



INSIGHT

THE RUSSIAN WAR AGAINST UKRAINE AND THE LAW OF THE EUROPEAN UNION

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THE EUROPEAN POLITICAL COMMUNITY: A NEBULOUS ANSWER TO THE STRATEGIC QUESTION OF HOW TO UNITE EUROPE

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ABSTRACT: The European Political Community (EPC) is an institutionalised but flexible forum for political coordination between European countries. It was established in the aftermath of the Russian invasion of Ukraine in 2022. While the EPC is only in its early stages, and therefore there is a significant element of volatility in the subject, this *Insight* reflects on how the EPC innovates in terms of actors, process, and instruments with respect to the European Union, the North Atlantic Treaty Organisation, and the Organisation for Security and Co-operation in Europe. In terms of who is accepted as member, the EPC pursues both an *inclusivity/exclusivity* rationale of creating a geopolitical block across the continent and parallel *integration* rationale of offering some countries something more than the European Neighbourhood Policy but less than EU membership. In terms of processes, the EPC is formally, but by no means materially, separate from the EU. In terms of instruments, for the moment the added value of the EPC is in its presence. The *Insight* concludes with reflections on the future of the EPC, highlighting risks of duplication with those other organisations and issues of credibility.

KEYWORDS: European Political Community – European Union enlargement – War in Ukraine – EU Neighbourhood Policy – Europe in the world – EU-Russia relations.

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I. INTRODUCTION

The European Political Community (EPC) is an institutionalised but flexible forum for political coordination between European countries. Its establishment, proposed by French President Macron,¹ follows the new applications for EU membership by Ukraine, Georgia, and the Republic of Moldova after the 2022 invasion of Ukraine. These applications served as a catalyst for the establishment of the EPC, reflecting the pressing demand for an immediate response to it, in the absence of a quick or fast-track accession procedure.²

This *Insight* is dedicated to this potentially significant – but still in its early hours³ – policy reaction to the war. Its main argument is that the EPC is meant to provide an immediate solution to long-term problems, but it is unclear whether it can actually do so. While its need may have been felt also if the 2022 Russian invasion of Ukraine had not taken place (for the structural reasons highlighted in this *Insight*), the relatively quick set-up is one of the many innovations in terms of policy that the invasion has triggered in Europe.⁴

Zooming in on the focus of this special issue, Section II sets out the two rationales of the EPC: an *inclusivity/exclusivity* rationale of creating a geopolitical block across the continent and a parallel *integration* rationale of offering some countries something more than the European Neighbourhood Policy but less than EU membership. In particular, the connection between the EPC and the question of Ukrainian accession to the EU is twofold. Firstly, the EPC provides a unique platform for European nations to navigate the complexities of the new strategic landscape. It is designed to allow for political and security cooperation, energy collaboration, infrastructure development, and more, all of which are crucial in addressing the challenges posed by the ongoing war in Ukraine. Secondly, the EPC offers an alternative approach to the enlargement policy of the EU. While the EU's enlargement process had experienced a temporary stall, the war in Ukraine rekindled discussions about the future of Europe and the need to reevaluate enlargement policies.

The remaining sections discuss how the two EPC's rationales play out in terms of actors, processes, and outcomes. In terms of actors (Section III), the broad membership of the EPC may be read as a failure of EU policies toward its neighbours, or, quite the opposite, as a recognition of its success in creating a high level of integration between

¹ E Macron, 'Speech to the European Parliament' (9 May 2022) [presidence-francaise.consilium.europa.eu](https://www.presidente-francaise.fr/en/consilium-europa).

² On the accession procedure see R Petrov and C Hillion, 'Guest Editorial: "Accession through war" – Ukraine's road to the EU' (2022) CMLRev 1289.

³ There have been only two meetings of the EPC, in Prague in October 2022, and in the Republic of Moldova in June 2023 (Summits are organized on a rotating basis by each participating country with the host alternating between an EU and non-EU member state). The next summit is scheduled to take place in Granada in October 2023, the day before an informal meeting of the Heads of State or Government of the EU Member States (as it happened in Prague); after that, the next meeting will be held in the UK in 2024.

⁴ See further Section II.

some countries of the continent. In terms of processes (Section IV), the EPC is formally, but by no means materially, separate from the EU. This constructive ambiguity follows from the indefiniteness of the EPC's mission and of its relations with the EU. In terms of instruments (Section V), for the moment the added value of the EPC is in its presence, acting as a laboratory for testing solutions to the strategic problems of wider Europe.

Section VI draws together the threads of the most important feature of the EPC, namely its contingent genesis and the uncertainty – or deliberate ambiguity – over its future, with potential issues of duplication and of credibility.

II. THE ESTABLISHMENT OF THE EUROPEAN POLITICAL COMMUNITY: TWO RATIONALES

This is the background for the establishment of the EPC in the words of its proponent:

“How can we organize Europe from a political perspective and with a broader scope than that of the European Union? It is our historic obligation to respond to that question today and create what I would describe here before you as “a European political community”. This new European organization would allow democratic European nations that subscribe to our shared core values to find a new space for political and security cooperation, cooperation in the energy sector, in transport, investments, infrastructures, the free movement of persons and in particular of our youth. Joining it would not prejudice future accession to the European Union necessarily, and it would not be closed to those who have left the EU. It would bring our Europe together, respecting its true geography, on the basis of its democratic values, with the desire to preserve the unity of our continent and by preserving the strength and ambition of our integration”.⁵

This *Insight* argues that this reveals two rationales. The first can be conceptualised as an *inclusivity/exclusivity rationale*. The EPC should be a united “geopolitical block” across the entire continent (in this diverging from the EU), of democracies sharing common values thus excluding Russia and Belarus (unlike the Organisation for Security and Cooperation in Europe), and with a geographical focus that would exclude the US (unlike NATO). This *Insight* argues that the EPC falls short on all three fronts. It encompasses countries with so diverse interests, histories, and priorities that they do not constitute one united block (in some cases there are ongoing border disputes or conflicts between the members such as Cyprus-Turkey or Armenia-Azerbaijan). It is not an alliance of democracies, including instead countries on an authoritarian drift. The geographical focus is also an “unkept promise” of formally finding a clear delimitation to membership, but which has the only practical consequence of excluding the US – as if including the US as an ally of Europeans was a taboo. Instead, the EPC is yet another pillar of the institutional security architecture of the continent, and, at least until its role

⁵ E Macron, ‘Speech to the European Parliament’ cit.

is clearly defined by practice, it runs the risk of some duplication with the tasks of those other organisations. NATO, a purportedly defensive military alliance tasked with the defence of Europe since 1949 (then against the Soviet Union, now against the very present Russian threat), keeps the US, the leading military power (in traditional terms), in Europe; the OSCE, created in 1975, was active in Ukraine including by brokering the first Minsk agreement, and has both Russia and US among its members (so it is now “paralysed”); the EU itself lacks military structures (such as one chain of command, one headquarters, its own weapons and ammunitions) and largely depends on the resources made available by the Member States. All these organisations have partially overlapping (not identical) membership.

Second, Macron’s speech reveals an *integration rationale*. EPC is a platform that grants to Eastern neighbours of the EU more than the European Neighbourhood Policy (which foresees no such institutionalised multilateral meetings), but less than EU membership.⁶ At the same time it is open to other members, and it includes among others the UK and Kosovo.⁷ The EPC is in the tradition of the French “strong track record of launching new international formats and posts for purposes of high statecraft. These include the European Council, the EU’s high representative, and, of course, the G7”;⁸ and of the (equally French) ideal of uniting European states across the continent with a more or less explicit objective of relying less on the US (notable precedents are Charles De Gaulle and Mitterrand’s ideas, the latter recalled by Macron himself⁹).¹⁰

These rationales derive from – but do not really answer – important political questions on the extent and purpose of EU enlargement.¹¹ After the “big bang” enlargement of 2004, whereby 10 Central, Southern and Eastern European states joined the EU, and later accessions (Bulgaria and Romania in 2007, Croatia in 2013), the EU enlargement process has grinded to a halt. This is partly for internal political reasons (lack of will

⁶ F Marciacq, ‘The European Political Community and the Western Balkans. Strategic Thinking or Misleading Hope?’ (5 December 2022) Friedrich Ebert Stiftung library.fes.de 6.

⁷ The inclusion of the latter is significant because there are EU Member States who do not recognise its statehood, and on official documents of the EPC the name of Kosovo is accompanied by the usual disclaimer that “This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence”.

⁸ R Parkes and M Nič, ‘Analysis of the European Political Community Misses the Point’ (26 October 2022) DGAP dgap.org.

⁹ “In 1989, President François Mitterrand opened up this reflection when the Soviet Union collapsed, proposing the creation of a European confederation. His proposal did not bear fruit. It was most certainly ahead of its time. It included Russia in this confederation, which, of course, was swiftly deemed unacceptable for the States that had just freed themselves from the yoke of the Soviet Union. But it raised the right question and this question remains”.

¹⁰ Similar rationales are identified by V Tcherneva, ‘The Future of the European Political Community’ (1 June 2023) European Council for Foreign Relations ecfre.eu.

¹¹ E Letta, ‘Letta: una Confederazione europea. Il percorso per l’adesione di Kiev’ (19 April 2022) Corriere della Sera www.corriere.it.

from EU member states, time needed to adjust EU governance to the 2004 enlargement), partly for reluctance of the candidate countries (as in the case of Turkey), partly to historical events that pushed enlargement in the background (the economic and financial crisis of the early 2010s), or a combination of some or all of them. The political and strategic earthquake caused by the Russian invasion of Ukraine of 2022¹² have brought the enlargement process again to the top of the EU political agenda. The EPC is a (nebulous and tentative) attempt to feed into that process, which builds on the assumption that the EU alone is unfit to unite Europe, because an EPC is needed instead “to organize Europe from a political perspective and with a broader scope than that of the European Union”.¹³ This being “unfit” may be considered a failure of the EU, but instead, as argued later, it is a manifestation of its success.

III. ACTORS: THE EUROPEAN POLITICAL COMMUNITY AND NEW EU ACCESSIONS

At a time when EU enlargement is again on the political agenda, the EPC’s extended membership responds to one of the rationales (the *integration* rationale) of this newly established organisation, but it is hardly a solid solution. Membership of the EPC is in fact significantly broader than that of the EU and corresponds to that of the Council of Europe (plus Kosovo). As the President of the European Council Jean Michel stated, the EPC goes “beyond enlargement”, in that it feeds into the process of transformation of the current EU enlargement policy into a form of gradual (“phased”¹⁴) regional integration taking place in parallel with the negotiations for actual membership.¹⁵ But, as counterintuitive as it sounds, that form of gradual regional integration is *not* the EPC.¹⁶ There is not, and there cannot be, an EU commitment to promise membership to Ukraine, Georgia, Moldova and the countries in the Western Balkans. This is because art. 49 TEU foresees specific procedures (including the need for approval by each EU Member State),¹⁷ and the practice of EU accession has been such that negotiations would not

¹² Which triggered almost revolutionary changes such as the request for EU membership by Ukraine, Republic of Moldova, and Georgia; the request for NATO membership by Sweden and Finland; and the doubling of the German defence budget.

¹³ E Macron, ‘Speech to the European Parliament’ cit.

¹⁴ See already European Commission, ‘Enhancing the Accession Process - A credible EU Perspective for the Western Balkans’ (5 February 2020) neighbourhood-enlargement.ec.europa.eu.

¹⁵ European Council Conclusions of 23-24 June 2022: “the European Council invites the Commission, the High Representative and the Council to further advance the gradual integration between the European Union and the region already during the enlargement process itself in a reversible and merit based manner”.

¹⁶ The European Council noted that the EPC and enlargement are “two separate discussions that should be handled as such” and that “such a framework [EPC] will not replace existing EU policies and instruments, notably enlargement”.

¹⁷ Art. 49 TEU: “Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Coun-

take place during the EPC meeting. The process of joining the EU has usually required, instead, years of bilateral meetings.¹⁸ In sum, membership of the EPC does not equal future membership of the EU, although some have suggested that the EPC could be “an accelerator” of accession.¹⁹

The link made by Michel between EU enlargement and EPC raises the question of the precise “collocation” of the EPC in the relationship of the EU with its immediate neighbourhood, that is to say, the *inclusivity/exclusivity* rationale. Macron’s speech assumes that the future organisation of Europe should have a broader scope than the EU. And some commentators have in fact pointed out that the EPC is only needed in the first place because the EU has failed to perform the task itself:²⁰ the EPC may in fact give the impression that the EU is now unfit to manage its relations with wider Europe, because the European Neighbourhood Policy, as the Union for Mediterranean before it, have failed. That the sequence of constitutional amendments from the end of the Cold War on have resulted in an EU “enlargement fatigue”, or anyways lack of legitimacy in pursuing further enlargement and deepening integration.²¹ This view has merits. The process of enlargement is relatively straightforward in legal terms – it is the political aspects of it that require careful management, and which have proved to last for several years, with some issues resurfacing well after obtaining EU membership, as structural “rule of law” issues, or lingering border disputes,²² show. EU enlargement policy needs to be re-thought in its strategic foundations: who should be included, when, and with what long-term vision?

The creation of the EPC is hardly a convincing answer to those questions. It does not put a stop to the ongoing process of reflection, of “conceptual discussion” one could say, over the boundaries of Europe. The question is not merely to understand the geographic limits of Europe, which is nearly impossible in the absence of a clear physical border in the East:²³ if the Southern Caucasus is in, should central Asia, on the other

cil, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account. The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements”.

¹⁸ A Missiroli, *L'Europa Come Potenza. Diplomazia, Sicurezza, Difesa* (Il Mulino 2022).

¹⁹ F Mayer and others, ‘Enlarging and Deepening: Giving Substance to the European Political Community’ (22 September 2022) Bruegel Policy Contribution www.bruegel.org 1.

²⁰ R Parkes and M Nič, ‘Analysis of the European Political Community Misses the Point’ cit.; F Marciacq, ‘The European Political Community and the Western Balkans’ cit. 6.

²¹ A Missiroli, *L'Europa Come Potenza* cit.

²² See e.g. case C-457/18 *Slovenia v Croatia* ECLI:EU:C:2020:65 on a border dispute that should have been settled as a political condition for Croatian membership.

²³ On the implications of this, see for example L Lonardo, *EU Common Foreign and Security Policy after Lisbon: Between Law and Geopolitics* (Springer 2022).

shore of the lake – the Caspian Sea – also be Europe? And why are Cyprus and Turkey in but not the neighbouring Syria and Lebanon? And further yet, it may be odd for some to consider Israel in Europe, yet it does participate in the EU's budget.²⁴ More generally, the choice not to include the southern shore of the Mediterranean is the fruit of a precise geopolitical choice of focusing on Central and Eastern Europe as opposed to the Mediterranean basin.²⁵

The question is more about “cultural” borders, and what is implicitly at stake is the place – in a conceptual, not just geographic sense – of Russia in the governance of the continent. While Russia and Belarus have been excluded from the EPC, a long-term vision could conceivably see their involvement, in keeping with Macron's initial slogan that Russia must be defeated but not humiliated.²⁶ This is not to contradict the opinion expressed by Professor Petrov²⁷ and many other observers that it is impossible for Putin to be seen sitting at the EPC table. But Putin is not immortal, and, depending on what happens after him, it might be politically possible or indeed desirable to invite the representative of the next Russian administration. To this one could add that the criterion for membership of being “democratic nations”²⁸ is not interpreted strictly,²⁹ which again suggests that membership is political and cultural rather than geographical or exclusively value-based. That the democratic character of members is not interpreted strictly is shown by the fact that countries against which EU institutions have adopted measures for being potentially in breach of EU values (Poland and Hungary) or countries whose leadership has been contested for a deteriorating human rights situation (Turkey³⁰) have joined without public discussion of the issues. This has led one commentator to suggest that, to avoid hypocrisy, “the EU should rhetorically decouple its efforts to contain authoritarian Russia or rethink Europe's role in the new global order from its desire to defend democracy and serve justice”.³¹

²⁴ Israel is part of the EU Horizon 2020 framework; on the exclusion of Kazakhstan from the EPC see A Pau, ‘An Analysis of the Rationales behind the Launch of the European Political Community and Its Added Value for EU Diplomacy’ (2023) *Eurojus rivista*.eurojus.it 141, 146.

²⁵ L Lonardo, *EU Common Foreign and Security Policy after Lisbon* cit.

²⁶ S Vernay, ‘Entretien. “Ma nouvelle méthode”: les confidences d'Emmanuel Macron’ (3 June 2022) www.ouest-france.org.

²⁷ R Petrov, ‘Search for the European Political Community's identity – A pan European Political “Bazaar” or a Quiet Room for Peace-making?’ (14 November 2022) *EU Law Live* eulawlive.com.

²⁸ Or, more likely, states, but the use of the word state would create a difficult situation with entities like Kosovo.

²⁹ On this point see also A Pau, ‘An Analysis of the Rationales behind the Launch of the European Political Community and Its Added Values for EU Diplomacy’ cit. 144.

³⁰ See e.g. European Parliament, Press Release of 7 June 2022, ‘Turkey: Persistently Further from EU Values and Standards’ www.europarl.europa.eu.

³¹ C Stratulat, ‘The Beginning of the European Political Community’ (3 October 2022) *European Policy Centre Discussion Paper* www.epc.eu 4.

On the other hand, the creation of the EPC recognises that the EU has reached such a high degree of integration and homogeneity – at the net of the inevitable political differences between its Member States – that only something “less” can unite the rest of the continent. The EPC is the only politically viable reality, a form of external (because outside the EU) “differentiated integration” in Europe. The creation of the EPC underscores the success of the EU, not its failures, and “preserves” a deeply integrated Kern-Europa by adding to it an outer layer of less integrated but very close allies. One could go further in the argument: the EPC is perhaps the recognition that the post-Cold War system of alliances in Europe is a resilient system after all. The war in Ukraine has crystallised a division in two blocks that now stand strong – but again in some form of equilibrium – against each other. The fact that the war has not spread further than Ukraine is evidence of this equilibrium, which the EPC is now meant to formalise.

IV. PROCESSES: DECISION-MAKING FORMALLY INDEPENDENT FROM EU STRUCTURES

As mentioned, the EPC is, formally, entirely separate from the EU.³² Some of the ambiguities that this formal but by no means material separation entails were discussed in the previous section and others are detailed in this section. Decision-making is by consensus, in a decidedly intergovernmental organisation. The EPC is anchored to the pursuit of the interests of its member states, and not to the interest of the Community itself as separate from that of the Member States. This is unlike what happens in the EU, where art. 17 refers to the Commission representing the Union’s interests, and art. 21 TEU elevates the pursuit of the *Union’s* interest in international relations to an objective of the EU.

This separation between EU and EPC reinforces the argument that, formally, the war in Ukraine has not resulted in institutional changes in the EU, with the exception of a re-organisation of some units, such as the creation of the European Commission’s “Freeze and Seize” Task Force.³³ And so unlike, say, an extra-EU Treaty adopted in the context of a crisis such as the European Stability Mechanism, the EPC foresees no involvement of EU institutions.

Links between EPC and EU do exist, however, as a matter of substance.

First, the EU is a member of its own right, and the EU may engage in doing things as a result of EPC meetings (see next section). The High Representative, the President of the European Council, the President of the European Commission are invited to attend the meetings.

³² European Council Conclusions cit.: the EPC “will fully respect the European Union’s decision-making autonomy”.

³³ L Lonardo, *Russia’s 2022 War Against Ukraine and the Foreign Policy Reaction of the EU: Context, Diplomacy, and Law* (Palgrave Macmillan 2023).

Second, the EPC is on the same trajectory for the EU, not because its members will eventually join the EU (as explained previously), but because they both aim to strengthen Europe on the world's stage, in opposition to competing world views. The EPC creates a "geopolitical block" that is sufficiently homogeneous to have common interests in global politics, and sufficiently distinct from Russia and from the US.

Third, Macron proposed the establishment of the EPC, in his capacity of President of the Council, to the European Parliament. The invitation to the first meeting was signed by the President of the European Council, and the summit took place the day before a meeting of the European Council, and in the same place.³⁴

V. INSTRUMENTS

What does the EPC do? One should not look for concrete action by the EPC. It would not be impossible to find such acts, but they are meagre: the first EPC meeting concluded without a joint statement by the 44 heads of state present, but with the launch of a short-term *EU* mission to the Armenian border, for de-escalating the conflict in Nagorno Karabakh. The significance of the EPC lies rather in its *presence*, as a forum to strengthen the security, stability, and prosperity of Europe, no doubt with a strong symbolic charge of continental unity in the face of what is perceived (and does everything to be perceived) as a common enemy. If this interpretation is correct, and the EPC has also an anti-Russian function, then it is also an element of distinction from NATO, whose leaders at the Vilnius meeting of July 2023 reaffirmed that the alliance protects the continent from threats "no matter where they stem from".³⁵

But what *can* the EPC do? This means asking the question of what is necessary (in terms of tools – since membership was discussed previously) in order to deliver on the promises to be "contributing together to the security, stability and prosperity" of the continent.³⁶ Unfortunately, it seems that a level of military equipment and structures is still necessary to provide security and stability in Europe. The EPC does not have this. Nor does the EU, despite the attempts at enhancing its capabilities and strategic autonomy through the Permanent Structured Cooperation (launched in 2017); nor France – which, despite being the only EU Member State possessing the full spectrum of military capabilities, including nuclear power, has never publicly considered using them against Russia – outside, that is, a multilateral intervention. Only NATO does. If the EPC is a forum for organising multilateral or bilateral discussions, it is to be welcomed in its ambition, but it is hard to see how it can deliver on its promises.

³⁴ Other links with EU institutions are recalled in D Wyatt's, 'The European Political Community should make itself the United Nations of Free Europe' (21 November 2022) EU Law Live eulawlive.com.

³⁵ See NATO, 'Vilnius Summit Communiqué' (11 July 2023) www.nato.int.

³⁶ Government of the Netherlands, 'Non-paper on the European Political Community' (17 June 2022) open.overheid.nl.

VI. CONCLUSION: FUTURE SCENARIOS

The establishment of the EPC is a contingent development, a response to an emergency. It would most likely not have happened if not as part of the policy changes accelerated or triggered by the Russian invasion of Ukraine of 2022. It is perhaps inevitable – given the unforeseeable accidents of history, which escape any grand strategy or long-term vision – that the law of international organisations in Europe is reactive and experimental.³⁷ This is also how EU integration proceeded at time: by attracting under EU law structures that first orbited outside it. It was, for example, the case of the European Political *Cooperation* (the intergovernmental, flexible, informal forum for foreign policy cooperation of the 70s and 80s) that was formally associated to the Community institutional structure with the Single European Act – and which eventually became the Common Foreign and Security Policy of the EU. It is not inconceivable that something similar might happen to the EPC.

But for this to happen, at least two significant obstacles should be overcome. First, although it was not “marketed” this way, the EPC is a temporary solution to a contingent problem – namely, creating a bridge between the EU and its neighbours while the latter build the capacity to fulfil the criteria for EU membership. Given the current set-up, it is hard to see how it could be permanently integrated into EU structures. In particular, the EPC does not solve the issue of Ukraine’s application for EU membership, because being part of the EPC does not equate eventual EU membership. An accession of Ukraine to the EU is therefore a persistent political issue which necessitates a decision to be made in the short or medium term.

Second, there are serious risks of duplication with other organisations and issues of credibility. The EPC currently has the same membership of the Council of Europe (plus Kosovo), but a very different task. It does have a very similar task of the EU – and is linked to it with all the ambiguities highlighted in this *Insight*. The EPC sits uncomfortably with NATO. The awkwardness derives from the fact that while both organisations share the rationale of being alliances with an anti-Russian element, the fact that EPC is an exclusively European geopolitical block means that it lacks the deterrence capabilities that, in Europe, are currently provided by the US.

³⁷ This idea that the EU is re-active to the accidents of history is inspired by L van Middelaar, *The Passage to Europe: How a Continent Became a Union* (Yale University Press 2020) 129 and his philosophy of history: “history has no plan, no logic”.