisan etc. And yet his argumentation quickly reveals how *interested* universality necessarily is.

Spiritual Unity

This is the apparently unavoidable – and yet ultimately very fruitful – dialectic that constitutes the foundation of Schuman's reflection on the construction of Europe. An empirical unity – a *de facto* unity – is necessary to preserve, defend, and cultivate a spiritual one, and, inversely, it is the *de facto* unity, the assembly of empirical realities proper to the nations and ethnic groups of Europe that gives rise to the spiritual unity so *idealistically* evoked by Schuman. “Beyond these contingencies and these competitions that have until now determined the course of history there are the affinities and the community of interests, which it is our task to release from the past as virtualities of the future.”¹⁹ From one and the same European history emerge both the force of fissure and of fusion. Both the dark sides of history and the potential for peace and prosperity are derived from one and the same logic. The task of the political class – the builders of Europe – is to discover the conjunction between these two currents of the same historical discourse, to find the political logic which permits, in the most concrete terms, the origins and consequences of the one to inform those of the other.

The political leaders of Europe are thus faced with a formidable task: *justify unity on the basis of disunity*. Expectedly, the solution to the political problems involved in this apparent *aporia* is a kind of displacement of the contradiction, a transfer of the validity of the claim to European unity from one level of analysis to another. Schuman approaches the problem by building upon the notion of a “community of interests”²⁰. But here too the strange dialectic of universality and particularity slides into the term “interest”. Schuman repeatedly under-

¹⁸ Cf. Burgess, 1997.

¹⁹ Schuman, 1964, p. 51.

²⁰ *Ibid.*

scores the need to cultivate "effective solidarity of interests and efforts"²¹ as the ethical imperative behind work toward European political unity.

The meaning of "interest" remains a vast problem. Interest is built on a double-layered understanding of the coexistence of *particular* and *universal* interests: "European politics, in our spirit, is absolutely not in contradiction with the patriotic ideal in each of us."²² On the contrary, the spirit of collectivity is derived precisely from that patriotism which has had the most negative nationalistic consequences. "The true European spirit is the recognisance of the realities, the possibilities and the obligations in the presence of which each of us places himself beyond frontiers, beyond our antagonisms and our resentments."²³ The unity which we are to seek is not *external*, not derived from the contingent, circumstantial or occasional characteristics which make individual groups what they are. These are mutable, variegated and unstable. The unity which must be sought is *internal*, based on the "organic structure"²⁴ of Europe. The development must be free to follow its own "natural" course: "The unity of Europe will be accomplished neither uniquely, nor principally by European institutions; their creation will follow the progression of spirits, whence the importance of a free circulation of ideas and individuals between the European countries. Those countries that refuse this notion exclude themselves in principle from Europe."²⁵ Had Schuman had any idea of the extent to which the "free flow of capital and labour" was to become the *mantra* of European political discourse in the 1980s, he would doubtless have chosen a more fortunate expression than "the free flow of ideas and individuals".

Still, the historically irony with which hindsight provides us reveals much about the delicate course that Schuman is attempting to navigate. He does indeed attempt to capture both sides of the *aporia* we are discussing. While believing that the institutional form for European collectivity will necessarily have to be some kind of economic collaboration, his explicit desire is that that institutionalisation will somehow assure spiritual unity, the "free flow of ideas". Although

"ideas" – or better "knowledge", in the communication age – are increasingly construed as "capital" in the most empirical way, the spiritual or cultural intention of Schuman's expression is clear: it is European spirit which will assure unity, and the communication of spiritual or cultural "material" will be a necessity for spiritual unity.

Solidarity of Interests and de facto Solidarity

If it is a reconstruction of *spiritual unity* that Schuman is seeking, why does he settle on the ECSC, a collaboration based on some of the most primordial raw materials of modern industry, farthest down the hierarchy of "spirituality"?

The two world wars, he argues, have made us understand that "the best guarantee" of the well-being of the nation "no longer resides in its splendid isolation, nor in its own force, whatever its power may be, but rather in the solidarity of nations guided by one and the same spirit, which accept the common tasks in a common interest"²⁶. The picture Schuman paints of post-war Europe is one of a "naturally" international or supranational disposition in which the nation "flourishes". Without historicising to any particular degree his argument, Schuman builds upon the notion of a kind of historical shift concomitant with the end of the most recent war, in which the nation passes from a "natural" – though misunderstood – isolationism to a supranational form of existence. Schuman understands the history of the European nation-state as the history of the mutation of the nation-state. The community of nations is *more* necessary – and more *necessitated* by the very nature of the nation itself – than it was prior to World War II²⁷. European peace has gone from a kind of pragmatic problem, to being construed as a kind of metaphysical dimension. Indeed peace has *always* been "the condition of all liberty and all prosperity"²⁸. Security and defence have *always* been national considerations. Thus when Schuman argues that the questions which must be confronted by the individual political entities of Europe surpass those units, he is taking cognisance of what has today become a common theoretical

²¹ *Ibid.*, p. 26.

²² *Ibid.*, p. 28.

²³ *Ibid.*, p. 26.

²⁴ *Ibid.*, p. 30.

²⁵ *Ibid.*, p. 48.

²⁶ *Ibid.*, p. 30.

²⁷ Here we bracket provisionally the entire etymological network which associate the words "nature" and "nation". The essence of nationality is in fact closely related to the notion of nature, and both, to extend the network, may be associated with the notion of "culture" as an agricultural figure. (Cf. Burgess, 1997).

²⁸ *Ibid.* p. 31.

presupposition for understanding the nation-state: the negativity or alterity of the nation. The "new" universal essence of the nation is its alterity or otherness, that is its dependence on the Other, as friend or foe, economic collaborator or cultural Cupertino. The national self is created through the imaginary, theoretical, but also material, geographical rejection of its Others.

Thus although Schuman clearly and auspiciously presents himself as a partisan of an implicit non-material matrix of European communality his demonstration does not depart far from a more or less materialistic perspective: "The provisioning of raw materials, the questions concerning labour and unemployment, the anguishing problem of refugees, of displaced persons and of surpluses of population, the modernisation of our industrial and agricultural equipment, international exchanges and the fate of moneys, the periodical crises of shortages and of overproduction. These are all examples of one thing: in all domains, nothing effective and durable can be done in isolation, when a State is reduced to its own resources."²⁹ From a strictly material point of view it is clear that political borders are a hindrance to economic well being, and that economic well-being will inevitably manifest consequences for national and international politics. And yet the situation at the end of the 1940s bears no sign of the apocryphal pronouncements of the end of the nation-state, of the moment in which trans-national and "trans-democratic" forces of capital supported by the instantaneousness and ubiquity of communication technology exceeds in all regards the national economic and politic frameworks which gave issue to them³⁰. Schuman is far from willing to give up the nation and national sovereignty, seeing them as indispensable for assuring the trans-nationality which he seeks to advance through European construction. On the other hand, international interdependence is more evident than ever, an interdependence which has the "fortunate or unfortunate consequence" that a people cannot remain indifferent to others. The source of moral solidarity in the European context. One cannot be pleased at the economic failures of one's neighbour. All are united in a "common destiny".

²⁹ *Ibid.* p. 32.

³⁰ Cf. Guéhenno, 1994 and 1996, when the French title published in 1994, *La fin de la démocratie*, is translated with the dubious, though ideologically significant title *The End of the Nation-State*.

Yet as the ruins of the World War II smoulder in the immediate consciousness of most Europeans, this notion of common destiny has unremittingly clear overtones. In 1948, all evidence suggests that the common destiny of Europe is the self-destruction of Europe. The solution, suggests Schuman, is, on the one hand, to build unity based a common understanding of the causes of the antagonisms which have marked European history, and "sundered humanity"³¹ and, on the other, to emphasise the "real community of ideas" which have been cloaked, disturbed or to certain extent extinguished by the "passions evoked and exploited" in European conflict, but never compromised. It is thesis affinities and the "community of interest" which it is now our task to bring forth "in the past as in the virtuality of the future"³². The "solidarity of interests" must therefore exist in a kind of dialectical space, the horrors which earlier European "collaboration" has brought about must remain present in the European consciousness, the presence of the "bad" Europe serving as an index for the "good" one³³.

Schuman admits that the causes of the antagonism will not disappear. And he struggles again and again against the same theoretical riddle in his appeal for Europeanisation: the only instrumental-governable Europeanisation seems destined to remain resistant to the immaterial, moral or spiritual unity which the rhetoric of Europeanisation finds indispensable. Schuman sensitively evokes the rich cultural unity of the European continent, the "cohesion of peoples"³⁴ and the delicate intertwining of moral and spiritual interests, only to speak of the natural resources of steel and coal as the "only *raison d'être*" of war³⁵. A true community cannot be created through the development of the ECSC as a manger of material resources. Indeed a true community cannot be *created* at all. Schuman is the first to note that the existence of a universal community is a *symbolic* question not a "real" question³⁶. A veritable community supposes a number of "affinities", not the least of which "a minimum of confidence" and of "identical interests", and a sufficient number of "common relations and ideas". In other words, a community can be created only where it *already exists*.

³¹ Schuman, 1964, p. 50.

³² *Ibid.*, p. 51.

³³ *Ibid.*, p. 107.

³⁴ *Ibid.*, p. 189.

³⁵ *Ibid.*, p. 45.

³⁶ *Ibid.*, p. 193.

No amount of legislation of the mutual cultural bonds between peoples can create what is not already naturally there. Purely instrumental gestures remain purely instrumental; cultural identity cannot be exhausted in materiality. The legitimacy of the governance of cultural unity and the spiritual substance of that cultural unity are mutual necessary and irreducibly heterogeneous.

Law, Identity and Interest

The notion that law can and should be in a position to assure the sovereignty and legitimacy of any given cultural collectivity is a contemporary development, more or less coeval with the emergence of the nation-state. Enlightenment philosophy and the 18th century theoreticians of the nation-state conceptualise constitutional law as the codification of economic, political, and cultural relations – “laws” which somehow are intelligible but not codified. The monumental purveyors of universal rights, constitutionality and nation of the 18th century create the difference between law and code in order to emphatically unite them in the principles of political modernity. The process of modernity produces the conception of the nation-state, is itself a certain version of the trajectory of the legalisation of law. There is thus a strange and difficult kind of double logic in the movement from the law of belonging as an organic, phenomenological, even affective dimension to the instrumentalisation of belonging in the notion of *civitas*, that is, belonging which is juridically guaranteed by the construction of citizenship.

Weber's erudite *Sociology of Law* (1921) provides a partial confirmation of our hypothesis that the cognitive presupposition of law is the cultural cohesiveness which binds any given society. It can be seen as an analysis of the process of modernisation understood as a history of the emptying of law of its cultural references. Law and culture are homologous. Or rather a certain radical generalisation of the law provides the structure of intelligibility of both national-cultural identity and state-law. Modernity's enormous project of egalitisation in the name of democracy, instrumentalisation in the name economic efficiency, technologisation in the name progress, all devalue, to a greater or lesser degree, the fuzzy logic, the non-purposefulness, and the non-technical nature of “culture”. The logic of exclusion of culture from the programme of modernity is remarkable indeed: culture is excluded *because* it cannot be consigned to the various modern logics of instrumentalisation, and among them, post-war political economy. In other

words, it is irreducible to the logic of modernity and therefore it must be reduced to a logic of modernity, and rejected according to modernity's premises.

The history of legal foundation which is the object of the *Sociology of Law* consists of a considerable variety of forms of legitimacy. What assures the continuity of the development is that legitimacy lies in the ties that bind the social group which is to be governed by the law at hand. Legitimacy thus has an essential social dimension, but it is indeed more than that. It is indeed not simply reducible to the logical co-ordinates of an association, but rather, a certain force (*Gewalt*) which arises from the interstices of association, from the cohesiveness of social cohesion. This is indeed what Weber majestically demonstrates as the presence of in the pre-modern history of law, and what he seeks to demonstrate the absence of in the modern context.

Weber's historical development demonstrates that law is traditionally nourished by a collaboration of *objective* and *subjective* legitimacy. Individually legitimated law draws its force from the faculty of judgement proper to every thinking, acting subject. *Objectively* legitimated law orders individuals with respect to an authority which issues from some origin or collective platform which is by its numbers external to the individual. Subjective legitimacy emphasises a horizontal access of judgement: value set on the basis of other individuals, other acts and experiences within the sphere of experience of an individual actor. Objective legitimacy is vertically organised, drawing its authority from a singular source, the essence and validity of which is closely tied to its universality. According to Weber, traditional conceptions of legitimacy repose on an interplay of these two elements. This is in accordance with the neo-Kantian theories of law and ethics upon which many of Weber's points of view repose. Neo-Kantianism develops the notion of transcendental yet individual categories of reason, whereby any ethical claim is both subjective and objective. This interaction assures the social cohesion which is coeval with legal legitimacy. This is why the interaction of the subjective and the objective, is both constitutive of cultural identity and of the legality of law.

The concepts of both Weberian sociology of law and Kantian ethics contribute significantly to our understanding of the constellation of legitimacy, nation and culture. All moral-legal positions have both objective and subjective axes of reference. On the national-European plane, they represent the varying degrees of national/cultural integration and European orientation. The subjective axis measures the

sense of solidarity or collectivity with other individuals in one and the same designated and recognised political unity. The objective axis is the authoritative or arbitrary instance which tests assembles the new (European) and whose self-evidence is constantly put the test. Or rather, its self can be boiled down to a trying or testing of the limits of a collective identity which is less than self-sufficient or self-evident. In this sense European individuals are always partly "at home", that is integrated in the self-evidence of their own cultural identity, and "abroad", that is associated both informally and bureaucratic with other European compatriots who are at least in part foreign to them. For Europeans, the European self is never completely obvious. Indeed, it is in the nature of the European self to be equal to the very evolution of the European self, its mutability and mutation. The relationship between the European individual and the European collectivity is not binary – one to one – it is a trinity, or three part, otherness to the second degree. It is this phenomenological insight which lurks – in the form of ex-Hegelian Alexander Kojève – behind the platitudes of the Schuman Plan.

Kojève and the Dialectic of European Unity

When on May 9, 1950 Robert Schuman proposes the unification of coal and steel industries in Germany and France it enters the annals of history as a relatively principled plan to integrate on a material basis two arguably different spiritual destinies. Yet if the principles of the plan are presented by Schuman, a brilliant tactician waits behind the political scenes. It is Alexander Kojève, whose seminar on Hegel's *Phenomenology of Spirit* 1933-1939 influenced an entire generation of intellectuals in France and significantly contributed to a renaissance of Hegelian philosophy in France. We began our discussion of the tension between European universality and national particularity by evoking Hegel's philosophy of history as a certain vision of European unity³⁷. As we saw, Hegel understands history in general, and European history in particular, as one great rational process. At the same time Hegel is not a garden variety idealist who *a priori* devalues or discredits empirical reality in favour of the superiority of the eternal, ubiquitous

Idea. Indeed Hegel spent most of his career politicising against precisely that position.

Kojève and Schuman: Identity and the Dialectic of Unity

Alexander Kojève was born Alexander Vladimirovitch Kojevnikov in 1902 into a family of the *haute bourgeoisie* of Moscow. His schooling was privileged and cosmopolitan, preparing him from early on for a career as a Western intellectual. He was barely fifteen when the Czar Nicholas II abdicated and was executed in 1917. Given his bourgeois origins the material existence of Kojève and his family after the Revolution was difficult and Kojève was denied access to the University of Moscow. In 1920 he fled across the Polish border with a companion, was arrested, and spent two months in prison. Thanks to the German heritage of his companion, the two received German passports and entered Germany where Kojève begins studies. In 1926 he completed a doctorate in philosophy and oriental languages under the direction of Karl Jaspers, then moved to Paris with his future spouse Cécile Shoutak, sister-in-law of Alexander Koyrè. Financially well off, he continued his studies in oriental languages and mathematics. In 1930 as a consequence of the stock market crash Kojève's wealth vanished and he began for the first time to experience financial difficulties. In the summer of 1933, several months after the burning of the *Reichstag* and the ascendancy of Hitler, Kojève, at the suggestion of Koyrè, was named lecturer at the École Pratique des Hautes Études. In the autumn he began the famous seminar on "Hegel's Religious Philosophy". The seminar would continue for six years, interrupted by the German occupation. Kojève was mobilised, later participated in the French resistance. In 1944 he made the acquaintance of Jean Monnet and Robert Marjolin, with whom he began a dialogue on the reconstruction of France and the reunification of Europe. After the war Kojève assumed a post in the DREE of the French Foreign Ministry. This period Kojève was active in the negotiations at the Havana Conference on the organisation of international commerce. Throughout the late 1940s his role became more and more instrumental behind the scenes of European construction. Among his many contributions to this process was his position paper on the Schuman Plan in 1950, "The Schuman Proposal and the OEC."

It is clear from the documents that Kojève supported the Schuman Plan. At the same time he was critical of the exclusively Franco-German structure of what is understood as an institutionalisation of

³⁷ The influence of Kojève's seminar is partly due to the remarkably complete compilation of it produced by Raymond Queneau and published in 1947: Kojève, 1947.

European unity. Indeed the proposition for the OECE, while focusing on the two major European powers, specifies an organisational structure that will permit the integration of the other European nations. Kojève's reservations are based on his conviction that European unity must quite simply *begin* with European unity, even if it is *de facto* unity of the Schuman logic which we analysed above³⁸. From Kojève's point of view it is tactically unwise to turn away from the basic *theoretical* principle of European unity, namely that Europe is *one*, even if the European reality is anchored in a Franco-German bipolarity. As an alternative Kojève proposes putting in place a structure of gradual negotiations, first Franco-German, then without delay, adding the Benelux countries, Italy and the other European manufacturers of steel. He feels it is impossible to negotiate with Great Britain without some sort of collective continental agreement already in place. According to his reasoning a sort of double dialogue must be operative in negotiations concerning the future of industrial markets in Europe, on the one hand, through the authority newly vested in the OECE, and on the other, through the sovereignty of national governments in a more traditional sense³⁹. The OECE must be structured in such a way that British Euro-scepticism will always be caught in a situation of inner contradiction with the free market liberalism of the British European economic policy. If British Euro-scepticism is simply and plainly based on the argument from market liberalism, then the OECE understood as a kind of monetarist market liberalism, a regulated deregulation will present itself as an argument *for Europe*.

Even as a European bureaucratic Kojève functions as a subtle dialectician. In his thinking the OECE must surpass ("subsume", to use the Hegelian jargon) the Europe/non-Europe bi-polarity by surpassing the liberalism/neoclassicism bi-polarity. The OECE can and should serve as a dialectic motor of European development. The operative motor of this dialectical sursumption is the Kojevian mutation in the concept of liberalism.

³⁸ My presentation of Kojève's policy positions here is largely based on a number of "working notes" which he wrote and circulated in the years between 1949 and 1967 – with the exception of the period 1954 to 1957 where the notes are missing – at different stages of his bureaucratic career. The notes, provided by Phan Van Phi and Bernard Hesbois through the intermediary of Annie Moussa, form the basis of the presentation given by Dominique Auffret in his remarkable intellectual biography of Kojève (Auffret, 1990), bibliographical note, p. 447.

³⁹ Auffret, 1990, pp. 321–322.

Identity, Arbitration and Interest

In 1941, the great Hegelian thinker of universal spirit crossed the line of demarcation, travelled to Marseilles and attempted to find passage to the United States, at the only time when there was a realistic chance to leave the European continent. Kojève had decided to emigrate with Nina Ivanoff, his future spouse, but she, not being a French citizen, had difficulties entering Vichy France. She spent two months in jail, finally released through the efforts of Kojève. They settled near Marseilles until the end of the war, participating occasionally in the activities of the Marseilles resistance⁴⁰.

In the summer of 1943, during their forced stay in Marseilles, Kojève wrote *Outline of a Phenomenology of Law*. The book is a phenomenology in the sense that it explores the limits of the conceptual experience of law. Instead of analysing the rules and procedures of the interpretation of legal texts, it seeks to map out the intelligibility of law, the conceptual necessity of legal structures. Perhaps the most forceful moment of his analysis is his study of the essence of the juridical, and his discovery of the borders of that essence, in other words, the nature of the limit between the juridical and the non-juridical. This problem is particularly relevant for our discussion of the coherence of European unity.

Kojève's basic operative principle and the structure to which he returns again and again, is that of the juridical as a dialectical structure, with one individual in a position of conflict with another, thereafter arbitrated by a third, disinterested party⁴¹. Simplifying considerably we can note that, faithful to a dialectically understanding of law, the juridical is always relational, never organised in the sphere of a singular point of view alone. The adequation of the act of the individual of one with the concept of the right or just is never reserved to one. Law is a kind of mediation, guaranteeing by its very nature (1) the irreducible heterogeneity of the legal and (2) its essential ties to the social, economic and cultural aspects which organise the relations between two or more social actors.

1. From the phenomenological point of view the sovereign is only the sovereign when recognised as such. The claim of a meaningful association between the desire on the part of any given sovereign

⁴⁰ Auffret, 1990, pp. 321–2.

⁴¹ Kojève, 1981, pp. 22–24.

on the one hand, and my desire to act in accordance with that desire, on the other, presupposes a recognition of the legitimacy of the sovereign. The point is that this recognition is external to both the sovereign, the subject, and the entire legal system. It can neither be legislated, brought about by force or persuasion.

2. From the sociological or politological point of view it is necessary to ask what binds the dialectical relationship which Kojève finds so essential. (a) What is the foundation of the conflict or difference between the two parties. If the sovereign's will is different from the subject's, or in more republican terms, if the laws of the republic understood in some sense as a reflection of a certain unified consensus are at odds with the volition of a given unified group or individual what is the nature of the band which construes action based on that volition as unlawful? What is the basis of the negative link between the two? (b) What is the foundation of the arbitration which mediates the conflict of the first two? On what grounds do the two individuals grant their trust to the arbitrator? And what is the nature of the presumed "objectivity" of the arbitrator. Is objectivity possible? How is it established? (For example, is not any effort to establish objective arbitration subjective by its nature?).

It is precisely Kojève's contention that none of these fundamental question about the nature of law and the juridical actually "belongs" to the juridical. Although the structure of law and legitimacy in any given national or international context is the object of the juridical sciences, the foundations or legitimacy are necessarily external to it. In what sense can the self-understanding or institutional foundations of national legal systems be understood within a European legal system which goes beyond the legal institutions of individual nation-states? On this level the two parties evoked by Kojève are two sovereign states with non-identical interests.

To acquire authority in someone's eyes, is to get him to *recognise* that authority. Now a man's authority (that is to say, in the final analysis, his eminently human value, though not necessarily his *superiority*), is *recognised* by another when that other follows or carries out his advice or his orders not because he cannot do otherwise (physically, or because of fear or of any other "passion"), but because he spontaneously considers them worthy of being followed or carried out, and he does so not because he himself recognises their intrinsic value, but only because *this particular person* gives this advice or these orders (as an oracle might), that is to say, precisely because he recognises the "authority" of the person who gives

them to him. We may therefor grant that Hiero, like any political man, actively sought tyranny because (consciously or not) he wanted to impose his exclusive *authority* on his fellow citizens.⁴²

Kojève and Strauss: European Plurality as Liberalism?

During the months surrounding the announcement of the Schuman Plan in the Spring of 1950, another complex of intense international negotiations was in the making, this time with the direct involvement of Kojève. It was not a question of immediate political matters, but rather of the formation of a joint publication between to Kojève and Leo Strauss, at that time Professor of Political Philosophy at the University of Chicago. The publication, *On Tyranny*, was to become one of the richest and most penetrating exchanges on political philosophy in the post-war period⁴³. The discussion is provoked by the publication of Strauss's reading of Xenophon's *Hiero* in 1948. The *Hiero* is a classical dialogue which ostensibly explores the relationship between philosophical reflection and political action, in particular, with respect to the notion of tyranny. The dialogue places Hiero, the tyrant of Syracuse, in discussion with Simonides, the wise man and poet⁴⁴. It scrutinises the function of the tyrant in society, the foundations and consequences of tyranny, the role of reflection – philosophy – the acts of tyrants, and explores ways in which reflection could be of service to a state organised by the rule of a tyrant. Strauss's book seeks to problematise modern political philosophy in the sense that it formulates a protest against the ineffectiveness of political reflection in actual political affairs. Yet beyond the analysis of the Xenophon's dialogue, Strauss seeks to reflect on the relation between society and philosophy in general⁴⁵, and formulates a clear thesis about the function of philosophy in society. It is this thesis which Kojève so vehemently opposes.

The classical point of view, which Strauss defends, sees society as the place of *doxa*, of popular opinion. Philosophy, on the other hand, is understood as the curator of rationality. In this capacity it is charged with the burden of both persevering in rationally based scepticism and

⁴² Kojève, 1991, pp. 144-145.

⁴³ Strauss, 1991.

⁴⁴ *Ibid.*, pp. 36-37.

⁴⁵ Gourevitch & Roth, 1991.

shielding a vulnerable society from the discontinuities and *aporias*, which are inevitably produced by philosophical scepticism. Which, then, is the *same* and which is the *other*? Kojève's position is expectedly and forcefully Hegelian. Hegel's dialectical theory of history, we recall, understands historical reason as the gradual progress of the *consciousness* of Reason in time. Reason is neither completely subjective nor objective, it is the becoming rational of our concrete reality through the process of our discovery of it as rational. History is, according to one's point of view, the rationalisation of concrete reality, and the concretisation of the rational. One important point to be made with respect to Strauss's text is that the opposition between philosophy and society cannot be intelligible, unless understood in a temporal framework in which the opposition is resolved and rationality is raised to a higher level through that very resolution.

In the Hegelian-Kojevian optic, a tyrant is never an absolute tyrant. If we are to understand tyranny as Strauss understands the Hiero figure of *Hiero*, then it necessarily consists of an absolute and unilateral grasp of power. It must be completely indifferent to the particular individuals who are the objects of the repression. For should their interests and desires manifest themselves in the actions of the tyrant, then society will have already passed beyond tyranny and into a more *representative* form. The volition of the individual members and groups of society, though not dominant, will have been assimilated into the process of decision making. Strictly speaking – which is to say in the classical political version of tyranny – the tyrant is absolute, his position is unilateral, unquestioned, unopposed. It does not communicate in any sense with those on whose lives it will bear consequences. According to this point of view the action of the tyrant is isolated from the reflection of the other, from the philosopher or the reflective citizen.

The Hegelian-Kojevian response to this conception begins by pointing out that regardless of how absolutely sovereign the tyrant may be, he/she is no tyrant without the individual or social group which suffers tyranny. That individual or social group has two choices, (1) to ignore utterly the commands of the tyrant, and thereafter suffer the consequences, or (2) to “accept” in some sense the tyranny of the tyrant, to make a compromise with respect to its own desires, interests and needs, and “heed” the commands of the tyrant. In the first case, there is no tyranny. The individual or group acts in accordance with its own criteria. There is no subjective collaboration with the tyrant. In the

second case, there is established what might be called a contract, the individual or group agrees to give up part of the content of its own volition in exchange for its well being, or in certain cases, its life⁴⁶. The precondition of this contract is the “recognition” of the tyrant as tyrant, a recognition of power and of the commands of the tyrant in association with that power. In Kojève's paraphrase of Xenophon: “In any case, both Hiero and Simonides know perfectly well what is at issue. Hiero would like his subjects “willingly to give way in the streets” and Simonides promises him that if he follows his advice his subjects will be ‘willing men obeying’”⁴⁷. Moreover, these two cases have important dialectical consequences. Where there is *absolute* refusal to submit to tyranny, there is no tyranny. Tyranny exists only where there is recognition, in one form or another of the tyrant. In this sense, the tyrant is dependent on the recognition of the tyrannised⁴⁸. This is the dialectic of master and slave in a nutshell, the conceptual paradigm which completely dominates Kojève's reading and application of Hegelian thought: the master is master to the slave only insofar as he is slave to the slave's recognition.

What can the Kojève-Strauss debate teach us about European unity, and what is its relation to Kojève's position with regard to the Schuman Plan? Or to put it another way: should the philosopher get mixed up in European politics? Can critical reflection and principle scepticism play a role in a political organisation whose fundamental and absolutely indispensable principle is *unity*? Is not reflection the very wedge which risks to shake European unity, and whatever political, social and cultural solidarity there is. As we have seen,

⁴⁶ Kojève, 1991, p. 145.

⁴⁷ *Ibid.*, p. 143.

⁴⁸ “To acquire authority in someone's eyes, is to get him to *recognise* that authority. Now a man's authority (that is to say, in the final analysis, his eminently human value, though not necessarily his *superiority*), is *recognised* by another when that other follows or carries out his advice or his orders not because he cannot do otherwise (physically, or because of fear or of any other “passion”), but because he spontaneously considers them worthy of being followed or carried out, and he does so not because he himself recognises their intrinsic value, but only because *this particular person* gives this advice or these orders (as an oracle might), that is to say, precisely because he recognises the “authority” of the person who gives them to him. We may therefore grant that Hiero, like any political man, actively sought tyranny because (consciously or not) he wanted to impose his exclusive *authority* on his fellow citizens.” (Kojève, 1991, pp. 144-145).

Strauss would argue that it does. The philosopher, he would affirm, has no business in analytically dismantling the armature of a Europe built through artistic statesmanship, millions of hours of negotiation, and countless compromises – all taken on the state level, that is – metaphorically speaking – by the tyrant.

The theoretical pluralism of the “family of nations” of the European Union is thus not identical with the liberalism which characterises the principles of its foundations. The principles of economic liberalism which are so central to the Treaties of Paris, Amsterdam and of Maastricht cannot and should not, according to Kojève’s reading, substitute for a *conceptual* understanding of the dependence of the European Union on the “recognition” of its members. The *rationality* of the EU – now in the historical Hegelian-Kojevian sense, and not in the sense of *Zweckrationalität* – can only be measured as a function of the consciousness of the dependence of mutual recognition. This means not only recognition of and from the individual member states, but also of the particular social, cultural, ethnic groups which form the “spiritual collectivity” of which Schuman writes so warmly in his memoirs. This is not merely an argument against the so-called “democracy deficiency” of the European Union, though that institutional aspect is far from unimportant for our conceptual considerations. It is a formulation of the notion that the structure of recognition made necessary by the Kojevian reflection is at once more flexible and more general than the institutional “recognition” effectuated by modern democratic processes.

It would be incorrect to force the vision of Kojève, to extrapolate his Hegelian schema onto the finite problematic of European unity in the late 20th century. At the same time, no one could extrapolate the Hegelian schema more than Kojève himself. As Francis Fukuyama has abundantly demonstrated at his own expense, post-Kojevian scenarios are *sui generis* extremely tenuous⁴⁹.

European Institutional Questions

Let us now return to the discussion of European unity. How can we apply Kojevian theory to the present debate on European identity?⁵⁰

⁴⁹ Fukuyama, 1992; Burgess, 1995.

⁵⁰ Weiler, 1996; Franck, 1990; McAusland & McEldowney, 1985; Connolly, 1984; Telo, 1995; Lodge, 1994.

Broadly speaking one may distinguish between four systems of legitimisation which are operative in conceptualisations of the relationship between the national and European levels: 1. the co-ordination of national and European economic systems through the EMU; 2. the establishment and application of a “common foreign and security policy”, finalised in principle in the Maastricht Treaty; 3. the ambition to a unified “cultural” policy, exemplified by the position taken by the European Union in the Uruguay Round of the GATT negotiations; 4. the discourse of European Constitutionalism. Clearly the domains of these four dimensions resists delimitation. Their conceptual references are necessarily mutually independent on several different levels. The notion of European law and a European legal system is for Kojève’s purposes the overarching institutional problem, but it is hardly self-sufficient. The European complex of legitimacy is thus founded upon the *interference* between four structures of theories, presuppositions, implementation, and power: politics, economics, culture and law⁵¹.

The European Monetary Union

It is safe to say that the French-German axis dominates political consideration with respect to the EMU. The opposing French and German conceptions of a European Monetary System and its organisational policies and agencies is paradigmatic for the tensions involved. Broadly speaking, the *Bundesbank* is organised around the principle of administrative independence. The management of the nation’s finances cannot be a part of a political dynamic. Politics, it is thought, fall to often victim to the vacillation associated with public opinion and democratic processes in general. The national interest in stable growth and the ability to systematically plan for the economic future is understood as preeminent. Stability and predictability are virtues attainable only through the smooth operations of a completely apolitical central bank. The French conception, on the other hand, is deeply rooted in the notion that political economy is *principally* a political matter, and that the relationship between a central bank, the *Banque de France*, and a democratically – that is, politically – controlled system of decision making. According to the French conception political economy is deeply rooted in the cultural substance of the people served by the *Banque de France*. The German philosophy, on the other hand, sees the operations of a central bank as a scientific

⁵¹ To which could be nominally added “administration”. Cf. Sand, 1998.

matter with clear empirical truths in which cultural aspects have no role to play⁵².

The Common Foreign and Security Policy

Among the audacious "Common Provisions" of the Maastricht Treaty is the resolution calling for the implementation of "a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world"⁵³. The simplicity and idealism of this brief and powerful formulation is indeed remarkable. Yet one need not look deeply into European history in order to seize the immense principled and pragmatic problems of a such a notion. The explosion of the long-brewing Balkan crisis in 1991 lead to theatricalisation of the inherent, perhaps even necessary, disunity of the European Union. The Yugoslavian power conflicts have never been simply or exclusively based on the principles of national sovereignty proper to the European self-understanding. The multiple identities have always been inscribed in a largely, deeper economy of power, first in the field of tension between the Habsburg and Ottoman Empires, themselves caught in the cross-currents of the Orthodox and Catholic Churches, and the European Muslim communities⁵⁴. The Balkans, at this writing, by the extermination of ethnic Albanians in Kosovo by Serb military forces. The "phenomenon" of unity largely affirms Kojève's dialectical understanding of European universalism: Europe discovers its unity in its pulverisation. Europe exists as the failure of Europe to unify itself in the crises of 1991 and 1992. It is in the end NATO, with its own logic of civilisation which in a unified, if finally ineffective manner, applies a unified policy. The preamble to the North Atlantic Treaty spells out the common goals of the NATO. The participating parties "reaffirm their faith in the purposes and principles of the Charter of the United Nations and their desire to live in peace with all peoples and all governments. They are determined to safeguard the freedom, common heritage and civilisation of their peoples, founded on the principles of

democracy, individual liberty and the rule of law..." Is there any communication possible between the Maastricht treaty, its interests and explicit formulations, and those of the North Atlantic Treaty? The alignment of the two treaties is indeed skewed, if only slightly, by the multiplicity of decisive interests and strategies which organise the Maastricht treaty, not to mention the multiplicity of historico-philosophical references which lies in NATO's explicit preoccupation with "freedom", "common heritage and civilisation" etc. At this writing by the extermination of ethnic Albanians in Kosovo by Serb military forces both flowers and provokes an identity crisis parallel to that of 1991-1992.

The Unified Cultural Policy

A direct example of the procedural attempt to justify the European Unity as a coherent and independent cultural entity may be found in the shape of negotiations in the Uruguay Round of the General Agreement on Tariffs and Trade. In order to find an adequate economic agreement for the exchange of cultural objects, the European Union, with France in the lead, presented itself as a cultural *unity*, with common heritage and interests. The diversity of the European space was thereby forced in the background in the name of political (negotiation) power.

The Discourse of European Constitutionalism

The legal doctrine of European Constitutionalism is a hybrid legal system which first and foremost provides the legal network connecting the European member states with the European Community. The combination of the various international elements of this doctrine set the Community and the Union apart from ordinary international organisations and from the classical understanding of international law⁵⁵. The structural characteristics which it shares with other national or international legal systems set it radically apart in the European context. As Kojève hastens to point out in his *Phenomenology of Law*, the legitimacy of any legal system is based on a three-party relationship. The first two are those which seek the intervention of the legal system, in other words, those who (1) find themselves in conflict, (2) recognise the conflict as a *legitimate* conflict, that is who recognise

⁵² Frémeaux, 1993; Capul, 1991.

⁵³ "Title I", European Communities; de la Gorce 1992, p. 6; Klein, 1995, p. 31; Vladimirov, 1988.

⁵⁴ Cviic, 1996, pp. 219-20.

⁵⁵ Weiler, 1996, p. 4; Weiler, 1988.

the point of view of the other, even though they do not share it, and who (3) formally recognise the mediation of the legal system. The legal system, or any system of authority obeys an essential yet puzzling logic. The legitimate authority of the intervening party must be *external* or *other* with respect to the two parties in conflict. The intervening authority must have an administrative relationship to both parties, but it must be simultaneously juridically independent of both. This externality is relatively simply to guarantee within the framework of a national legal system. On the European level, however, the externality of the juridical authority requires that Europe be larger than the sum of its member states, external with respect to its components. Yet the relations between the member states is not only juridical (through the doctrine of constitutionalism) but also political, cultural and economic. Kojève: "Let us admit – by impossibility – that there is not yet any law on earth, but that there are nonetheless sovereign states and specifically political (that is, by definition, essentially human) interactions between them. Can we deduce from the interactions an international public law? In other words, can these interactions receive a juridical significance beyond their purely political significance?"⁵⁶ The question of law is ultimately a question of the non-legal. The question of legitimacy is a network encompassing culture, politics and economics. It is ultimately these which fill the space between the *particular* elements of the European collectivity and the *other* which is its judge.

Conclusion: Identity and Interest (who we are is what we want)

In the post-war period, the rise of European Social Democracy and interventionist economic and social philosophies has led to various attempts at re-anchoring legal foundation in the substance of social and cultural reality. Many European scholars see this process of "re-materialisation" as the implicit project of the welfare-regulatory state⁵⁷. The most common tactic for re-materialisation is a reconstruction of the link between cultural substance and legal form through a re-historicising or "evolutionary" approach. In this context, *crisis* becomes the vehicle for progress in the development of a more coherent picture of legal reality. Crisis is not understood as a loss, but rather as a far more

⁵⁶ Kojève, 1981, p. 377.

⁵⁷ Teubner, 1983, 1988, 1991, 1992, 1997.

dialectically marked re-absorption of the failed moment in a totality which rationalises as its failure⁵⁸. And yet, no one could have taught us more about the "calculated interests" of modernity than Weber. The *Sociology of Law* construes the epitome of modernity as the rendering-calculable – the quantification – of all interest. Rationalisation – modernity's ideological anchoring point – is implemented as a strategy of control, measure, systematisation, atomisation, compartmentalisation, mathematisation, and bureaucratisation. The rationalisation of society is carried out at the expense of the allegedly non-rationalisable: aesthetics and ethics. Will, the force of moral action, the nexus of law and human life, is relegated to the category of the a-rational, to the non-rational and the non-rationalisable, the non-quantifiable. Theorems of value or worth retain intelligibility uniquely through their inner *ratio*. The numbers tell all there is to tell; what cannot be measured cannot be understood. This is not just a feeble ideology for the weak at heart, it lurks somewhere at the very foundation of human cognition⁵⁹.

⁵⁸ The most significant systematic attempts to formulate an evolutionary reconstruction of legal rationality are offered by Nonet and Selznick, Habermas, Luhmann. (Habermas, 1981; Luhmann, 1972). Nonet and Selznick see the evolution of legal systems in three distinct phases: the repressive, the autonomous and the responsive. (Nonet & Selznick, 1978 p. 78). The repressive moment corresponds to a notion of rights and legality which emerges from feudal structures, mapping the transformation which Marc Bloch calls the movement from "noblesse to legal noblesse". (Bloch, 1968, pp. 454-57). The autonomous phase corresponds to the rational paradigm developed by Weber and support by the Neo-Kantianism of Rickert, Dilthey, Simmel and Droysen. The final – responsive – phase is the product of the crisis in legal formalism. It is the process whereby new forms of law emerge which are oriented to a large degree toward "purposefulness" and the participatory dimension of law. Luhmann's evolutionary reflection is based on the notion of an internal differentiation of society and on the complex interdependency of society and legal systems. Habermas, finally, continues the general project of a critique of the modern concept of rationality in the *Theory of Communicative Action* with a differentiation of the formal rationality of law. A fourth, compelling alternative is presented by Günther Teubner, who abstracts both Habermas, Luhmann, and Nonet and Selznick in order to construct a synthetic route between the two. Nonet and Selznick, he suggests tend to rely on variables which are internal to the system or to thematise its evolution, while Habermas and Luhmann, each in his own manner, concentrate on external or international elements between legal and social structures (Teubner, 1983, pp. 4-6).

⁵⁹ "If postmodernity is a retreat from the blind alleys into which radically pursued ambitions of modernity have led, a postmodern ethics would be one that readmits the Other as a neighbour, as the close-to-hand-and-mind, into the hard core of the

Yet no interest is completely calculable. If an "interest" can be calculated, then it is precisely not an interest, but rather, a "de-culturation" of things, acts, experiences – the instrumentalisation of cultural identity. Not even Weber foresees the *double entendre* which lies beneath the surface of modernity's discrete processes of rationalisation. As we have already seen, without the possibility of a provisional – and indeed infinitely fragile – identity, of delimitation, of stating clearly what a thing is and what it is not, without the possibility of measuring or *calculating* its limits, it cannot be unambiguously attributed to a concept or understood as predication. Thus the *calculated interest* – as the expression goes – is a paradigm of modern ethical thought. To integrate *interest* in the conceptual whole of an institutional system is to digest the ethical share in that system. *Interest* is an implicit participation in a given matter. It is both internal and external, necessary and contingent, spiritual and material.

How can interest be calculated? On the one hand, if the relation between subject and object is radically *objective*, in other words, if my *interest* in a given object is *precisely* its "objective" "price" I paid for it, excluding any "subjective" value, any emotional, ethical or aesthetic involvement, then my interest can be said to be "objective" and can thereby be completely quantified and exhausted by the pecuniary calculation alone. On the other hand, if my *only* relation to the object is the objective quantity (the "money") I have exchanged for it, then I have indeed no relation to it at all. The quantity of money and the object are utterly identical, and my position with respect to them is radical indifference. This is precisely what we call *disinterest*. In short, only when interest *cannot* be quantified is it indeed interest, only when interest is irreducible to calculation can it rightfully be called "calculated interest". Only interest which is completely disinterested can rightfully be called interest.

This insight casts light on why Schuman's notion of "*de facto* solidarity" is in the end both completely coherent and at the same time considerably troubling. On the one hand, community is never simply reducible to quantifiable *facts*, to a certain number of tons of coal and steel. On the other hand, Europe is not exclusively *symbolic*. The meaning of cultural communities cannot be exhausted through even the

most exhaustive exegesis or imaginary networks. The opposition between the "symbolic" and the "real" is never absolute; a certain reciprocity can never be eradicated⁶⁰. The *spiritual* heritage of European culture is also grounded in the *material* reality of European history.

moral self, back from the wasteland of calculated interests to which it had been exiled; an ethics that restores the autonomous moral significance of proximity; an ethics that recasts the Other as the crucial character in the process through which the moral self comes into its own." (Bauman, 1993 p. 84).

⁶⁰ Attali, 1990.