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"On Democracy within the United Europe"

(in Romanian: "*Despre democraţie în Europa unită*")
by Iulia Motoc

Humanitas Publishers, Bucharest, Romania, 2012
ISBN 978-973-50-3571-6

Book Review by Radu Carp
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Any book written by Iulia Motoc is an intellectual challenge and, after careful consideration, any reader may have the feeling of an extraordinary sense of accomplishment. This is because the author has a double specialization, in law and political philosophy, while demonstrating a prestigious academic carrier in the field of political science as well as a solid set of knowledge derived from universal literature. This whole set of preoccupations makes the topics selected by Iulia Motoc to be premeditatedly and systematically situated at the borders of multiple disciplines, so that the jurist may have the chance of observing that the norms which he is obliged to apply have a higher rationality than that of the simple will of the lawmaker, and the expert in political science that the object that he or she is analyzing must not only be put into connection with the behavior of political actors.

Iulia Motoc's most recent book, *"On Democracy within the United Europe"* places itself within the same class of interdisciplinary frontiers that open in front of the reader and that show themselves as being filled with meanings yet to be discovered.

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The first paper that gives way to the volume "*The purpose of the European Union. Is there an Eastern-European perspective? Reflections on Joschka Fischer's discourse"* shows how a text that has been written almost ten years ago may be extremely actual but at the same time how it may receive a ultimately new meaning. The explanation is that the discourse itself proposed a federal form of integration within the European Union, a matter that has been long considered rather taboo by European officials, just to be resumed during last September, when it has borrowed several ideas set out by the former German Minister of Foreign Affairs. Iulia Motoc considers that we may not speak of a revival of the entire political European project without placing at the core of our concerns Europe's identity issue: without a "spiritual re-invention" we cannot discuss a political one. And thus the close proximity of philosophers, such as Jan Patocka, Vaclav Havel or Constantin Noica, to the federalist issue may not be as much a paradox as initially imagined. Iulia Motoc starts her analysis by observing that East-European nations have always manifested reluctantly towards federal projects, due to their experience that has showed that equality within a federation proves itself to be a utopia sooner or later. Another problem of any federal project is that "the effort of encoding it into a constitution seems to be insufficient and has not had, so far, any impact", the federal deficit being closely connected to the constitutional one, a reality that is self-obvious today as well.

The second paper *"The partnership of the European Union with Central and Eastern-European countries. Political criteria*" has a similar destiny to the first one. That is to say that it had been written at a time when the process of accession of Central and Eastern-European countries was not yet done, and still it is surprisingly contemporary. In the absence of a process of democratic consolidation we may not speak of a full Europeanization of these states. But such consolidation cannot exist in the absence of the rule of law. Thus Iulia Motoc uses the model set out by Linz and Stepan, who see the rule of law as one of the five components of a consolidated democracy, next to civil society, politics and economics as well as a consensus regarding democratic procedures. According to Iulia Motoc the weakest link is precisely the rule of law. The rest of the mentioned components may be remedied or adapted as we go, so to speak, but the rule of law remains largely inefficient, as long as there is a heritage characterized by a lack of administrative structure that "has marked the appearance of the modern state in Western Europe." In other words, if the economy or the active participation of politics and civil society may be borrowed, as well as adapted in time, the rule of law cannot be borrowed as such, because of a lack of a bureaucracy that is both efficient and immune to political change. At the time of writing this paper, Iulia Motoc warns that the accession to the European Union will not resolve the deficiencies manifested by the rule of law, an issue that will lead to an incomplete Europeanization process for a long time. It is a vision that has unfortunately fulfilled itself and to which there are no politically accepted remedies. Another issue approached by Iulia Motoc refers to the relationship that one may observe between the citizen and his national identity. Without a consensus on the nature and existence of a European citizenship one may not speak of a common European vision. In this very domain, the national traditions are still quite powerful and will probably continue to be. The common denominator should be a universally accepted criterion such as the protection of human rights.

The text entitled *"United Europe and post-communist Europe. The rationality and ethics of enlargement"* is similarly structured, that is to say that it has the same issue, of the fundaments of European unification. For Iulia Motoc, there are two visions on European integration, even if these are not presented so. One is based on prudence and empiricism and has long been experimented as being the "Monnet method". The other is based on political rationality, while having at its core efficiently rather than ethic considerations. The only way in which a successful political integration model might be reached can only base itself, according to Iulia Motoc, on a just combination of both views. Thus the issue of the rule of law returns within this paper: the lack of the rule of law is not just an observation, but"another feature of

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communism". In the absence of a bureaucratic culture, communism has installed himself more effectively that if there were a stable administration present, as a result of entering the modern phase. The rule of law is today deficient also because it has been disregarded within the Marxist theory. The fact that *"Marx, in the descent of Hegel, demystifies the law and considers it a simple over structure"* has long term effects over the disregard of the role of the rule of law within the democracy consolidation process. Even if the rule of law is a relatively absent actor in public debate, Europeanization contributes indirectly to its well-functioning. The Europeanization process substituted itself to the process of democratization, according to Iulia Motoc, which represents a positive aspect as well as a trigger of reflection regarding the capacity of East-European societies to self-regulate themselves. Europeanization has played, and plays, a beneficial role, because the public debate in these societies has oriented itself towards the future, without blocking themselves in a past on which consensus is hard to achieve.

The final chapter of the book *"European Tradition and international law. Some considerations regarding the totalitarian heritage"* starts from the rather intellectual exciting premise that: there are two ways in which we may report ourselves to law, each of them being specific to the two halves of the continent. The Marxist doctrine of law must not be disregarded, it being continuous in forms that often makes us make errors regarding intellectual origins. We inherit and are influenced by this pattern of thinking, much more than we would like to believe. The lack of some efficient mechanisms of guaranteeing rights, as well as ensuring them trough the constitutional text, is the mark of Marxist thinking patterns, that are quite efficient in not respecting the fundamental rights while the contrary is being proclaimed. For Iulia Motoc, this double language would not be possible if the justice system would be both independent and neutral from a political point of view. This is the reason why the communist regimes have made concessions in regulating some fundamental rights but remained fully attached all the way to a model of organization that excludes the independence of justice. Iulia Motoc reminds us that the original model of Marxism started from the premise that the expansion of public law against the private one, will contribute to a better guarantee of individual rights. This vision was not taken over by the communist constitutions which proved themselves not to be true to the Marxist tenet, much less to the democratic one. Because of this *"for the citizens living in communist states, the Constitution has the same statute as The Communist's Party Manifesto, that is to say an external object".* International law itself has not been exempted of ideological interpretation, considering the fact that its provisions could not be directly invoked in front of courts, except for the situation in which they were transposed in internal law. In this manner, the communist states have signed international instruments that aimed at protecting human rights, while utterly ignoring their keeping. The Western model is different from the Marxist one in many ways. But the domain in which the interpretation is not only different, but radically opposed, is that of the manner in which justice should function. While reading these reflections set out by Iulia Motoc, we can only ask ourselves to what extend the Marxist pattern of thought has succeeded in surviving and how could one radically separate himself from it in order to assure the application of the whole normative system that accompanies the rule of law. Because the public debate does not reach such subjects, or when they appear they are treated in a superficial manner, the discussion *"about European constitutionalism has failed to penetrate the core elements of the problem."* There is a remedy that might be employed in order for the fundamental elements of the rule of law in Europe to be put on a constructive path: the way in which The European Court of Justice has discreetly but efficiently contributed to clarifying the content of key elements in understanding the normative structures that sit at the basis of the European integration project. Within the same chapter, Iulia Motoc exposes one of the most percussive arguments to be found in this book which is surprising in the manner in which it includes philosophic reflection in order to explain the law. More than tolerance is needed in order to reconcile the two approaches of law, even if apparently we seem to have a consensus.

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Tolerance is for Iulia Motoc, in line with Derrida, "conditioned hospitality", a concept that finally defines the argument of the strongest. There is much need for a total openness to be manifested by the supporters of both traditions, a need for "hospitality towards the one that unexpectedly visits you", the hospitality that is much more than tolerance but, "the invitation of a guest."

Even if it is composed of text written in different periods, Iulia Motoc's book represents a remarkable unity of ideas. The key concepts used are those derived from a vocabulary which tends towards trivialization due to the excess of usage: democracy, rule of law, Europeanization, the independence of justice, etc. Trough her book, Iulia Motoc restores the sense of these concepts and makes them describe a reality that is hidden to the superficial eye, a reality which, through the illumination of these less approached elements, becomes more accessible.