



JIM'S READING CORNER

It is a rare pleasure to discover a book that provides an intellectual and theoretical underpinning for what you have believed for a long time as a practitioner. This is exactly what happened to me while reading Jaap Hoeksma's work on the EU as a democratic Union of democratic states.

I have been for a long time frustrated by the tendency to see the EU in an "either or" fashion: either a federal state or an international organisation. Neither category aptly catches the essence of the Union. This way of looking at the Union has made it very difficult to communicate correctly about it. One gets the impression that a lot of the communication and most of the academic research talk past the real nature of the Union and create confusion and misunderstandings.

I have tried to counter this narrative by talking about the double legitimacy that governs a Union of States and peoples. Jaap Hoeksma has clearly given a lot of thought to this theme, and his findings are luminous. He sees further than I did: the Union of states and peoples I referred to has in fact meanwhile been replaced by a Union of states and citizens, which is a more accurate way of referring to the new reality.

Hoeksma manages to explain things in simple and straightforward terms without any academic jargon and with a good dose of common sense and humour. He quotes de Tocqueville who once famously remarked that "it is often easier to make something new than to find the appropriate term for it." And Michael Burgess who wrote that "the EU works in practice although it cannot function in theory." It is time, says Hoeksma, that the EU stops behaving like an ostrich refusing to see the world and itself as they are. I like the way he describes Cameron's attitude towards the EU when calling for the referendum: "Cameron denounced the EU as an undemocratic organization, but simultaneously said that he wanted to remain in the EU if it became an undemocratic union."

The thesis of the book can be summarised very simply. Over the years, the EU has developed into a new subject of international law, a transnational democracy, or a democratic union of democratic states. This is a radical departure from the Westphalian system of international relations that has dominated the public discourse since the 17th century. This system is based on the concept of sovereignty as absolute and enshrined in the nation state; the logical consequence of this is to view

THE EUROPEAN UNION: A DEMOCRATIC UNION OF DEMOCRATIC STATES

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international relations as relations between sovereign states.

Because the development towards a very different model of relations within the EU has been gradual and because of intellectual conformism, the significant departure of the EU from the Westphalian model has gone largely unnoticed, against the background of a theoretical debate that has talked past it. This is yet another case reminding one of Monsieur Jourdain speaking in prose without being aware of it.

But how did the EU morph into a new legal order? Hoeksma distinguishes ten stages, which I recall here:

1. The creation of the European Coal and Steel Community in 1952 introduced the notion of shared sovereignty, a first departure from the Westphalian model.
2. In 1963, the European Court of Justice, in the *Van Gend & Loos* case, stated that the European Community had created a new autonomous legal order of international relations. A year later, in *Costa versus ENEL*, the Court underlined the direct effect of EC legislation and insisted on the primacy of EU law over national law in Community matters.
3. At the Copenhagen summit in 1973, the European Council referred to a Union of democratic states.
4. In 1979, the first direct elections to the European Parliament attributed an immediate role to all citizens across Europe in the shaping of European integration.
5. The entry into force of the Single European Act in 1987 extended the possible use of qualified majority voting to most matters pertaining to the Single market.
6. The Maastricht Treaty created a new European citizenship. After the Danish "No" vote the European Council re-emphasised the point that this citizenship was additional and did not replace national citizenship. It should be noted that the Maastricht version of citizenship was focused on cross-border activities only.
7. The Amsterdam treaty introduced the concept of democracy directly into the treaty.
8. The Charter of Fundamental Rights, solemnly proclaimed at the 2000 European Council in Nice, symbolises the emancipation of the citizens in the framework of the Union.
9. The Lisbon Treaty is the first treaty in legal history

to turn an international organisation into a transnational democracy, without transforming it into a state. It highlights the importance of democracy and the rule of law and foresees a new procedure to sanction serious breaches by Member States of the values referred to in Article 2 TEU. This definitely leaves Westphalia behind and reinforces the need for a positive definition of what the EU is.

10. In the ensuing years, the ECJ developed its own interpretation of what the EU is. In its jurisprudence, it stated that citizenship of the Union is intended to be the fundamental status of nationals of the Member States, thus removing the cross-border limitation. National laws cannot deprive citizens of the rights that go with EU citizenship. In the *Puppinck and Junqeras* cases of 2019 it declared that the EU is based on autonomous democracy, which is one of the core values on which the EU is founded.

In the light of these developments, it is legitimate not only to talk about a Union of democratic states (Democracy in Europe) but also about a democratic Union (Democracy of Europe). As Hoeksma writes: *"If two or more democratic states agree to share the exercise of sovereignty, in a number of fields with a view to attain common goals, their organization should be democratic too."* And he adds mischievously: *"Citizens cannot split themselves into an authoritarian part and a democratic part."*

It is high time to align the theory on the practice, rather than trying to squeeze the practice into an artificial theory. This would allow for a more serene debate. It might even help to steer the German *Bundesverfassungsgericht*, which sees sovereignty only in a state structure, away from its narrow Westphalian frame of mind which could represent a real threat not only to the further development of the EU but even to its present functioning. It would prevent us from launching false good ideas that have no grounding in what the EU fundamentally is, like the Spitzenkandidaten scheme or the merger of the Presidents of the European Council and the Commission. More importantly, it would open the way for a serious discussion of possible further steps and reforms to reinforce democracy in and of Europe.