

Multi-speed Europe and Political Polarization Europe's New and Old Challenge

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Received: 30.10.2018 – Accepted: 15.11.2018

Título / Titre / Titolo

La Europa a distintas velocidades y la polarización política. El nuevo y viejo desafío de Europa.

Europe à plusieurs vitesses et polarisation politique. Le nouveau et l'ancien défi de l'Europe

Europa a multiple velocità e polarizzazione politica. La nuova e vecchia sfida dell'Europa

Abstract / Resumen / Résumé / Riassunto

This essay is not an attempt at a comprehensive or academic analysis of Joschka Fischer's landmark speech of 2000. One could analyze whether he rightly predicted the pitfalls awaiting the EU with regard to regulating free movement of workers in the enlarged Union or forging solidarity after the Eurozone crisis. Instead, this essay aims to reflect on two selected points that have changed significantly between 2000 and 2018. These two points are the conceptualization of a differentiated integration within the EU and the role of political ideology in the debate about EU's goals. The question addressed when discussing these two issues is to what extent can the framework presented by Fischer in his speech be extended to include the newer developments, and to what extent do these newer developments put Fischer's vision critically in question.

Este ensayo no es un intento de un análisis exhaustivo ni académico del discurso histórico de Joschka Fischer en el año 2000. Se podría analizar si predijo con razón los escollos que esperan a la UE con respecto a la regulación de la libre circulación de trabajadores en la Unión ampliada o si se forja la solidaridad después de la crisis de la zona euro. En cambio, lo que pretende es reflexionar sobre dos puntos específicos que han cambiado significativamente entre 2000 y 2018. Estos dos puntos son la conceptualización de la integración diferenciada dentro de la UE y el papel de la ideología política en el debate sobre los objetivos de la UE. La pregunta que se aborda al analizar estos dos temas es hasta qué punto se puede extender el marco presentado por Fischer en su discurso para incluir los nuevos desarrollos y en qué medida estos nuevos desarrollos ponen la visión de Fischer críticamente en cuestión.

Cet essai ne constitue pas une tentative d'analyse exhaustive ou académique du discours historique de Joschka Fischer en 2000. On pourrait

déterminer s'il a prédit à juste titre les pièges qui attendent l'UE en ce qui concerne la réglementation de la libre circulation des travailleurs dans l'UE élargie ou si la solidarité est forgée après la crise dans la zone euro. Il vise plutôt à réfléchir sur deux points spécifiques qui ont considérablement changé entre 2000 et 2018. Ces deux points sont la conceptualisation de l'intégration différenciée au sein de l'UE et le rôle de l'idéologie politique dans le débat sur les objectifs de l'Union. La question qui est abordée lors de l'analyse de ces deux questions est de savoir dans quelle mesure le cadre présenté par Fischer peut être étendu dans son discours pour inclure de nouveaux développements et dans quelle mesure ces nouveaux développements mettent en cause de manière critique la vision de Fischer.

Questo saggio non è un tentativo di un'analisi esaustiva o accademica del discorso storico di Joschka Fischer nel 2000. Si potrebbe analizzare se ha predetto correttamente le insidie che attendono l'UE per quello che riguarda la regolamentazione della libera circolazione dei lavoratori nell'UE allargata o se è possibile forgiare la solidarietà dopo la crisi nella zona euro. Si riflette, invece, su due punti specifici che sono cambiati significativamente tra il 2000 e il 2018. Questi due punti sono la concettualizzazione dell'integrazione differenziata all'interno dell'UE e il ruolo dell'ideologia politica nel dibattito sugli obiettivi del UE. La domanda posta nell'analisi di queste due questioni è in che misura la situazione presentata da Fischer nel suo discorso può essere intesa per la inclusione di nuovi sviluppi, e in che misura questi nuovi sviluppi mettono in discussione in modo critico la visione di Fischer.

Keywords / Palabras clave / Mots-clé / Parole chiave

Joschka Fischer, Multi-speed Europe, EU's differentiated integration

Joschka Fischer, Europa a múltiples velocidades, integración europea diferenciada

Joschka Fischer, Europe à plusieurs vitesses, Intégration différenciée dans l'UE

Joschka Fischer, Europa a multiple velocità, Integrazione differenziata nell'UE

Introduction

In his speech given in 2000 at the Humboldt University in Berlin, Joschka Fischer focuses on three challenges - institutional overhaul of European Union (EU) institutions, Eastern enlargement and differentiated integration.¹ After 18 years, none of the socio-political challenges that he identified seems to be outdated. At the moment when he gave his speech, the EU was facing these challenges with the debate about a constitutional treaty for Europe, negotiations with more than a dozen candidate countries in the final stages and new policy areas being added to the Treaties with several opt-outs.² In the meantime, these challenges have become burning wounds of the EU. The Treaty Establishing the Constitution for Europe has been abandoned as a project and instead the EU proceeded with a more technocratic Lisbon Treaty.³ 11 countries of Central and Eastern Europe have joined in 2004, 2007 and 2013 without these institutional redesign in place and with several varied transitional measures. Finally, the extent of *géométrie variable* has increased significantly, especially as policy areas such as Area Freedom Security and Justice (AFSJ) and Economic and Monetary Union (EMU) grew in importance.

The task of this Special Issue is to look back at Fischer's speech from various angles.⁴ I propose to focus

¹ Joschka Fischer, "From Confederacy to Federation – Thought on the Finality of European Integration", 12.05.2000, available at: <http://ec.europa.eu/dorie/fileDownload.do?docId=192161&cardId=192161> (14.10.2018)

² The European Union is used to refer also the European Communities operating as its legal predecessors

³ See i.a. Juliane Kokott and Alexandra Rüth, *The European Convention and Its Draft Treaty Establishing a Constitution for Europe: Appropriate Answers to the Laeken Questions*, 40 *Common Market L. Rev.* 1315 (2003); Armin von Bogdandy, *The European Constitution and European Identity: Text and Subtext of the Treaty Establishing a Constitution for Europe*, 3 *Int'l J. Const. L.* 295 (2005) and for the bigger debate: Erik Oddvar Eriksen, John Erik Fossum, Agustín Menéndez, *Developing a Constitution for Europe*, Routledge, 2004

⁴ This has also been done immediately after the speech, see Christian Joerges, Yves Meny, Joseph H.H. Weiler (eds.), *What Kind of Constitution for What Kind of Polity? Responses to Joschka Fischer*, EUJ 2000, available

on the relevance of Fischer's vision presented in 2000 to the current challenges of the EU. This short personal essay is not an attempt at a comprehensive nor academic analysis of Fischer's landmark speech. One could analyze to whether he rightly predicted the pitfalls awaiting the EU with regard to regulating free movement of workers in the enlarged Union or forging solidarity after the Eurozone crisis. Those ships have sailed. Instead, this essay aims to reflect on two selected points that have changed significantly between 2000 and 2018. These two points are the conceptualization of differentiated integration within the EU and the role of political ideology in the debate about EU's finality. The question addressed when discussing these two issues is to what extent can the framework presented by Fischer in his speech be extended to include the newer developments and to what extent do these newer developments put Fischer's vision critically in question.

Differentiated integration

First point is the differentiated integration that Joschka Fischer discusses as a challenge but which has largely become the reality of the EU's functioning in the meantime. Fischer identifies the deep roots of that practice in the founding visions of European integration. Smaller groups of countries were expected to take the lead with deeper integration (p.12). They are expected to keep the membership in their group open to others who will join later – either because they are convinced or because they have no other alternative. Such enhanced cooperation has been constitutionalized in the EU Treaties. The main risk that Fischer perceives in this context is the threat to his unitary vision of the EU. He accepts the idea of “center of gravity” or an “avant-garde” of European integration (p.14). Further, he seems to equal this center with the leading duo of Germany and France (p.4) or at least the founding six

at http://cadmus.eui.eu/bitstream/handle/1814/17255/ResponsesToJ.FISCHER_2000.pdf?sequence=1 (14.10.2018)

Member States (p.13). This unitary vision of a “European ideal” (p.13) leaves little space for the EU and the EU institutions to become a structure for deliberation about competing European ideals.

With 18 more years of practice of differentiated integration, we can clearly see that the increased complexity of decision making was not the crucial problem. The crucial problem was rather guaranteeing the equality before the law in light of a web of bilateral and multilateral legal agreements. Length of the meetings (p.19) was not the real stumbling stone even for a Commission of 28 members, which could have probably been Fischer’s nightmare at the time. The problem is also not the confusion as to what is the EU *acquis* in an Union of 28 members. Instead, the current challenge is the enforcement of equal standards and equal treatment by the EU institutions of individual Member States. We can see this with countries such as Denmark that has a general AFSJ opt-out while participating on a bilateral basis in the Schengen Area.⁵ Also non-EU countries participating in certain EU legal instruments, such as Switzerland or Norway, are subject to less stringent enforcement rules. Finally, EU Member States have also used this flexibility to make arrangements outside of the EU legal framework, such as with the European Stability Mechanism, which was established as a separate international organization first.⁶ The redistribution of votes according to financial contributions in such parallel structures poses serious challenges for the constitutional nature of the Treaties.⁷ It has been also raised that the structure of EU law might put the countries of Central and Eastern Europe at a disadvantage when trying to argue similar exceptions.⁸

⁵ Ester Herlin-Karnell, Denmark and the European Area of Freedom, Security and Justice: A Scandinavian Arrangement, Amsterdam Law Forum (2013) issue 1, 2015, page 95.

⁶ Pola Cebulak, Constitutional and administrative paradigms in judicial control over EU high and low politics’, Perspectives of Federalism (PoF), 2/2017, page 249.

⁷ See Deirdre Curtin, Challenging Executive Dominance in European Democracy, Modern Law Review 77(1), 2014, pages 1-32.

⁸ Damjan Kukovec, Economic Law, Inequality and Hidden Hierarchies on the EU Internal Market, Michigan Journal of International Law, Vol. 38, n° 1, 2016.

While dealing with differentiated integration in 2018 is still a challenge, the main threat that a realization of multi-speed Europe is posing is not that it might open a Pandora box of visions of Europe but rather that it might enhance the inequalities within the EU.

Political Polarization

Second point that has transformed into a completely new challenge is the positioning of political ideology in the debate about Europe and the EU. In 2018, in her Humboldt speech, Susanne Baer, a judge at the German Federal Constitutional Court, talked explicitly about “the right attacking rights”.⁹ In 2000, Fischer was not that explicit about the correlations between political ideology and the competing visions of Europe’s finality. However, it appears impossible to understand why he refrains from questioning certain basic premises without positioning him in the mainstream political ideology of his times. Joschka Fischer served as a vice-chancellor and Minister of Foreign Affairs in the cabinet of Gerhard Schröder between 1998 and 2005. Together with Tony Blair and other politicians in the Western hemisphere, he was part of the “Third Way” of social democracy. Third Way was presented as an alternative to the “old left” and the “new right”.¹⁰ This renewal of social-democratic agenda around the turn of the millennium involved a modernized attempt of squaring welfare with market economy.¹¹ It allowed the social democratic parties, *inter alia* in UK, US and Germany to enlarge their support by occupying the politi-

⁹ In resonance to Fischer’s speech, the Walter Hallstein-Institute for European Constitutional Law at the Humboldt University started a series of talks by public intellectuals, politicians and academics called “Humboldt Reden zu Europa”. For the one referred to see Susanne Baer, Humboldt-Rede zu Europa: “Rights under Pressure in Europe”- Dr. Susanne Baer, 25.01.2018, available at <https://youtu.be/GZenLGZtfsQ> (14.10.2018).

¹⁰ Martin Powell, New Labour and the third way in the British welfare state: a new and distinctive approach?, Critical Social Policy, Vol. 20, Issue 1, 2000, pages 39-60.

¹¹ Anthony Giddens, The Third Way: The Renewal of Social Democracy, John Wiley & Sons, 2013.

cal center. Schröder's government has been advocating such Third-Way policies in Germany.

Viewed from the perspective of nearly two decades, Third Way politics have been subject to substantial criticism. They have been criticized for prioritizing pragmatism over ideology.¹² Moreover, they have been masking liberal ideology and the importance of power relations by downplaying the left-right divide.¹³ Similarly, translated to the European debates, the emergence of Third Way might have silenced certain debates at European level. The Third-Way left-wing parties have refrained from challenging the insulation of the markets from political interference at European level.¹⁴ The lack of explicit debate in terms of left and right politics in Fischer's speech seems to resonate with these observations. Finally, Jan Zielonka drawing on the consensus between liberal parties, assigns them the blame for the current rise of populism.¹⁵ His broad definition of "liberals" includes the Third Way as well as the author himself. The scope of their failures is also broad – from growing technocracy to exploding inequalities.¹⁶ In particular at EU level, the liberal consensus has prevented the voicing of alternatives to the co-existence of neoliberal economics and technocratic politics. Fischer's speech operates within the limits of this liberal consensus and reflects the Third-Way agenda. He focuses on the reforms to improve institutional functioning of the EU and conceptualization of an European federation, without questioning the desirability of further economic integration as a finality of the EU.

¹² Michael Temple, *New Labour's Third Way: Pragmatism and Governance*, *The British Journal of Politics and International Relations*, Vol 2, Issue 3, 2000, pages 302-325.

¹³ Chantal Mouffe, "The radical centre." *Soundings* 9, Summer (1998): 11-23, 13.

¹⁴ Mark A. Pollack, "Blairism in Brussels: the third way in Europe since Amsterdam." *The state of the European Union: Risks, reform, resistance, and revival* (2000): 266-291, 267.

¹⁵ Jan Zielonka, *Counter-Revolution: Liberal Europe in Retreat*, Oxford University Press, 2018.

¹⁶ *Ibid.*

The speech draws a tension between two reactions to change - the popular backlash resulting from anxiety and embracing a historic opportunity.¹⁷ Unfortunately, he might have underestimated the extent of this backlash. Large part of Fischer's vision of institutional reform towards a symbolic constitutional materialized in the project of the Treaty Establishing the Constitutional for Europe, which was abandoned after negative results of popular votes in France and the Netherlands.¹⁸

Conclusions

In conclusion, if we were to reproduce the popular "Look Who's Back" narrative and ask how would Joschka Fischer feel coming back from his consultancy perspective today into a public position of thinking about the finality of European integration, he would probably have little trouble adapting.¹⁹ Many key challenges, in particular the lack of consensus about the finality of the EU project, remain of relevance. However, this short essay has focused on some crucial elements that have changed in the last 18 years.

While framing a vision for differentiated integration and left-right politics remain a challenges for European elites, they have become completely different challenges, rooted in completely new reasons. Differentiated integration is not about spill-overs and coherence, but rather about systemic inequalities and legitimacy in enforcement. When it comes to political ideology, the liberal consensus has been challenged and the political debate is characterized by increased polarization. Fischer's vision lacks responses for these transformed challenges.

¹⁷ Joschka Fischer, "From Confederacy to Federation – Thought on the Finality of European Integration", page 7.

¹⁸ See footnote n.4

¹⁹ Reference to the book Timur Vermes, *Look Who's Back*, Eichborn Verlag, 2012; for more information on Joschka Fischer's career development see Loren Balhorn, *Joschka Fischer's Long March*, Jacobin, 23.05.2018, available at <https://jacobinmag.com/2018/05/joschka-fischers-long-march/> (14.10.2018)