

Two minor points – one textual and one historiographical – are worth mentioning, about Rousseau and Bodin, respectively. On p. 9, Tuck quotes from the fourth paragraph of *The Social Contract* Book III, Chapter 1: “government’ is ‘often wrongly confused with the Sovereign, whose minister it is’” (my emphasis). Based on this line, Tuck draws the conclusion that it “suggests that he [Rousseau] recognized that sometimes it had *not* been wrongly confused” (p. 9) and that “he must in fact have been well aware that he was not the first person to use [the distinction]” (p. 8). However, the Cambridge edition of *The Social Contract*, edited and translated by Victor Gourevitch and referenced by Tuck as his chosen version (p. 4 n. 3), never mentions “often” in its translation of the line quoted by Tuck. (Interestingly, Tuck does not provide any specific page reference for the passage that he quotes on p. 9.) The original French passage from *Du Contrat Social* reads as follows: “Voilà quelle est dans l’Etat la raison du Gouvernement, confondu mal à propos avec le Souverain, dont il n’est que le ministre” (“mal à propos” is best translated as “inappropriately” or “improperly”: it does not have the same meaning as “often wrongly confused”). Finally, Tuck references two recent contributions by Daniel Lee and Kinch Hoekstra as examples of how Bodin’s use of the distinction between sovereignty and government “is beginning to attract the attention of scholars after many years of neglect” (p. 10 n. 9). While both Lee and Hoekstra have indeed done well to retrieve an aspect of Bodin’s political theory that had long gone unnoticed, it is not superfluous to recall an important precedent that *The Sleeping Sovereign* does not mention. Four decades ago, Norberto Bobbio, the most important political and legal theorist of 20th-century Italy, usually known to Anglo-American scholars for his translated writings on democracy as well as on the natural law tradition, engaged extensively with Bodin’s distinction between sovereignty and government, to which he devoted an entire chapter in his classic book *Theories of Forms of Government in the History of Political Thought* (1976). Reading Bobbio would probably have not changed the core of Tuck’s historical and textual account, but it would have perhaps made his historiographical vision clearer and more complete.

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EUROPE’S FUNCTIONAL CONSTITUTION

By Turkuler Isiksel

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Functional approaches have always assumed a pivotal role in research on European integration. The vast literature on Europe’s democratic path and steps towards democratization began to emerge only in the 1990s. Before this democratic focus in European studies, most approaches to European integration consciously displayed a functionalist bias. In the 1950s and 1960s German ordoliberals like Alfred Müller-Armack and Hans Peter Ipsen advocated a common market, deriving its legitimation from expected gains in terms of economic growth. To them, Europe’s institutional structures had to be curtailed in order to correct market failures and guarantee the free circulation of goods, capital, and labour. As Florian Rödl has shown in an important article on Europe’s Labour Constitution, the Keynesian camp, based primarily in France and Italy, was more ambitious, arguing that European integration ought to mitigate economic divergences and allow for a pathway to shared economic prosperity. In order to achieve these ends, more robust forms of supranational coordination and even redistribution were deemed necessary. Moreover, the neo-Marxist approaches

that dominated European university departments from the 1970s onwards provided a vast range of sophisticated explanations for the emergence of European integration. While authors such as Ernest Mandel considered the purpose of the European Economic Community was to coordinate the interests of a European capitalist class in the form of a nascent supranational state, others—such as Nicos Poulantzas or the French regulation school—identified it as the internationalization of the state, which transferred some state functions to the European level and thereby created a new terrain for hegemonic contestation between different classes.

In *Europe's Functional Constitution*, Turkuler Isiksel seeks to revitalize functional vocabularies and demonstrate their relevance to the state of the EU. She analyses the evolution of Europe's legal and political institutions and identifies functional normativity as the driving force behind European integration. From the outset, she argues, all steps towards further integration—whether there were the 1992 Maastricht Treaty and monetary union, intensified economic and fiscal integration in the wake of the Euro crisis since 2010, or growing competence in other non-economic policy fields such as welfare or non-discrimination—reiterate the functional logic of the 1957 Treaty of Rome. According to Isiksel, the EU “still follows the blueprint of functional constitutionalism established by the 1957 Treaty of Rome” (p. 19).

To substantiate her argument, she begins from a recalibrated perspective on constitutionalism, bemoaning the circumstance that the recent debate on supra-national and transnational constitutionalization suffers from a reductionist bias focused solely on democratic participation and the (re-)distribution of rights. In her view, the picture is more complex, to the extent that constitutions and the legal form do not necessarily safeguard democratic self-determination, but are an essential mechanism of “governing effectively” (p. 32). It is precisely through constitutionalization, that is, the interplay of high-ranking constituting and restraining mechanisms (Isiksel calls these “enabling constraints,” p. 32), that political and legal power can be enabled. Against this backdrop, Isiksel portrays European integration as a type of functional constitutionalism. Most importantly, the EU neither replicates the sovereignty-based political constitution of the nation-state in a sort of super-state, nor does it amount to a federated union. Rather, the EU is a “particular kind of political regime” (p. 73) which provides “its own pattern of justification,” namely economic development and growth through the “free movement of persons, services and capital” (Treaty of Rome).

Isiksel then analyses different periods of European integration over subsequent chapters. Echoing integration-through-law approaches, she meticulously discusses the adjudication of the European Court of Justice and its role in bolstering the common market. She illustrates how the European Court of Justice and the various steps in reforming the treaties have increasingly bestowed citizens with robust agency. However, Europe's fundamental freedoms continue to revolve around engagement in economic cross-border and commercial activity, not around political participation or human rights, which she claims “radiate out of the economic union” (p. 79). Isiksel acknowledges that the European process has also fostered the dissemination of fundamental and democratic rights. In this sense, the vast literature on deliberative democracy, citizenship, and legal integration is deemed to be correct in stressing the empowerment of individual and collective agency on the European level, but wrong for failing to see that all these developments are overdetermined by a functional normativity.

Isiksel's book is written with the clear intention of opposing the idealization of supra-national and transnational constitutionalism as potential forerunners of democratization. She soberly concludes that the EU “hardly adds up to a supranational democracy” (p. 213). The book warns that, given its deep entanglement in functional normativity, “constitutionalism is not emancipatory *per se*” (p. 219). Isiksel ends with a radical conclusion which—in all its sobriety—expresses a forceful assumption that already plays an important role in political life: namely, that all attempts to transcend or overcome Europe's functional constitution from within seem prone to fail because they tend to replicate its inner core—a sort of economic “overdetermination in the last instance” (Louis Althusser). Instead, to Isiksel, it seems vital to “articulate the value of European Integration in terms other than the economic” and invent “other horizons” (p. 231).

Although it does not explicitly conclude with a normative agenda, the book raises the question of how to deal with the EU's functional legacy. Given that management of the Euro and migration crises has intensified functional cooperation in crucial areas such as fiscal policies and border control, it seems worth revisiting the way that the functionalist

strand has evolved over recent decades and assessing how it has cast respective efforts towards European integration. Nowadays, we tend to overlook the fact that the founders of the Treaties of Rome, the bureaucrats of common agricultural policies, or the legal engineers of rights adjudication were not simply technocrats investing their efforts in a type of functional normativity as an end unto itself. Rather, even functional technocracy on the European level was deeply embedded in social and political conflict in the post-war era: ordoliberals always saw market rationality not as an end unto itself, but as an instrument for a well-ordered society which maintains a healthy distance from both real-existing socialism and state interventionism. In turn, Keynesians sought to establish at least some mechanisms—that could intervene in economic affairs and thereby guarantee a degree of economic stability and social welfare. Furthermore, the political left (broadly conceived) has always discussed how the left can relate to Europe's economic constitution. Federalists and reformers such as Altiero Spinelli or the Italian Communist Party of the 1970s tended to support strengthening the EU in order to establish a third power bloc in world politics. Ernest Mandel and André Gorz, who initially adhered to a strictly functionalist account of the EU, viewed its development towards a supranational capitalist state as a potential trigger for the advent of social counter-movements that could, in turn, replace Europe's market-oriented liberal constitution.

Without going into the details of all these varieties, it is worth noting that they went beyond a mere emphasis on output legitimacy. Rather, the respective conceptions diverged and were embedded in a broader landscape of political strategy, assumptions about social causation, and institutional engineering. Beneath the surface of technocratic management, functionalist approaches pursued hidden political agendas.

Beginning in the 1970s and 1980s, however, European integration researchers discovered that the strategic use of functional constitutionalism proved to be highly problematic. Once set in motion, Europe's functional constitution tended to realize a self-referential bias that exceeded the control of the member states and relevant factions of the bureaucratic elite. Ordoliberals promoted the narrow vision of the common market, but could not prevent the European layer from intervening in the sovereignty of member states and accruing crucial competences. Keynesians have always been optimistic about more centralized power on the European level, but the gradual steps towards a fiscal constitution were taken under the auspices of austerity and anti-Keynesian fiscal discipline. The European Court of Justice supported economic integration and fundamental market freedoms, but their rulings produced side-effects in social and non-discrimination policies at the same time. The attempt to advance political objectives by means of functional constitutionalism was self-defeating: on one hand, it established a powerful market-liberal nexus that is constantly replicated. On the other, it created a complex terrain following its own obstinate logic and regularly exhausting popular political ambitions.

In this sense, Isiksel's analysis could lead us to reassess Europe's functional constitution not only in descriptive, but also in political, normative, and strategic terms.

If it is true that the EU's inner core is unresponsive to a democratization that applies normative standards, it might more promising to redirect or even subvert the functional constitution from within. Instead of reforming the political order through a strengthened parliament, plebiscitary mechanisms or constitutional renewal, changes in three major technocratic realms could exert transformative effects: The first is monetary and fiscal regulation. Here, the revocation or neutralization of austerity as an overarching value could open up alternative economic pathways. The second is Europe's legal dimension. A further judicialization of social rights on the European level could undermine the dominant adjudication between market and liberal rights of by the European Court of Justice. The third is managing migration. A financial redistribution mechanism that allowed incoming refugees to choose where to apply for legal status and, concomitantly, provided financial support to the member states according to their welcome-quota, could prove to be efficient in generating a movement to counter the rising forces of isolation and closed borders (and produce important economic side-effects). In the light of the political tensions and blockades arising on the European level, democratic forces are ill-advised to dismiss Europe's functional legitimacy as a potential terrain for social change.

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