Dorota Gozdecka and Magdalena Kmak (eds.), *Europe at the Edge of Pluralism Ius Commune EuropaeumSeries. Volume 134*. (Cambridge, Antwerpen, Portland: Intersentia 2015), ISBN 978-1-78068306-5, 218 p. [1]

One of the questions that inevitably needs to be answered by any democracy is: who are the people? It always separates 'us', who are 'members' of the people, from 'them', referring to those who are not.[2] With the EU being in a prolonged state of crisis over the entry, division and acceptance of large groups of refugees and asylum seekers, this debate is as topical as it could be. Some of the fears that appear to be strong motivators for resistance to accept 'outsiders' into 'our' society reveal a second dimension to the question of who the people are: Democracy theory usually supposes the people to have a collective identity.[3] The book *Europe at the Edge of Pluralism* deals with both aspects of democracy in a pluralist society. While several contributions deal with the 'outer' border of society, analysing the hurdles in becoming 'one of us', most of the chapters deal with the position of minorities in a pluralist society. The book is mainly about the function of law, culture and collective identity in a pluralist society.

The main aim of the book is:

"[to illustrate] the inefficiency of contemporary European legal tools and approaches to the question of recognition and their intended and unintended consequences. The collection urges law and diverse European legal systems to challenge their own presumptions before unconditionally withdrawing from rethinking multiculturalism."
(p. 8)

It assumes that as legal problems in dealing with minorities are often a result of "the very terms of discussion that are dominant in contemporary discourses on diversity and pluralism in Europe" (p. 8), those terms need to be critically re-examined, as well as the legal tools that are based on them. To this end, the book is divided into three parts. Part I is called 'Law, Diversity and Pluralism', part II 'Religion, Agency and Minors' and part III 'Respect and Memory'.

The first three chapters deal with the interaction between dominant groups and minorities in a pluralist society. In the first chapter, *Selen A. Ercan* critically

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2 In that sense, Carl Schmitt's (in)famous separation of persons into existential friends and enemies is still relevant. C. Schmitt, *Verfassungslehre* (München and Leipzig: Verlag Von Duncker & Humblot 1928), p. 247.

3 On the concept of homogeneity and 'thick' or 'thin' popular sovereignty, for instance, see L. Vinx, 'The incoherence of strong popular sovereignty', (2013/Vol. 11) *International Journal of Constitutional Law*, 101-124.

analyses essentialism and constructivism in the context of the current debate on what she calls the 'politics of recognition'. She shows that essentialism presupposes an essential core of a given culture, leaving little room for integration of different cultures. Constructivist criticism of this is that cultural identities are not static and clearly separate, but quite often overlap and change over time. However, it offers very little guidance on the institutional framework that is needed to 'capture' this constant change. As a solution to this problem, Ercan proposes to organise the politics of recognition along the lines of deliberative democracy.

This solution, however, is less thoroughly presented than the debate she has analysed. The author, perhaps unsurprisingly, does not seem to be aware of Rudolf Smend's *Integrationslehre* and Gerhard Leibholz' adaption of it, that are specifically aimed at the core problem she is dealing with.[4] In the same way, any trace of the American or European debate on popular sovereignty, equal representation and constitutional pluralism is absent.[5] In their own way, these debates deal with the problem of integrating several groups into one society (or not) through deliberative democracy. The chapter claims that our collective identity should be the result of constant formal and informal dialogue and open discussion. This I certainly want to believe. But in the end, the analysis is not thorough enough for me to be convinced.

In a way, the first chapter is typical of many chapters in the book. What I found very disappointing about almost all chapters is their very short length (roughly 10 pages per chapter). Most of the authors seem to have been more ambitious than space allowed them to be. As a result, many chapters offer a very interesting analysis of a given concept or situation, but offer very little guidance on how to move forward from this. This certainly is the case in the second chapter by *Dorota A. Gozdecka* and *Selen A. Ercan*. It offers a critical analysis of the concept of post-multiculturalism, but offers us very little guidance on what do with it.

The third chapter, by *Eliška Pírková*, deals with the apparently still illusive universal definition of what 'minorities' are in the legal sense. As she explains, such a definition may be more harmful than helpful, especially since the groups in question are not static, but fluctuate over time. This problem is exacerbated

4 On the main ideas of Smend's *Integrationslehre*, see C. Bickenbach, 'Rudolf Smend (15. 1. 1882 bis 5. 7. 1975) – Grundzüge der Integrationslehre', *Juristische Schulung* (2005), pp. 588-591 and A.R. Greber, *Die vorpositiven Grundlagen des Bundesstaates* (Basel, Genf and München: Helbing & Lichtenhahn 2000), pp. 116-123. Leiholz' corresponding work can be found in G. Leibholz, *Das Wesen der Repräsentation und der Gestaltwandel der Demokratie im 20. Jahrhundert* (Berlin: Walter der Gruyter & Co. 1966), pp. 46, 58-59.

5 For instance, see M. Avbelj, J. & Komárek (eds.), 'Four Visions of Constitutional Pluralism', EUI LAW 2008/21 and S.J. Boom, 'The European Union after the Maastricht Decision: Will Germany Be the "Virginia of Europe"?', (1995/Vol. 43) *The American Journal of Comparative Law* 177.

by the EU's four freedoms. Pírková enlighteningly explains the problems of legally recognizing minorities. However, she does not help us fundamentally reflect on issues such as the position of the four freedoms in light of the problem of minority protection or the concept of Union citizenship and its broader function of democracy. Ultimately, her suggestion that minority rights should be dealt with on the specific basis of the needs each minority group is mostly disappointing.

In chapter four, *Marcin Kilanowski* introduces us to David Kennedy's thesis that thinking in terms of universality of human rights can lead us to see those rights almost religiously as apolitical absolute truths, and consequently see the lawyer as the high priest of universal justice. The chapter is worthwhile to read, but relies excessively on Kennedy's work.

*Ukri Soirila's* chapter explains very well why the 'traditional cultural pluralist vision' runs the risk of "essentialising those interest-groups, communities and cultures" (p. 75). However, this chapter also follows a promising first part with a mostly underdeveloped solution. Where it suggests that the law can be interpreted strategically to stimulate debate, it does not, in my view, fully reflect on the ordering function of the law or on the proper function of the courts in a democratic society. For instance, Mattias Kumm's concept of the right of Socratic contestation could certainly have helped the chapter.[6]

In my view, the next three chapters should have been separated into a new part II. With their subject matter, which is the way in which Europe deals with migrants, they are clearly distinguishable from the first five chapters. It seems unbalanced to have part I consist of eight (out of thirteen) chapters.

*Magdalena Kmak* shows that the current Reception Directive stimulates, or at least accepts, very strict treatment of migrants. She argues that it has led to a 'subjectivity trap' that conceptually turns genuine refugees into 'bogus asylum seekers'. The idea that language matters is always interesting and relevant to the lawyer.

*Sanne van de Pol's* and *Sam Bennet's* chapters show us that the Flemish and British civic integration programmes officially see integration as a two-way street, but in practice focus on one-sided obligations instead. Bennet analyses the neo-liberal construction of citizenship that is dominant in the UK to force migrants to 'perform integration', that seems to be very close to assimilation. In a likewise manner, Van de Pol explains the irony that while the Flemish civic integration programme is based on fundamental rights, migrants who follow it encounter discrimination in their everyday life. She suggests changing the philosophy of integration to stimulate migrants to make more use of their minority rights.

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6 M. Kumm, 'Institutionalising Socratic Contestation: The Rationalist Human Rights Paradigm, Legitimate Authority and the Point of Judicial Review', (2007/2) *European Journal of Legal Studies*.

Part II focuses on the difficult relationship between minority protection and the interests of children. *Sanna Mustaari's* chapter is a very clear analysis of the dilemma that arises when both the state and parents have a duty to act in the best interests of children. An objective point of reference being absent, different representations of the best interest of the child can become the focal point of cultural clashes. While this problem certainly drew me in, I found the proposed solution of 'critical autonomy' very hard to follow.

Likewise, *Ryan Hill's* chapter on the dilemma of who gets to decide what children can and cannot be taught in terms of (non-)religious convictions had me thoroughly engaged at first. But then it focused on the permissibility of religious clothing for children. To me, that seems to be peanuts when compared to fundamental beliefs. What did not help is that the chapter certainly does not support its main argument very well.

In the eleventh chapter, *Jernej Letnar Černič* shows how the European Court of Human Rights (ECtHR) deals with the issue of hate speech in a democratic society. He argues that what is permissible is hugely dependent on the circumstances of the case. He proposes that courts use a holistic approach to hate speech to improve their argumentation. Although I can see his point, I am not convinced by his argument. For that, he has shown me too little evidence that courts are indeed reaching inadequate results as a result of the wrong approach.

The final two chapters of the book deal with memory laws that formalize the past in some way, such as the German prohibition of Holocaust denial. *Aleksandra Gliszczynska-Grabias* vividly illustrates the dilemma of protecting the common history versus the risk of creating an 'outgroup' that does not share this common history. Her chapter is an engaging, good read that I can recommend to anyone.

*Mónica López Lerma's* chapter, finally, is an excellent account of Spain's past of Francoism and the legal and political ways in which the country has dealt with this past. As such I would also like to recommend it. However, I found its main point, that the Spanish Supreme Court has dealt with the resulting amnesty law in way contrary to international law, much less convincing.

After reading the book I am left with mixed feelings. The issues that the chapters deal with certainly are fascinating. And I would like to stress that most of the chapters contain very good, clear and interesting analyses of the problems they deal with. However, as I have tried to illustrate above, almost all chapters suffer from a lack of space. That ultimately makes them disappointing to this reader, as almost all chapters promise more than they can deliver.

A second point is that as edited volumes go, this one is good in terms of coherence. However, it does not look like the contributions were specifically asked for this book. The chapters go well together, but there is a certain pluralism in terms of focus, level of abstraction and analytical or descriptive nature of the chapters. Maybe it is enough that they all fit the theme well. However, a stricter selection of the chapters could have made the book even more coherent. To me, the way the editors present the book concept does not really help, as it

struck me as overly complicated. Clearer interrelations between the chapters and the concept should have been relatively easy to achieve with a little help from the authors.

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