Yale Law Journal

Volume 64
Issue 3 *Yale Law Journal*

Article 10

1955

Northrop: European Union and United States Foreign Policy. A Study in Sociological Jurisprudence

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EUROPEAN UNION AND UNITED STATES FOREIGN POLICY

In his tireless search for common norms and institutions which could bring together East and West and overcome other schisms dividing contemporary humanity, Professor Northrop has investigated the problem of European Union in relation to the foreign policy of the United States. This short book really falls into two quite separate parts. A considerable portion is devoted to a courageous criticism of United States foreign policy towards Europe. It shows a sympathetic understanding both of the magnitude of the efforts, and of the problems which the countries of Western Europe meet in trying to overcome their age-old differences. Although in this criticism of American foreign policy and this account of European doubts and anxieties about it there is little which has not been said time and again in The Economist, The New York Times, The Manchester Guardian, and other outstanding English or American periodicals, it is valuable that a detached scholar of Professor Northrop's standing should restate the position. As a survey of the problems of United States—European relations, this little study is a timely and worthwhile contribution.

But Professor Northrop is more ambitious. He submits his book as "a study in sociological jurisprudence," and he underlines the significance of the subtitle in the preface. His objective is nothing less than to prove that the common legal institutions, which a number of European Powers have already formed or are trying to form, are supported by what Professor Northrop, following Eugen Ehrlich, calls "the living-law."[1] Ehrlich defined "living-law" as "the inner order of society" and contrasted it in some respects with positive law. Professor Northrop, therefore, sets out to examine the extent to which the "positive law," *e.g.*, such institutions as the European Coal and Steel Community, the Council of Europe, and the since defunct European Defense Community, is supported by the "living-law" of the participating nations. Doubts concerning the way in which Professor Northrop answers this very complex and difficult question begin when one is promised in Chapter Six an analysis of "the living-law of Greater Europe" (in ten pages) and in the following chapter, an analysis of "the living-law of each continental European nation" (in twenty-eight pages). A study of these and other chapters shows that what Professor Northrop calls "an experiment in sociological jurisprudence" is little more than an extremely cursory analysis of the major political parties in Western European nations, their party programs, and their electoral strength according to recent election statistics. This is supplemented by some figures about the relative distribution of Catholicism and Protestantism. Insofar as this is an analysis of contemporary political trends in the nations of Europe, with brief sketches of some of the leaders, such as Adenauer and

1. To Professor Northrop, in this as in other writings, Ehrlich is "the sociologist of law," very much as Aristotle was "the philosopher" to the medievalists. With all respect to the significance of Ehrlich's contribution, such pioneers of sociological jurisprudence as Max Weber or Karl Renner on the Continent, Bryce, Dicey, and Maitland in England, or a number of contemporary American jurists, many of them inspired by Pound, have contributed as much or more to the study of sociological jurisprudence as Ehrlich.

Monnet, there is nothing in these pages which is not done week by week by the able correspondents of the previously mentioned periodicals. But they do not affix the label of "living-law" to their analysis. The reviewer doubts whether there is a single instance in Professor Northrop's book where the omission of the prefix "living-law" would have meant any loss of meaningfulness.[2]

Professor Northrop uses election figures, party programs, and religious statistics to demonstrate how far the major parties and groupings of the nations concerned are likely to support European supranational organizations. A characteristic example is his analysis of the party program of the Netherlands' Labour Party. From the fact that the party's aims include "a legal order of labour" and "the establishment and vigorous maintenance of the law, to which the state itself must also submit,"[3] Professor Northrop deduces that here is a characteristic demonstration of the "Stoic Roman, Continental type of legal mentality, reinforced by the Continental Rationalistic, modern philosophic outlook . . . ."[4] This, he further argues, makes supranational sovereignty natural. By way of further support, there is a brief excursion into the philosophy of Europe:

> "The Stoic Roman, Continental type of legal mentality and the Continental Rationalistic philosophical mentality are not artificial or transitory. They are living-law beliefs built into the minds and emotions of Continental Europeans by centuries of reflection and education. Moreover, initiated by Descartes and Malebranche in France, advanced by Spinoza in the Netherlands and completed by Leibniz and Kant in Germany, they are living-law norms holding as much for Belgians, Luxembourgers, Frenchmen, Italians, and even West Germans as they do for the people of the Netherlands. Similarly, the domestic norms peculiar to the socialist parties of the six nations are the same in all six and are, therefore, also supranational, rather than chauvinistically national in their qualitative content."[5]

This is a remarkable oversimplification of a problem which many great political and legal philosophers have discussed for countless years. In the whole book there is not a single mention of Hegel and neo-Hegelian thought which, together with Nietzsche, Bergson, and other anti-rationalistic influences, have had, without question, far stronger impact, in particular on German and Italian political developments than the ideas which Professor Northrop mentions. Hegelian ideas have led to the worship of state power and positive law, to leader cults, and ultimately to the Nazi and Fascist states. While counter-influences have asserted themselves more strongly since the downfall of Hitler's and Mussolini's empires, it would be very rash indeed to assert that the power of Hegelian ideas has exhausted itself.

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2. See, among many other examples: "a purely continental European common living-law standpoint" (p. 142); "Roman Catholics in their living-law" (p. 166); "living-law statistics" (p. 199).

3. P. 88.

4. *Ibid.*

5. P. 89.

No less questionable is the assertion that espousal of a government of laws in a party program is proof of a "Stoic Roman, Continental legal mentality," which in turn demonstrates the strength of European support for such institutions as the European Coal and Steel Community.[6] As purveyors of high-sounding platitudes, party programs are rivalled only by preambles to constitutions and international treaties. If protestation of the rule of law in documents of this kind is taken at its face value, then the signatories to the Atlantic Charter, the North Atlantic Treaty, the United Nations Charter, and certainly the American Constitution are as representative of a "Stoic Roman, Continental" mentality as the West Europeans.

Few if any sociologists of international law and international relations would, however, accept Professor Northrop's identification of party programs, and even election statistics, with the "living-law." A great many of the Germans who supported Dr. Adenauer's government in 1953, for example, are a floating element who, in more recent elections, have changed their allegiance. It is a great illusion, though one shared by many others, that everybody who voted for Adenauer in 1953 was a supporter of European Community. Again, since Professor Northrop's book went to press, France has rejected EDC for the rather different scheme of the London Agreement. Does this mean that the "living-law" of France and Germany has changed in the last few months? Or does it not rather mean that basic ideas are only one element in the medley of ideals, economic interests, emotions, personal power politics, and a multitude of other factors which makes up the complex pattern of international relations?

It is equally dangerous to assert that official registration of a person's religious faith determines his political actions. The influence of religious belief on political faith is probably stronger with Catholics or Moslems than with Protestants. But these are very difficult matters to dispose of in a few pages.

Like many other Americans, Professor Northrop is a very strong supporter of the European Defense Community which, at his writing, was still an open issue, though it is now defunct. His account of the main provisions of that Treaty is unfortunately much too summary and, in certain respects, incorrect. It is a common illusion that EDC would have been an exact parallel to the Coal and Steel Community. It was designed on parallel lines but, as a result of many compromises, the powers of the Commissariat would have been far weaker than those of the High Authority at Luxembourg, and subject to a far greater extent to the consent of the Council of Ministers, *i.e.*, to the national policies of the participating governments. One wonders how far Professor Northrop would regard his analysis as confirmed or disproved by the developments of the last few months?

On examination, many of Professor Northrop's sweeping assertions turn out to be only half-truths: He states that Protestant nations, unlike Catholic nations, are not disposed to accept supranational sovereignty, and that British politics do not favor any closer association with Europe. Under the pressure of political events, Britain, a Protestant nation, has gone a considerable way

6. P. 88.

towards supranational organization by accepting the majority decision of the enlarged Council of the Brussels Pact in regard to her continental defense forces. Another assumption by Professor Northrop is that nations with common institutions, religious or cultural, do not go to war with each other, but are prepared to merge their sovereignties in common institutions. A common religion or similar political institutions may eliminate conflicts, and they probably are an essential basis for certain types of international institutions, though not for all international agreements.[7] But history has time and again disproved the thesis that a community of religion or other beliefs may make wars impossible, for example, between Catholic French and Catholic Germans, or between Protestant Dutch and Protestant English. From Professor Northrop's assumption follows his remarkable definition of aggression:

> "Aggression is any violation by one nation of the pluralistic principle of living-law sovereignty with respect to another nation. This occurs when any nation tries to impose the norms of its own positive-law ideology or living law upon the different living-law norms and positive-law majority choices on another nation."[8]

Does this definition imply that an aggression carried out simply for the purpose of territorial conquest or economic exploitation, or for strategic reasons, without any change of "living-law norms," is not aggression? The majority of aggressions have been of this type. How one would wish that the definition of aggression, on which countless international law commissions have labored for many years,[9] would be as simple as Professor Northrop believes it.

As this little book professes to be a sociology of jurisprudence and international law, this reviewer must also record his regret at the completeness with which Professor Northrop ignores the many serious efforts made in this field by international lawyers and jurists. As early as 1910, Max Huber sketched out a program for a sociology of international law. Since then, such distinguished scholars as Quincy Wright, Corbett, Morgenthau, McDougal and Lasswell in the United States, and Schwarzenberger and Stone in the British Commonwealth have done much to clarify at least parts of this infinitely complex science. They have discussed some of the conditions in which international law demands a closer community of values and interests, and distinguished them from other situations where international law can be based on a looser "society" of nations. How far tentative supranational institutions established by some European nations will be able to support themselves on the laws and customs of the participating nations is indeed a formidable and important question. It may be useful to sketch out very briefly the kind of

7. For a discussion of this problem, see the reviewer's article: Friedmann, *The Disintegration of European Civilization and the Future of International Law*, 2 MOD. L. REV. 194 (1938).

8. P. 205.

9. See, *e.g.*, the Report of the U.N. Secretary-General, Document A/2211 (Oct. 3, 1952), on definitions of aggression. This document covers sixty closely printed pages.

problem that arises, for example, in the European Coal and Steel Community, the one European supranational authority which is already operating. One of these problems is how successfully industries with different types of legal and social organization can be brought under a joint supranational control. The French coal industry is nationalized; the German industry is not. The latter, therefore, objects to the attempts of the High Authority, in accordance with the Treaty, to destroy existing cartels and other restrictive agreements. Connected with this is the further question of whether the "living-law" of the participating nations—or to put it more soberly, their economic interests, legal institutions, social habits, and similar factors—will implement what is one of the Steel Community's principal objectives: the restoration of international free competition. To answer this would require a very thorough study of the legal, structural, and governmental developments of at least half a century in Germany, France, and other countries.

As already observed, a study of the political and moral philosophies in Europe would require a very much more balanced and thorough analysis than Professor Northrop has given. Particularly needed are an assessment of the respective strength of rationalist and irrationalist, of cosmopolitan and nationalist tendencies, all of which still struggle with each other. This philosophic analysis must, however, be supported by a multitude of comparisons of economic and social factors, matters of patient study which, in many cases, require the collaboration of lawyers, philosophers, economists, sociologists, and others.

To such a study, Professor Northrop's little book can at most serve as prolegomena. And yet, its basic approach to international relations is wise and courageous. It is a plea for international understanding and organization through mutual respect for national cultures and traditions rather than through a giant process of mechanical legal organization. But the implications of this approach—developed in the author's brilliant and imaginative *The Meeting of East and West*—are far more complex than Professor Northrop appears willing to admit.

This reviewer cannot forbear from concluding with a previously voiced lament: Are contemporary jurists helping to prepare the advent of 1984 by the use of high-sounding labels? Among them, "living-law" is still relatively modest. We hear of "nomology," "integrative jurisprudence," "psychological jurisprudence," "egological jurisprudence," and even "jurimetrics." Mostly these are big words for modest thoughts. The men who still tower above us, who blazed the trail for generations to come, men like Dicey and Maitland, like Holmes and Cardozo, like Gény or Radbruch, did not use labels. They were not absorbed in methodology. They simply had scholarship, vision and thought, and with it all, the humility which knows that the solution of human, social, and legal problems is not a matter of sweeping formulas.

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