Between Restoration and Revolution, National Constitutions and Global Law: an Alternative View on the European Century 1815-1914
(EReRe)

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1. Introduction: the Alternative 19th Century Legacy

Europe today teeters upon a precipice, the apparent choice placed before its peoples one between dissolution and a union subordinated to the demands of the bond markets. Behind the strident political rhetoric that accompanies this dilemma lies a profound failure of political imagination that emerges from a deeply a-historical view of Europe's past. There is an urgent need for a more realistic history that rejects any teleological understanding of Europe as a self-propelling project on a steady march towards a predetermined goal. Instead, the fragility of European peace and progress, so evident today, needs to be highlighted. Recent attempts to look for historical analogies to the EU in the American constitutional convention that met in Philadelphia in 1787, or in the Holy Roman Empire of the German Nation that collapsed in 1806, ring hollow, even as European states take hesitant steps towards fiscal union. They bypass Europe's long experience of violent nation-building and global expansion. Europe was not born anew in 1945. The legacies of its past, and of the attempts that Europeans have made to deal with that past, pervade the institutional structures of contemporary Europe, and the mentalities that govern it. Planning for the future must entail a reckoning with this past, but such a reckoning must go beyond the conventional pieties attached to that much repeated phrase, 'Never again!' The dark ambiguities of the European inheritance are no more exhausted by inquiry into the cataclysm of the early twentieth century than its potential is defined by the achievements of the last sixty years. The conflicts of the interwar years and the political order that emerged as a safeguard against their return were alike deeply rooted in the political, legal and economic regimes that had emerged in the nineteenth century. In the late twentieth century it was common to write European history as an epic of hubris, nemesis and redemption. There was a crude narcissism in such self-aggrandizement that betrayed the origins of this mode of thinking in the triumphalist histories of earlier generations, and it carried with it the note of special destiny that had characterized them. But the idea that Europe continues to struggle with the creations and failures of its moment of ascendancy is a powerful one, and it is in the spirit of that struggle that this research project was conceived.

The EReRe Project was established at the University of Helsinki in 2009 with the goal of providing an alternative view on the European Century, 1815-1914. From the outset, our assumption was that the century is traversed by themes and tensions that in one way or another continue to dominate ideas about European peace and progress today. These need to be highlighted so as to enable an adequate historical understanding of the difficulties of the present moment, including the nature of the alternatives faced by European decision-makers today. We also insist that focus must reach beyond European institutions, so as to grapple with the themes and tensions that traverse the past two centuries both nationally as well as globally. The present situation is an outcome of developments at all of the three levels: national, European and global. They must all be captured in their inter-relatedness, and this must be done realistically. By realistic we mean a view of the past as open towards the future, fragile and contentious in its achievements, and contingent rather than deterministic in terms of outcome.

We have identified three themes that are cut across by tensions that are no less visible today than they were in the 19th century: the themes are those of the nature of desirable "community" in Europe, the character of the order that we can see in the world, and the ways in which European societies have sought to secure their own welfare, including the question what "welfare" means. The tensions within each theme are addressed in the vocabularies of politics, law and economics. But we do not see these three as in the

common view as parallel tracks, but in their entangled and inter-dynamic dimension. Politics, law and economy each offer contending visions of community, world order and welfare. Moreover, they each have a national as well as an inter- or transnational, and ultimately global dimension. This pattern of entanglements and inter-dynamics between vocabularies and ways of thinking is underpinned by our alternative non-teleological historical perspective. No solution has been the necessary result of impersonal forces; everything has depended, and continues to depend, on human choice. To choose widely today, a realistic history is needed. Our focus does not begin with the revolution in 1789 or some other foundation myth, but with the restoration and the search for European stability, which did not prevent new revolutions, however, as we know today. In the achieved stability was fragility.

When we explore the fragile 19th century Europe we do not start from the standard focus on national diversity defined in terms of identity, but focus on political shaping in more complex forms than identity construction. For the past 30 years, national identities have been used as a blueprint for the imagination of today's Europe. These identity stories begin often with a reference to 1789 and unfold in a narrative that suggests the slow capture of claims of identity within an overall liberal frame. We reject such a "Whig history" and want to highlight, instead, the contingency of any chosen date. One might alternatively begin in 1815 so as to highlight restoration and the recurrent authoritarianism in European politics. But the significance of these dates or any other dates is dependent on where one looks: national experiences differ significantly. Moreover, history is a continuum; materials from the 18th century must of necessity be included (and will be included) in our descriptions of the 19th century. In some areas, the sense of continuity is greater than in others. In intellectual history, for example, it would be impossible to understand developments in politics and science without seeing there a reaction to the earlier predominance of natural law. We wish to examine both liberalism and authoritarianism as well as the presence of an ambivalent traditionalism, even narcissism as key parts of the Europe heritage. And we wish to consider the alternative temporalizations operative in the colonies and in Europe's margins. Perspectives from Latin America, Russia and the Ottoman Empire provide distinct counterpoints for the traditional narrative.

Our alternative history has the potential to establish a European link between constitutional patriotism and coming to terms with the past, which Jürgen Habermas emphasized when he in the German case argued that *Vergangenheitsbewältigung* was the precondition *sine quae non* of *Verfassungspatriotismus.* This connection has been flagrantly missing in the debate about a European constitution. The past that needs accounting for consists of a realistic assessment of achievements under each of the three themes – the thinking of community, the relationship to the world, and the creation of welfare. In each, we see not just liberal progress but authoritarianism, conflict and tension between contending values and vocabularies. Politics, law and economy have each provided instruments of progress and platforms of struggle simultaneously.

When we integrate all three vocabularies in our history we want to highlight the pronouncedly inter- or perhaps rather counter-disciplinary (law-politics-economy) account that we hope to give of the 19th century. The divergence of our vocabularies is a richness but also a problem: the fact of their tending to operate independently and sometimes even in conflict with to each other is part of the European heritage we need to grapple with. In terms of methodology our analyses focuses on the role of language and the dynamic and contentious conceptualization of law and politics in the face of the ongoing transformation of semantic fields.

2. Three Thematic Fields of Tension

Our outline of Europe's past – which we want to explore, refine and underpin in great detail – focuses on the period between the Peace of Vienna (1815) and the outbreak of the "Second European Thirty Years War" (1914). The century 1815-1914 was the pre-war historical ground on which the peace of 1945 and our present conception of Europe were built. It was in that period, when the familiar *problématique* concerning the nature of desirable community (political and economic) was formed and when Europe became conscious of itself as a continent and a tradition situated in an intensely global system of order. It was then, too, when present notions of welfare – what it consists of, how to attain it – were formed, together with the persistent conflicts over those questions. The century began with the battle-lines between revolution and restoration firmly drawn, but unfolded with a constant questioning of the result. The dialectic of change and stability never promised its own resolution and the century testifies at least as much to conflict and fragility as to progress. The tensions we have witnessed in the political, cultural, social, economic and legal fields reflect

back to the antinomy between restoration and revolution with which the century began. The calls for freedom and for authority that we hear today are part of what define, for us, different conceptions of European modernity. The new European order established at the Congress in Vienna in 1815 was constructed between restoration and revolution and lasted until 1914. During the "Congress era" wars in Europe decreased, whereas the number of civil wars increased and "'the Revolution' came to no end" (Koselleck 1969:199-229). The only wars which challenged the borders regulated in the Treaty were the Italian and German unification wars between 1859 and 1871. The other international wars during the century after Vienna were either about the spatial order in South-Eastern Europe and in the Ottoman Empire or about colonial possessions. The European battlefields were either exported or transformed into internal social conflicts.

Our history will not embody a homogeneous notion of "Europe". Instead, it presents the 19th century in terms of a series of tensions which were imposed upon the European states and other actors in the wake of the French revolution and the Napoleonic wars. These tensions were articulated in different vocabularies that spoke, for example, of geopolitical strategies, of constitutional conceptions, of economic efficiency, as well as of social protection. They embodied alternative views of the meaning of "Europe". In one way or the other, they all dealt with the themes of community, international order and welfare. These interactive dynamics were also visible in the permanent movement between search for and expectations of stability and experiences of fragility.

Our three thematic fields of tension – creating community, providing for global order, and securing welfare – are tied together in tight webs of interaction. They are separated basically for analytical, operative purposes. Our historical argument is that *these tensions have not gone away with the EU but rather mutated*. Each theme is still alive as a platform over which contested conceptions of Europe, the world and welfare are articulated in different vocabularies – those of law and politics, surely, but also economics, technology, culture and intellectual life. To include all of them in our study – indeed any study – would be an impossible undertaking. So while we have wanted to be clear about the existence of the three fields of tension, we have refrained from any ambition of exhaustiveness with regard to how the conflicts within each have been articulated. Each is a field of contesting vocabularies. And within each, we hope to illustrate their contested nature and the fragile character of any momentary stability by drawing on a variety of topics. These include conflicts between the creation of formal states and constitutions on the one hand, and claims of varying identity and spontaneous community on the other; conflicts regarding geopolitical strategy and international law, and how to draw the line between Europe and the periphery, as well as conflicts around the "economic" and the "social", or "civilization" and the market. Each of these conflicts – alongside many others – has been historically articulated in the 19th century in ways that continue to resonate in today's choices.

2.1 Creating Community

2.1.1 Teleology to be contested

We contest the existence of a stable European identity underpinning European integration with an uncomplicated relationship to national patterns of identification. We are especially critical of the view of a European community built on essentialized imaginations of a shared European patrimony, expressed either in the language of constitutionalism or civilization. We contest the view that there is a standard road of transformation towards liberal democracy – with the German *Sonderweg* as the exceptional case – that Europe has taken, a linear teleology of "developmental stages" leading from monarchical power towards parliamentary democracy. For us, "Europe" is not only a geographical notion but an idea that is often linked with "modernity" *tout court.* As such, we see a *contraction*, or even a *rejection* of Europe as the project of modernity is dissolved from one single civilizing mission to separate nation-building projects such as those carried out by the European-originating Latin-American elites, for example. We will begin our contention of this teleology by a critical assessment of Hegel's theory on development and progress, which has fuelled thinking in this vein.

2.1.2 Two vocabularies of community in Europe

Two 19th century languages have sought to ground the view of Europe as a community and to provide it with a definite place in the world. Both have had an awkward relationship with nationalism. They are the intertwined languages of constitutionalism and civilization.

2.1.2.1 Constitutionalism

Formal constitutions were introduced almost everywhere in Europe during the decade after Napoleon's defeat. The rise of constitutional language has been conventionally interpreted as a first step towards parliamentarianism, leading in due course to the triumph of democracy. This undermines its open-endedness, however, the way it has been able to encompass the most varied forms of power – including by demarcating the (public) realm of legitimate political contestation from the (private) realm of consensus and search for private interest – and this open-endedness has remained almost completely unexplored. There is a lack of transnational studies concerning 19th century constitutionalism. Parallels to or differences from other European states have been only marginally considered. Only recently have new attempts emerged to write and interpret constitutional history on a comparative – above all European – level, especially in German historiography. However, all these projects are oriented towards typology – and not on an analysis of what the adoption of constitutional language *does* to political community.

We shall look for a position that is between national and European, focusing on the struggle between the principles of monarchical power and popular sovereignty as it unfolds in constitutional terms. We are especially interested in the changing conceptions of legitimacy under Max Weber's categories of traditional and rational *Herrschaft*. What is the role of charismatic tendencies (Caesarism), for example? Of special interest is the emergence of a public sphere based on social critique and opinion formation which gave new preconditions for the execution of royal power. The emergence of public spheres meant open value contention about legal arrangements.

The difference between *national* constitutions and *Empires* undergoing constitutionalization processes, such as the Austrian-Hungarian, Russian and Ottoman realms, will be considered, as well as the "democratization" of constitutions and the suffrage; we will discuss questions of inclusion and exclusion, masses and elites. The aim of the analysis is a differentiated interpretation of the role of constitutional language in the creation of European polities, including in the broader transnational contexts. While much cultural analysis has assumed that constitutions "reflect" the shared values and beliefs of well-defined or pre-existing communities, we see the existence of such communities as the *result* of cultural construction and the political search for internal coherence. In this work of construction the idea of the "constitution" has played different roles in different national contexts. Its legacy in Europe is multifarious.

We want to map out a European 19th century in all its complexity and ambiguity. Key issues were legitimacy of power and the search for stability. Both involved an intricate dynamics of politics and law. There was no script to follow. Instead, Europe muddled through progressive steps and setbacks, revolution, reform, and reaction. Liberalism and monarchical rule were both challenged and often entered a more or less tenuous compromise.

2.1.2.2 The language of culture and civilization

Constitutionalism operates with formal concepts and institutions. By contrast, the vocabularies of civilization and culture invoke informal self-understandings, values and ideologies of progress and decline. In the 19th century these expressions began to connote social community in parallel to the construction of formal states. They were products of the same process of fragmentation of universalistic principles as the idea of nationality but richer in meaning and more flexible in use. Civilization and culture could be used to demarcate a community of values by reference to spontaneous religious, moral, aesthetic, scientific, or other such vocabularies.

Whereas "culture" was often used in parallel with "nation" (e.g. Friedrich Meinecke: *Kulturnation*) and aimed at a division within Europe, "civilization" was used to mark out Europe as an entity in relation to other world societies. Through "culture" the national past could be celebrated and marked out as against other European pasts. "Culture", like "civilization", was essentialised into a robust world view and core set of values that were assumed to stand stable in the flux of time. This discourse was closely connected to the idea of progress and the theory that different cultures, civilizations and nations were situated at different stages of development (e.g. Maine 1887). These were expressed by intricate legal distinctions

between "civilized", "barbarian" and "savage" communities. This laid the basis for the idea of a Western or European mission, a *mission civilisatrice* where the task was to educate the uncivilized (Anghie 2005).

Where "constitutionalism" was a vocabulary of especial importance inside Europe, "civilization" plays an organizing role outside. It was one of the key concepts in the semantic field developed by informal imperialism. The period between 1790 and 1914 can be described as a triumph of the Christian world mission, based on confidence in the superiority of European civilization. Many projects were covered by that language: religious missions, commercial expansion, administrative organization, military disciplining. The language of civilization connected moral, political, economic superiority of Europe and justified the developmental mission as its most significant legacy.

Our intention is to highlight the significance of both notions of culture and civilization as alternative languages of legitimacy that came to structure the semantic field of European and global politics in the 19th century. They were informal and flexible, and thus could be used for a number of political and economic projects alongside constitutionalism. They gave substance to identity-formation and conflict but also to ideas of progress and development all of which have continued, under different vocabularies, to define European self-understandings up to the present.

2.1.3 The entangled inter-dynamics between the language of constitutionalism and the language of culture and civilization

Our analysis of the construction of "community" by reference to the vocabularies of constitutionalism, culture and civilization will focus on the integration in formal constitutions of the most varied kinds of political preferences – for example, the way authoritarianism may be written into and economic relations may be excluded from constitutions. How do the opposite but often equally important concerns of "change" and "stability" come to be articulated in constitutional debates? We will pay attention to the construction of meaning of notions such as "liberal", "democracy", "freedom", "sovereign", "culture", "civilization", "development", "progress", etc in the political and legal struggles of the century. The profiles of the legal-political cultures will show the variety of legal arrangements (international-national, public-private, commercial-social), legislative entanglements and their various connections to politics (*Rechtstaat* vs. *Sozialstaat*), for instance; law as frame of politics vs. politics shaping law, law interpretation vs. law making) as well as their self understandings in terms of civilization and development (hereunder the emergence of European mission societies: their environments at home and in the colonies). We will also investigate the shifting basis of legitimacy due to the expanding public spheres with political critique as a crucial dimension. The legitimization of political power moved from the divine and traditional to the public and modern. We will concentrate our analysis on some periods of particular value clash: the search for stability 1815-1820, the revolution 1848 and its aftermath, the emergence of the social question and its connection to the colonial question (~1875-~1885), and the transformation of informal to formal empire around 1900. We will include analyses of the Latin-American experience as well as of the conflict of tradition and modernity in the constitutional debates in Russia and the Ottoman Empire.

2.1.4 Links to the present

The debate around the European constitution that failed in 2005 departed from imaginations of essentialised European values. So does the debate on the War on Terror and the Iraq War. The impasse of these debates demonstrates the urgent need for a more complex and fluid conceptualization of "European values" with a development potential in very different directions. In a situation where the imagination of a European identity does not seem to provide mobilizing and legitimizing guidance any more, a more complex, political and legal understanding of the notion of "European values" will lead to a more realistic understanding of the historical foundation of Europe.

2.2 Ordering the World

2.2.1 Teleology to be contested

We now know that Europe will not be the leader of the world in the foreseeable future. Nor has it been a world leader for quite sometime. And still, European leadership remains one of the most persistent European teleologies. It is high time to take critical stock of Immanuel Kant's famous essay "Idea for a Universal History with a Cosmopolitan Purpose" (1785) where he refers to a "regular process of improvement in the political constitutions of our continent (which will probably at the end legislate for all other continents)". Following this, Europeans have seen Europe as the centre and point of departure of global progress.

2.2.2 Two languages of world order

Two languages of world order developed in the of 19th century, that of dynastic territorial politics (geopolitics), and international law. Throughout the 19th century, conceptions of European public order varied between the Great Power leadership under the European concert, and the international law of sovereign equals. The interplay between the two became more pronounced after 1870 when the establishment of the German Empire fundamentally changed the power relationships on the European continent. Would diplomacy become *Machtpolitik* or a search for some (natural) order? The transformation from monarchical towards parliamentary legitimacy (although to a certain extent achieved by 1914) increased the tension between the two languages: who would have the authority to bind the state? The non-European world was treated as a sideshow, dependent on European events and leadership, oscillating between imperial exploitation and the cultural ideal of future statehood.

2.1.2.1 The language of geopolitics

The dynamic between a European system of nation-states and a global system of Europe-based empires is crucial to grasp in order to account for 19th century geopolitics. When we employ the term "geopolitics" we are well aware that this concept was invented only around 1900 and that other conceptualizations were used in Vienna. It is a common misunderstanding that the European Peace of 1648 meant a rupture of the medieval multi-layered monarchical order (Teschke 2003). State politics to a large extent remained dynastic politics pursued as family enterprises. The monarchs had a stronger control over foreign politics than in domestic affairs. This lasted long after 1648 and was challenged only in the 19th century by the idea of national (people´s) sovereignty. The competition between these two principles of rule – monarchical and parliamentary – provides a basic part of our rethinking of the history of Europe.

Geopolitics in Europe was played out by the rules of the balance of power. True, a few months after the Vienna Congress, Tsar Alexander I added on another legitimizing principle based on a shared religious belief in the perpetual legitimacy of Europe's dynastic system. The attempt by the Holy Alliance to make their ruling order permanent through regular congresses failed, however, in the confrontation with the principle of national sovereignty. What little territorial stability was received within the Concert was bought at the price of internal instability: the number of civil wars and revolutions grew. The precise contours of the connections between external and domestic conflicts and between the two alternative principles of legitimacy remain to be explored. Moreover, the proclamation of the German Empire in 1871 shifted fundamentally the power balance on the European continent. The event foreboded a new time, which not only should be related to the German demonstration of military power but also to the break-through of industrial capitalism and the subsequent formation of working classes. The language of nationalism clashed with the language of class. The national question remained on the agenda but the stress on the European order grew through the acceleration of the social conflict in the wake of the market expansion. National socialism and class-struggle socialism were two alternative outlines of the future in Europe (cf. theme 3).

In 1858 Charles Darwin and A R Wallace launched the theory of the evolution of the species through natural selection. A few decades later this biological theory was translated into a social theory about the struggle for survival and the natural selection among nations. Competition on the world markets would result in the survival of the strongest and ever higher stages of European social organization. Social Darwinism channeled the social conflict in the emerging nation states into colonialism and struggle among the Europeans for global power. The biological metaphor was particularly strong around 1900. This was the

time of imperialism when "informal empire", managed by colonial companies and missionary societies, shifted to "formal empire" created through territorial annexation. The language of empire integrated the language of nation into itself.

European conflict and stabilization is more complicated than just a matter of nation-state building. There was a global dimension to the European nation-formation, and the shift from monarchical to people's sovereignty was anything but a one-way linear development. We hope to develop a complex view on the territorial transformation of Europe in the 19th century and on how this transformation was connected to the issues of legitimacy and power. As opposed to the standard IR analyses we insist on connecting the question of international order to the problem of national disorder. The language of geopolitics was based on a contradictory and complex mutation of ideas of monarchical territorial sovereignty, nationalism and popular sovereignty, colonialism and imperialism. If politics within this order was based on the law of the jungle, law was brought in as an attempt to bring order therein.

2.1.2.2 The language of international law

Competing with geopolitics was the emerging language of international law that spoke about equality, sovereignty, federalism and diplomacy. What existed in the 17th and 18th centuries as a form of philosophical contemplation was consolidated after the Vienna Peace of 1815 as "international law" in the chancelleries and universities of major European powers. As *jus publicum europaeum,* it provided a mirror in which European states could recognize and manifest their sovereignty and formalize their interaction. Alongside the European Concert, international law formalized such other aspects of the system as military alliances and commercial treaties between major powers, and a complex network of formal dependencies between European powers and their colonial possessions. The "state of war" was formalized with rules on neutrality, belligerency, and occupation. International law was used to provide legitimacy to the territorial-dynastic order, but also to contest it by reference to ideas of international and domestic justice. For example, political debates on nationalism, balance of power, legitimacy, democracy, free trade, religious toleration and degrees of "civilization" were articulated in new legal instruments (such as those of "recognition of states" or formal "equality") and novel legal doctrines. International law emerged as an instrument of stabilization in the framework of nation-state building; the establishment of national legal orders contributed to positive law increasingly overshadowing the natural law tradition. The social question is a case in point (cf. theme 3). There was quite obviously a tension between international law and politics for the expansion of transnational markets on the one side and positive national law for e.g. social protection on the other. A crucial question at the end of the 19th century was how to overcome this tension.

We do not treat "international law" as a monolithic or stable set of rules, principles or institutions. Instead, we want to highlight it as one of the languages by which the Great Powers consolidated their directorate over European and colonial affairs, and which likewise provided a platform over which such a directorate could be contested from the civil society. Behind a novel language of sovereignty, jurisdiction, occupation, binding force of treaties, neutrality, and lawful warfare various actors were pursuing various domestic and international objectives. A complex technical discourse on nationality, asylum, and "political offences" laid the framework for the movement of political activists, anarchists and refugees across Europe especially in the latter part of the century. Outside the continent, the colonial expansion of European states was being supported as well as attacked by reference to doctrines about lawful occupation and degrees and forms of "civilization". In fact, the single most important aspect of the colonial history of the period 1815-1914 – the turn from "informal empire to "formal empire" – was a *legal* construction. Instead of one single "international law" emerging from some historical teleology or *Zeitgeist* of the period, we will examine the various ways, in which a changing legal language gave form and direction to political projects across the century and across the world – in public and private law entanglements. Therefore it is more justified, as we do in the title of this project, to talk about *global law* than the conventional term international law connoting well ordered inter-state regulations. We will in the project underpin our proposed conceptual shift in this respect. For the moment the term global law is just a tentative proposal.

International law emerged from a set of formal rules of Great Power diplomacy and a rather marginal preoccupation of a limited number of (mainly German) academics to a politically powerful language to articulate the conflicting understandings of the nature and development of the international world by 1914. It was used by the peace and arbitration movements, by the officials and supporters of new

international "unions", giving voice to interests at events such as the Peace of Paris, 1856, the Berlin Conferences of 1878 and 1885 or the Hague Peace Conferences of 1899 and 1907.

2.2.3 The entangled inter-dynamics between the language of geopolitics and the language of international law

Our project will seek to bring together the languages of geopolitics and international law highlighting their entangled dynamics. We shall focus on the interests and projects highlighted by both languages. This will involve examining the tension between the domestic and the international, naturally, but also between Europe and the colonies. The shift from informal to formal empire, from imaginations of white man's burden to fully-fledged imperialism is of particular interest. Issues of suffrage, minority rights and gender inequalities were important during this transformation. One issue to which we will pay especial attention will be the paradoxical role of the notion and uses of "peace" in the century. On the one hand, "peace" was a crucial aspect of the re-ordering of the European politics within the confines of the restoration policy of the European Concert. Indeed, much of the "peace" here meant precisely the reestablishment of dynastic legitimacy and the suppression of revolutionary agitation. On the other hand, the burgeoning peace movements of the century operated with a wholly different notion of "peace" that they tried to push into liberally formulated international treaties and systems of arbitration. Especially towards the end of the century, the *topos* of "peace" had received varying meanings and became the carrier of varying projects from diplomatic re-organizations to socialism.

2.2.4 Links to the present

One reason for the difficulty of establishing a European foreign policy today lies in the contrast between imagining Europe as a great power alongside the US and China and envisaging it as a special kind of "soft power" whose influence would be based above all on ideological and cultural grounds. The establishment of international courts, and the attention received by developments in the fields of human rights and democracy after 1989 has given rise to a lively debate on the "constitutionalization" of the international legal system, and what part European integration might play in it. On the other hand, Kosovo is a vivid example of the re-emergence of European protectorates based on ideas of a specific European responsibility and on the use of legal and military instruments in consolidating European influence. What can be the role of Europe in the aftermath of the "Arab Spring"? Our purpose is to provide background for these debates by examining their pedigree in the heterogeneous 19th century debates on geopolitical influence and international law. Should Europe think itself as a super-power prepared for global military interventions? Or should it remain a soft power whose influence is channeled through economics and culture?

2.3 Securing Welfare

2.3.1 Teleology to be contested

We contest the teleological view that holds that economic expansion guarantees automatic progress ("globalization"). Markets do not produce wealth without political management. While they solve some problems, they also create other problems. We wish to highlight the tensions between the economic and the social, between economic integration and social disintegration. And we want to stress the role of political decisions in responding to this tension. The key figure here is Adam Smith whose *The Wealth of Nations* (1776) was based on very specific – but contested – assumptions about economic progress and the role of law in it. In Smith's theoretical construction of a growing economy, labour became a means, not only to maintain existence, but also to create expanding capital. Labour was synonymous with economic growth, and economic growth signified material and moral happiness. There is a tension between utopian utilitarianism and pragmatic reasoning in Smith's text. Later commentators, for example neo-classical thinkers in the 19th century, have overemphasized the utopian element. Smith's work was an extension of 18th century natural jurisprudence and involved a "classical" theory of the role of law in transmitting the perspective of the "impartial spectator" into the distribution of social goods. According to this view, it is possible to condense an "ideal" system of social relationships within legal rules whose application will produce the most just, and the most economically equitable outcome, regardless of time and place. Present debates about "rule of law"

and "good governance" manifest this view of law as well. We do not share it. Legal systems are indeterminate in their consequences: the same rules produce different results in different contexts. There is no golden road to prosperity through property rights and freedom of contract. Everything depends on contingent political choices.

2.3.2 Two languages of European Progress

European modernity has always involved a belief in progress. The future can be made different – and better – through human agency. Both ideas about economic efficiency and social solidarity have reflected this belief. They have been enshrined in two separate discourses and academic disciplines, namely economics and sociology. But though separate, both constantly defer to each other. Their contrast has also received other manifestations, like the one between legal rationalism and the historical approach. Instead of separating the opposite languages of progress, as is customary, and linking them to specific (for example, liberal and socialist) reform projects, we will bring the two languages together and demonstrate their entanglement and mutual constitution. Thus, for example, ending of serfdom in Russia illustrated a Europeanization strategy that drew precisely on the twin efforts towards solidarity and economic efficiency – and did this above all so as to solidify the imperatives of change and stability that were to guarantee the future of the ruling dynasty. Throughout the century it was obvious that although global markets and class solidarity may be different languages – each still drew from assumptions significant for the other. The constitution of the economic debates will be highlighted at the moment "before socialism", that is to say, when the conditions of the economic debate were laid out in the first decades of the century between advocates of contrasting positions on the role of the state in the economy.

2.3.2.1 The language of economic efficiency

The move from the mercantilism of the 17th and 18th centuries to free trade in the 19th drew largely upon Adam Smith's argument that free trade facilitates division of labour, which, in turn, was the key to economic efficiency and growth. These arguments supported the emergence of "classical legal theory"(Horwitz) that was based on a combination of individualism, positivism, and legal formalism and held that a proper "science of a legislator" (Smith, Haakonssen) would create a stable system of market-relations between individual property-holders by the enforcement of contracts through impartial rule. In this image, law would only transpose optimal economic relationships at the level of enforceable rights and duties. The only reason for public intervention in trade, for example, would be to guarantee freedom of exchanges.

No political break-through to free trade followed, however. In many European countries there was a protracted struggle between industrial owners and workers, who argued for free trade for market outlets and for cheap import of food, and agricultural producers, who argued for protection against cheap import. Britain applied free trade from the 1840s and countries like e.g. Belgium, Denmark and the Netherlands reduced the customs on imports of industrial commodities. Commercial treaties opened up new markets for European producers from the Ottoman Empire to China. Countries like USA and Russia protected their growing industries with customs of 100 per cent or more. The problem was more complex than just an opposition between industry and agriculture. Even free trade adherents became protectionists under changing economic conditions. During the 1880s, under conditions of economic depression on markets for industrial products and dumping of cheap cereals from USA and Russia on the agrarian markets, the customs issue became a burning political problem. Consequently, Europe shifted in the 1880s towards protectionism. There was a spillover to military and geopolitical perspectives and to the relationships between Europe and the colonies (themes 1 and 2). We hope to retrieve the complexity of dependencies between free trade and regulation in reaction to social concerns.

The scenario we hypothetically discern is anything but the smooth development of Smith's economic liberalism in tandem with a not less smooth development of political liberalism towards democracy. The more precise connections in the international-national and political-legal nexuses remain to be explored.

2.3.2.2 The language of social solidarity

Smith's theory about universal economic expansion towards general wealth was closely connected to the notion of economic progress transmitted through a formal system of enforcing contractual rights. His ideas were, however, contested in the 1870s when a long economic depression began and reinforced the social disintegration in the wake of economic integration. Social protest increased and "class" emerged as an important political category..

In Germany, in particular, renewed interest in the active role of the state in economic modernization and growth, and an emphasis on the pivotal role of protectionism and infant industry tariffs creating a modern industrial nation led to the foundation of the *Verein für Sozialpolitik* in 1873 with its stress on the social dimension in nation-building.

At the same time, the individualism and rationalism that had informed "classical legal theory" was being undermined by more collectivist, program-oriented ideas about law and legal reform. Instead of a transformation of rational (natural) rules, legislation was seen increasingly as a matter of contending interests (Jhering). Those interests now included collective demands for various social programs and improvements. In the 1860' and 1870's began a "second globalization of law" in terms of expansion of social and labour legislation, and an increasingly interventionist public realm. The task of legislation was no longer the enforcement of private contracts but carrying out social reforms (Kennedy 1997). The idea of the *Sozialstaat*, which guaranteed social rights, emerged as an alternative to the idea of the *Rechtstaat*, which guaranteed freedom of contract.

With growing attention to the social issue the metaphoric language shifted from the market to Darwin's "struggle among species and natural selection". The image of the world became one of nations struggling for survival. This had a clear connection to the emergence of formal empire and military imperialism. The social pressure created by and creating protectionism was channelled both into domestic and external conflicts (cf. theme 2). The language of an harmonious division of labour was overtaken by the languages of class struggle and nationalism.

The language of economic efficiency connected with the vocabulary of the nation; "progress" and "economic strength" served as bridging arguments. From the 1870s onwards a growing connection also emerged between the language of social solidarity and the language of the nation. It was the task of the legal system(s) to articulate the "social and historical reality" of the nation to far-reaching legislative projects of reform. This was also seen as a means to integrate social protest in a collective nation-building project. Inside the contending legal approaches "nation" and "class" emerged as competing categories of community. Politics and legislation about the social problems emerged through national compromises not through international class solidarity.

2.3.3 The entangled inter-dynamics between the language of economic efficiency and the language of social solidarity

The rhetoric of economic efficiency did not translate particularly well into a settled set of principles of economic behavior. Nor did 'solidarity' provide much more than a rallying cry in the attempt to negotiate the political pitfalls that the new economic world had opened up. Economic and social theory remained beholden to two metaphorical images of society that had emerged from the Enlightenment. One took society as a given, a natural organism perhaps - a body, a family or a garden - or else an impersonal mechanical device - a machine or a clock, for instance. The other viewed the future as *machbar*, makeable, by man in a progressive perspective (Unger). Neither legal positivism, nor any of its (naturalist) or social regulation competitors offered a self-evident set of social practices to be simply "applied". The furious search for political and legal articulation of the reality of a conflictual society after the 1870's may have been intellectually fruitful – and it certainly determined much of the political and legal controversy in the 20th century. But it did not resolve the problems of the fin-de-siècle years. The view on future as man-made opened up totally new possibilities for political entrepreneurs: the social engineer now stood against the social organism.

None of this meant that conceptualizations of society in terms of a self-propelling machine disappeared. On the contrary, ideas of self- organization were expressed, for example, in organic and historical concepts of the nation. The metaphors of self-organization and constructivism remained the two main metaphors of modernity producing interactive dynamics under their respective references to the fictions

of the market and the state and to the theories of free trade and protectionism, involving tension between economic efficiency and social solidarity. The metaphors and the theories had a strong impact on the 19th century attempts to come to terms with future through politics and legal norms.

2.3.4 Links to the present

The tension between economic efficiency and social solidarity and between the fiction of the market and the fiction of the welfare state is one of the most evident *Spannungsfelder* in Europe of today – each carries a distinct vision of the role of law and legislation in the government and reform of society. What is the role of formal "rules" in contrast to wide legislative "policies" in legal thought and in social and economic reform? The 19th century European experiences provide a historical backdrop of high relevance as a corrective in a simplistic debate under the label of "globalization".

3. Teleology

A theme cutting across all our work is a focus on *teleology*. Teleology played an enormous role in scholarly cultures from 18th century enlightenment onwards. Arguably, its spread and diversification was a result of the growing impact of various cultures of scholarship (for instance natural science, history, philology, legal studies, economics, and theology) on epistemic notions, such as 'rationality', in society at large. The scholarly-academic culture of law, for instance, went hand in hand with practice-oriented political projects of legal codification, attempting to impose a rational order of the present and the future. As European theologies – from Christianity and Judaism alike – began to historicize the Bible they became a focal point for the re-negotiation of eschatological teleology and its combination with emancipatory agendas of various kinds. The connection between the academic production of teleology and technological, political, religious, literary and other discursive formations appears as a crucial concern for 18th-20th century history.

Teleology also forms a great part of the history of *political cultures*. Here, the question of future expectations and horizons of past experience as generated and molded by fields of political strife will be the most prominent concern. The most salient examples in European history are presumably liberalism (both constitutional and economic), socialism, and colonialism. In relation with this, it is mandatory that we examine also the epistemic foundations on which political languages of future and past are built. For instance, one may think here of notions of agency, of 'great men' and heroism, of salvation, of emancipation, of experience and witnessing, and of suffering as inscribed in particular political constellations.

As awkward as it may seem, teleology remains a part of the justificatory schemes of much European politics today. This owes a great deal to nineteenth-century arguments concerning history, causation, time, and meaning. These earlier debates nevertheless remain obscure and our intention is to put them in context, beyond the identification of 'high points' and canonical figures. Focusing chiefly but not exclusively on Germany (where philosophical and methodological debates were particularly acute), we hope to uncover the intellectual correlates to the political, scientific and administrative changes outlined in the previous sections that increasingly underscored a desire for a future that was predictable, reliable, manageable and also ethical.

In a special study we will explore the European utopias of peace and progress, as they were designed in Vienna 1815, Versailles 1919 and Paris 1951, and connect them to the tenacious and contentious search for a political economy that unified liberty and solidarity, a search that repeatedly confronted the utopias with the monotonous muddling through of everyday life and strife, and occasionally transformed them into dystopias.

In carrying out our examinations of teleology we shall hold Reinhart Koselleck's conceptual history as a methodological point of reference. This means focusing on the discursive struggle for interpretative power of key concepts as the engine of politics. His approach pushes us to ask *what* new concepts were introduced by *whom* and *when* (and which old concepts were given new meanings), and to what *purpose*. It encourages us to see intellectual developments as an open-ended struggle without a pre-existing goal. This will contribute to giving shape to our sense that Europe has no essence and no roots and no pre-determined goal. Rather it is a constantly contested discourse – nothing more, nothing less – and must remain so in order to avoid any totalizing goal (Stråth 2000b). Constantly contested means open in negative

as well as positive terms. We also draw upon the speech act theory of the Cambridge school with Quentin Skinner (1998 [1978], 2002) as protagonist. We endorse the view that the connection between language and action is not necessarily intentional in a perspective of rational choice, but quite often action comes first and the legitimizing language afterwards (see Freeden 2006; Freeden, Humphrey and Talshir 1996). Ideologies provide a big arsenal of arguments that can be picked up and combined in mutative ways that are contingent on the context and on what the arguers want to achieve. In the 19th century, teleology became the predominant frame within which successful ideologies and arguments were to be pushed.

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