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The Medieval Origins of Constitutional Representation

PROFESSOR WIM BLOCKMANS

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The Medieval Origins of Constitutional Representation

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EUROPAEUM LECTURE
in association with the
MODERN EUROPEAN HISTORY RESEARCH CENTRE
FACULTY OF HISTORY, UNIVERSITY OF OXFORD

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Professor Wim Blockmans studied History at the University of Ghent where he obtained his PhD (cum laude) in 1973. He continued to work at the University of Ghent as senior assistant until 1975. In 1974, he also took on the post of Reader in History at the Provincial Institute for Translators and Interpreters in Ghent, which he continued to do until 1988, even after he took up a post in the Netherlands in 1975.

In 1975, he took the opportunity to work as a historian among social scientists as Reader in Social and Political History in the Faculty of Social Sciences at the Erasmus University in Rotterdam. This led to a professorship in 1980. From 1980 to 1989 he was also Dean of that same Faculty.

By 1987, the time was right to move closer to the centre of historical research and education, and he moved to Leiden as Professor of Medieval History. During this period he supervised over 35 PhD students. Nevertheless, the social sciences still continued to hold an attraction and he was also in charge of Contemporary European History in the Leiden Faculty of Social Sciences from 1993 to 2000.

Since 2002, Wim Blockmans has held the post of Rector of the Netherlands Institute for Advanced Study in the Humanities and the Social Sciences. In this capacity, he supervises the academic programme, the selection of fellows, and daily running of this institute.

Contents

A note on Wim Blockmans.....	2
The Medieval Origins of Constitutional Representation.....	5
References.....	28
Annex A : The Europaeum Record.....	30
Annex B : The Europaeum Partners.....	33
Annex C : The Europaeum Lectures.....	35

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The Medieval Origins of Constitutional Representation

Parliamentary democracy, beyond any doubt, is one of Europe's fundamental contributions to universal history. Wars have recently been fought, and still are being fought in the Middle East, in the belief that this will create stable democracies there. In recent years, democracy has become the hallmark for a State to be accepted into international or supranational organizations, such as the EU, at least at the level of political discourse. The admission, in the 1980s, of countries with a problematic record of democratic traditions, such as Portugal, Spain and Greece, is said to have encouraged the development of new institutional arrangements there. EU candidates are screened using the criterion of whether there is a well-established democratic system of political parties, free elections and the rule of law. Advocates of the admission of Turkey, Serbia and Albania argue that their inclusion in the Union will support the development of more democratic rule in these countries and counterbalance strong authoritarian local traditions.

Time and again, however, the introduction of democracy, as developed in Western Europe over the centuries, has proved to be easier on the paper of constitutions than in political practice. Some social structures, such as those based on clans or tribes, simply do not fit within the Western model of democracy. In his famous book *Social Origins of Dictatorship and Democracy*, first published in 1966, Barrington Moore compared the social conditions for the rise of dictatorial regimes in various states with those for the growth of parliamentary systems. He focused on the class structure of societies, and especially on the

position of peasants and the middle classes. In his view, it was the bourgeoisie which typically pushed for constitutional rights and political participation. His famous statement ‘no bourgeoisie, no democracy’ still seems to express an essential truth.

Recent scholarship has delved deeper into social structures at a more individual level. The collective studies produced of the biographies of the powerful elites have made it possible to identify the behavioural and career patterns of office-holders, and to trace their personal relations. Networks have been analysed and this new research has added flesh to the bones of structural analyses of the social classes. Moreover, we now also have the so-called linguistic turn by which political history can be rewritten in terms of discourse analysis. This approach has the merit of bridging the huge gap which traditionally existed between intellectual historians studying learned political theory and those trying to understand the role of ideas in political strife. Modern political history is now more about collective memory, communication and interaction, and the divisions between the social classes now appear less clear-cut and, perhaps, even less relevant than they were believed to be in the 1960s and 1970s.

In this lecture, I will address the circumstances and conditions under which the fundamentals of constitutionalism and representation emerged in Western Europe. I will connect these insights with some observations about the transition towards democratic rule in Central and East Europe in the present days.

The Slow Transition

Early February 2007, the former President Putin found it necessary to announce via a press conference that Russia is *not* using its energy resources as a political weapon and that it *wants* to be seen as a reliable gas supplier. On the same occasion, he again declared that Russia was

not implied in the murder of Alexander Litvinenko, arguing that the victim had no access to state secrets. This could be interpreted as signifying that someone with knowledge about such secrets is indeed considered a legitimate target. Nevertheless, the affair echoed the puzzling health problems of the former opposition leader and current president of Ukraine Victor Yushchenko. The European Court for Human Rights has issued numerous condemnations of Russia's violations of human rights in Georgia and Chechenya, to which Russian authorities complained that the Court is 'prejudiced and politically guided'. Russia is not the only superpower that dislikes the international Courts of Justice, even though these vital institutions guarantee the rule of a law across the globe. *Princeps legibus solutus*, the ruler is not bound by the law, says a famous dictum in Roman Law dating from the late Empire. This succession of painful incidents seems less related to the formal question of Putin's role as elected president or whether Russia has a democratic parliament with political parties, than is to do with a certain style of government, jurisdiction, a public discourse and a political culture that may be typical of a particular country.

Similar concerns can be expressed about the political culture of several countries of Central and Eastern Europe. Just taking a look at some of the newest EU-member-states, I can point to the allegations of widespread corruption in Bulgaria and Rumania. In order to meet some objections from the EU before the admission in January 2007, the Rumanian Parliament set up a National Integrity Agency in order to investigate the origin of the properties of ministers and MPs. Former Prime-Minister Nastase and the president of Rompetrol have already been subjected to investigation. However, on 13 February, the Senate passed a no-confidence vote against the Minister of Justice who was in charge of this investigation. President Basescu supported the minister and criticised the Senate for its encouragement of 'a masked system of corruption'.

The harsh antagonism between a monster coalition of ultra-nationalists, social-democrats, the Hungarian minority party, and even the governing liberal party in Parliament, and the President led to a procedure of impeachment. The President's advocates said that his opponents were trying to resist his reform priorities; the struggle against corruption, the opening of the Securitate-archives and the general condemnation of the communist regime. In a speech in Parliament, he announced himself a referendum about the reform of the election system, which he says it doesn't give the voters any influence on the persons to be elected on any particular list. He claims that this leads to the influence business people have on representatives. In July 2008, the third half-yearly report on the measures taken in Rumania and Bulgaria against corruption and criminality led the EU Commission to block 521 million subsidies to the latter country. The Commission also heavily criticised 'the vulnerability' of Rumania's judiciary and the 'strong political interference' with the policy against corruption.

Corruption had thus become a concrete measure to check and sanction the compliance of new member states to the EU standards. However, corruption is not necessarily and not uniquely a problem of states Central and Eastern Europe. The *Corruption Perception Index* of the renowned *Transparency International* institute in Berlin showed for 2007 very positive indicators for Estonia and Slovenia, while no less than twelve of the twenty-seven EU-members were rated below the sufficiency-level. Among them, Italy, scoring 5.2 on a scale of 10, as low as the Czech Republic, and not much higher than Greece (4.6), Poland (4.2), Bulgaria (4.1) and Rumania (3.7). As the latest admitted, Bulgaria and Rumania have been submitted to draconian controls, while the problem is not significantly less evident in Poland. And what to think about the standards which are not met by old EU-members such as Italy and Greece, but to whom no sanctions can be imposed?

Even trickier is the question how to assess the respect of democratic rules. Here, party democracy and parliamentary control seem to take root with some difficulty. In the Czech Republic negotiations for the formation of a government were blocked for six months in 2006, because the main parties could not reach a compromise. Hungary experienced a storm of protest and mass demonstrations after the publication of the prime minister's speech about how he lied in public about the state finances in order to win the elections in April 2006. His predecessor Medgyessy had to step down after publications about his activities in the secret service under the communist regime. In February 2007, the polarisation in the country had all but diminished; the opposition claimed that a new Iron Curtain had been built around the Parliament building – literally as well as metaphorically. The leaders of the two political blocks keep each other in an impossible balance. The political discourse is poisoned but lacks content. The ruling socialist party may have to be blamed, but the opposition doesn't offer an alternative policy and instead holds an ultra-nationalistic discourse addressing the millions of Hungarians beyond the state's borders.

In Poland, nine ministers stepped down in 15 months; in 2007, the Kaczynski brothers prepared a law by which the members of the Military Council who ruled the country after the coup in 1981 would be degraded and lose their pensions. This is seen by the opposition as an act of political revenge against those who courageously acted to prevent a Russian invasion similar to those in Prague 1968 and Budapest 1956. The problem is more complex than the fate of a handful of military junta members. As the resignation of Archbishop Wielgus in January 2007 shows, the transition from an authoritarian towards a democratic regime necessitates public debate about the role of all those involved in the former system. A report commissioned by the Kaczynski brothers who had campaigned under the motto of a 'moral revolution' by which they would clear the country of the communists' lasting control, failed

to demonstrate such a continuity, and lost its authority after the publication of the removal of the prime minister's name. A positive signal has been Prime Minister Kaczynski's defeat in the 2007 election and the dismissal of his projected legislation, which has been declared anti-constitutional. Nevertheless, the controversies and the frequent political re-orientations remain.

As in Poland, the Orthodox Churches have also been criticised for their role under the communist regime. In Rumania, a presidential committee of historians in December 2006 published a report on the misdeeds perpetrated by the communist regime. The report's critique of the church was vehemently refuted by the patriarch who announced an 'objective' investigation. A similar initiative was taken by Slovakia's catholic bishops' conference after allegations of the archbishop's activity for the secret service between 1972 and 1989. Here the church's collaboration with the Nazi-regime would also be investigated.

The German unification of 1989 was immediately followed by the screening of all leading office-holders and was accompanied by the opening of all the archives of the Stasi secret police, just as the Nazi archives had been opened in 1945. This helped Germany to come to terms with its complicated past in a transparent and civilised manner. In Rumania, the Securitate archives were not opened until 2005, which led to recriminations in the media by political opponents. In the vehemence of the antagonisms, archives are often abused as political instruments. In proportion to the population, Securitate employed forty times as many informers than the Hungarian secret service. The opening of Hungarian secret archives in 2003, which was triggered by revelations about former Prime Minister Medgyessy's past as an informer, has not yet been regulated by a general rule. No overall condemnation of officials in the communist regime has yet been issued. In February 2007, a court had to decide about the access of a journalist to the files of six religious leaders, on the basis that they had played a

public role. As a consequence, a debate arose about the authenticity and significance of historical documents in general. This is reasonable, as the accuracy of a secret report is obviously influenced by the spy's motives, which may be ideological, financial or for blackmail.

Eighteen years after the great transition of Central Europe, the political culture seems characterised by disappointment following exaggerated hopes, uncertainty about the future, repeated radical reorientations, heated accusations, and violent conflicts. The political culture is still weighed down with the remnants and recollections of previous regimes, especially since the archives were kept locked for far too long as there were so many who had an interest in burying the past. This atmosphere undermines trust in the authority of newly established institutions. On the other hand, hopeful developments are to be noted in several countries, which should warn us against manicheistic thinking about 'West' and 'East'. In some countries, democracy and its values are taking roots faster than in others; and, even in older democracies, stability cannot be taken for granted.

Do these observations lead to the conclusion that, eighteen years after the fall of the Berlin wall and the Iron Curtain, Europe is still a divided continent in which the West sets the tone and the remainder will remain the periphery forever? The free labour market is now attracting skilled as well as seasonal workers to the West: most of us have heard of the famed Polish plumbers. At the same time, labour-intensive industries such as automobile factories are moving eastward because production costs in the West are no longer competitive on the global market. Renault and Volkswagen closed down factories in Brussels to build new ones in Poland. This is the commonly known rationale of the free market economy. However, in this logic, those on the periphery remain dependent, even if there has been impressive economic growth in spite of all the disruptions. The Western rich life-style now approaches closer than ever: it is flaunted by the nouveaux-riches, displayed in extravagant

new luxury shops and brought into the home via imported television programmes – another feature of Western domination. This fosters rising expectations while incomes lag way behind. The immense social and economic problems place even more pressure on the disrupted and distorted political system.

Variety of Medieval Representation

The discrepancy we observe today between the economic and political developments of Western and Central Europe is not new. If we consider political representation and constitutionalism as being a unique creation of medieval Europe, it is essential first to understand the conditions that produced these political phenomena; and second, to elucidate the conditions that gave rise to the huge variety of representative institutions. My underlying question is whether or not the conditions for the emergence of parliamentarism have been weak or lacking in Central and East Europe since the very beginning.

In an influential article published in 1931, the German historian Otto Hintze identified the conditions necessary for the unique emergence of representative government in Western Europe.¹ In his view, political and social life in the West was moulded by the twin systems of feudalism and the Christian Church. The high clergy, the only intellectuals controlling the chanceries of the emerging states, could oppose limitations to lay authority by referring to general rules of Christian ethic. Germanic law, especially as it was formalized in feudalism, offered a second limitation to rule in its concept of reciprocal power relations. A ruler was always bound by mutual obligations and could be held to respect certain moral and legal standards. In particular, the immunity of ecclesiastical institutions, clergy, and the inhabitants of lordships and cities formed the basis of the subjective public rights of privileged groups. Western states did not grow into a unified empire but constituted weakly integrated parts of a loose global system which shared Christian values,

represented by a universal and independent Church. The constant competition between states led to an intensification and a rationalization of state systems; rulers sought the active support of their citizens in the mobilization of resources needed in the growing competition. The ecclesiastical model of conciliar representation was easily transferred to secular circumstances.

Hintze saw the extension of monarchical authority over the representative institutions as a necessary condition for the development of representation: in his view 'municipal structures everywhere excluded representation by estates'. On the other hand, unlimited feudalism tended to dissolve the emerging states. In his view, representative institutions could only develop and last within centralizing states.

It is generally assumed that states or, before their stabilization, countries or territories, formed the system in which representative institutions operated. Hintze regarded the nature of a monarchical state - competitive, centralizing and rationalizing, - as a necessary condition for the full development of a *Ständestaat*. This concept, difficult to translate into English, refers to a state in which the estates have a constitutional political role. In this perspective German historiography adopted the view of a dualistic system of the (territorial) prince and the estates. Even the opinion of Peter Moraw holds that 'the prince and his court were not only the point of departure and antagonist of the system of estates, but the nodal point from which the fundamental development of the territories has to be understood.'² Although this viewpoint may be adequate for large parts of continental Europe, it certainly does not fit urbanized coastal areas, where territorial and monarchical states had much less influence. It can certainly not be considered a general rule that the monarch was the initiator and sole focus of representative activities, not even in the Empire. In some urban areas, other types of representation developed into regional urban leagues; in some of these associations of cities (*Einungen* or *hermandades*) or *Landfrieden*

(territorial peace treaties) princes and nobles were included as well. Such systems could develop only thanks to negotiations and some form of representation. Regional urban leagues found unity in the German Hanse, which German historiography, in my view incorrectly, does not consider as another type of representative system. The Hanse cities had their own representative assemblies on different levels and acted towards the outside world in the name of their member towns. In a similar way, groups of coastal towns created regular contacts with other authorities in support of their citizens' trade. From the *consulado del mar* of Barcelona, dating from 1258, to the more conventional participation in the sealing of commercial treaties struck between princes, such as that carried out by Flemish cities during the thirteenth century, we can observe many examples of urban representatives operating in networks very different from those of the territorial state and its monarch. Apart from the networks of commercial cities, communities of free peasants in particular of cattle breeders proved able to represent their interests on their own initiative before trading partners or political competitors.³

Inspiring as it may be, I think Hintze's vision on the necessity of monarchical centralization for the development of representation has to be rejected. In my view, communes could very well create stable representative systems which deal with a good deal of public administration. On the other hand, it is evident from the early modern history of all Western monarchies that the kings tried to rule without their Parliament, States General, *Rikstag* or *Cortes* as soon and as much as they could, as soon as they had secured regular income without their subjects' consent.⁴ Empirical data unknown to Hintze has since demonstrated that in Europe's most densely urbanized regions, trading cities spontaneously created various forms of consultation and problem-solving between each other, in order to support their economic relations. These areas were mainly located on the coasts or along the great rivers, where the bulk cargos could be transported that were needed to sustain

the large urban populations. In those cases where a city grew much more than all its neighbours, because of its strategic location, it functioned as a gateway and imposed its rule upon smaller towns and market places. If no monarch could effectively impose his sovereignty over such a metropolis, it colonized its hinterland, near as well as far away, as was the case in Venice and Genoa. The relationship of domination excluded representation on the basis of autonomy. This is probably the model Hintze had in mind when he stated that 'municipal structures everywhere excluded representation by estates'. So, neither monarchs nor cities guaranteed *on their own* the emergence of constitutional representation.⁵

However, there were also highly urbanized regions with a more evenly spread urban hierarchy and where countervailing powers such as monarchs, aristocratic and ecclesiastical landowners were influential. In such regions, a division of power had to be reached on the basis of negotiation. There, conflicts of interest between the various power elites led to intensive bargaining in assemblies which were composed of a wide variety of members, including all the powers that be. Much depended on their relative impact, which was likely to shift over time. We should try to identify the specific strengths and weaknesses for each of the contenders:

- for monarchies: dynastic continuity, personal competence, availability of independent resources;
- for great landowners: size and yield of the properties, their concentration, marketable yields, extent of the seigniorial rights; public power through offices held, personal networks at court and in the Church;
- for cities: their position in the urban hierarchy and in interregional networks (expressing population size, market position, location), inter-urban cohesion, stability of internal social relations.

This mixed model can be observed in Catalonia and Valencia, in the coastal provinces of the Low Countries, Northern Germany (the Hanse) and Eastern Prussia along the Vistula. These well-developed and fairly autonomous municipalities had exclusive powers in matters related to their maritime trade. Since the mid-thirteenth century, Barcelona and Valencia had their own consulates of the sea, justices who sentenced cases with an extra-territorial character on the basis of a special law code, developed out of practice. Their flourishing trade gave these cities a strong bargaining position vis-à-vis the King of Aragon and the aristocracy.

In a similar way, other special jurisdictions developed under the control of major cities. To ensure their survival, the large cities indeed needed to control their direct environment, where their wealthy burghers invested in intensive husbandry and cattle-raising. Citizens needed to be sure of a supply of food, drinkable water, and raw materials. Therefore, the cities imposed their rule on their direct hinterland. A typical example is the control of the water supply and irrigation as seen in Southern Europe. Since the medieval epoch, the Water Tribunal has met every Thursday morning at the North Gate of the Cathedral of Valencia, and orally all disputes concerning irrigation are settled. The irrigation network in the Huerta dates back to Roman times and was greatly extended and improved under Moorish rule. Until today, it enables the yield of several harvests per year in this fertile alluvial plain.

Similarly, the drainage of marshy lands in Northwest Europe was organized by landholders, many of whom were burghers. The maintenance of the increasingly complex system of canals, dams, dykes, sluices and windmills, and the jurisdiction in these matters of vital interest, required technical expertise. This knowledge developed as a result of practical necessity and grew incrementally among the people directly involved. The solidarity and loyalty of all inhabitants could only be obtained by allowing their direct participation in decision-making and by a rigorous

distribution of all charges over the owners as well as the holders of the land, in proportion to the surface protected by the system. Strict control on the application of the required measures and harsh justice in case of neglect was required to secure the survival of entire communities and their property.⁶

Specific forms of public authority thus grew out of necessity on the initiative of the burghers and peasants themselves who had a clear understanding of their needs and interests. In some regions such organizations were concerned with the regulation and jurisdiction of maritime trade, elsewhere it concerned irrigation or drainage, elsewhere it was the transport over the passes in the Alps or the *transhumance* of the herds of millions of sheep, as in the Castilian *mesta*. All these situations required knowledge which only the people involved could provide; their practices led to the creation of special codes of law. The Monarchies had hardly anything to do with such matters, which often transgressed their own territorial powers. If they did have a role it was limited to the formal recognition and publication of regulations elaborated by the representatives of the communities.

In regions where urban and rural communities formed representative institutions, these could intervene collectively in political issues in order to protect their common interests. The weakness of monarchical power, such as during a under age, was a typical opportunity for the cities to claim control over the state. In thirteenth-century Flanders, the major cities played a role as a collective body. They are mentioned as early as 1209 as the 'six cities' in an act of King John of England concerning La Rochelle. In 1213, as a league, they struck a treaty with the king, which showed their ability to act autonomously in their relations with a foreign region which they had close commercial ties. From 1241, documents call them the *scabini Flandriae*, an acknowledgement of the collective action of the administrators either in relation to judicial conflicts between themselves or disputes in which only one was involved,

and over matters such as trade fairs and the control of the currency. In all these matters, the countess acted only 'with the assent of the aldermen of [the major cities of] Flanders'. During the most active period, in the first half of the fifteenth century, the 'Four Members' attended between 350 and 450 meetings per year, often in parallel sessions, sometimes at different places and with missions abroad. Within the county, their meetings lasted normally four to six days. These meetings were largely informal, normally involving ten to fifteen participants who were the main initiators. Long tradition and the continuingly strong demographic and economic position of the 'Four Members' meant that their domination of the representative system was accepted, both by the smaller communes and by the counts of Flanders.

In the cities, meetings of large councils including deputies of the crafts, and, in the rural districts assemblies of freeholders had the last word on taxation. Participation by guilds in the administration was nowhere as advanced as in Ghent between 1370 and 1540, when twenty out of twenty-six aldermen were elected annually by and from the crafts. Until the middle of the fifteenth century the main concerns of the 'Four Members' were trade regulations, commercial litigation, coinage, fiscal policy and foreign relations. Later, taxation and defence were to become the major interests. Assemblies of three estates were created by the count as late as 1400, but these met much less frequently than did the 'Four Members' who dominated them. Towards the end of the fifteenth century, however, the meetings of Estates and of the States General became more influential, as the government preferred collaboration with these more conservative bodies.⁷

When King Louis VIII of France took possession of Languedoc in 1226, after the so-called crusade against the heretics, he took care to demand oaths of fealty from all the prelates, nobles and cities in the region. His commissioners travelled around to receive these oaths, sworn

both privately and in public assemblies where the consuls and other townsmen represented their communes. The transfer of the county of Toulouse to King Alfonso IX of Leon was formalized in 1249 in a series of assemblies in which different sectors of the territory rendered their oaths. The townsmen of Toulouse did so and heard their liberties confirmed. In Agen, the assembly 'composed of barons and knights of the diocese, consuls of Agen, and councils and burghers of regional burghs, *castra*, and villages' refused to comply with the request of the commissioners to swear fealty, referring to their liberties and customs and to conflicting rights to the throne.

Indeed, in 1279 an assembly of prelates, deputies of the chapters, barons, knights, nobles, deputies of towns and villages was summoned to transfer the lordship to the proctor of King Edward I of England, who secured feudal recognition in person in 1286 in a general assembly as well as in local meetings. The whole episode shows the necessity for kings to obtain the assent of their new subjects in the form of regional assemblies which had their own rights which they clearly wanted to have respected. Cities and towns in the regions of Languedoc met on the initiative of royal officers as well as on their own to legislate on the export of grain (1269-75) and on coinage (1212 with the nobility, in 1292 alone), to collect petitions, to regulate trade routes, to press a suit against the English 'great custom' on the Garonne (1285) and against the bishop of Cahors in relation to usury.

The towns of Castile from 1282 onwards regularly formed *hermandades*. These autonomous associations, independent from the king's summons, were set up to preserve their privileges, and if necessary to protect against the king. Their movement went far beyond taking positions during the disputes for royal power. The towns' associations in fact formed the vanguard in the *cortes*, which during the minority from 1295 to 1301 claimed a place in the royal household and chancery, as well as a role in the collection of taxes and the custody

of royal castles. In 1312, a *hermandad* of some towns in León called for the education of the young king to be placed in the hands of good citizens, they objected to unlawful taxation and the alienation of royal castles and cities. Moreover, if violations of the *fueros*, the customary rights, were not redressed, the towns would elect another regent. Even if these claims overplayed the towns' unity, a broader *hermandad* was formed in 1315, including 180 towns from Castile, León, Estramadura, Toledo, Murcia and Andalusia. They would meet every year and control the royal revenue, which they effectively did for some years. This episode illustrates the towns' capacity to organise themselves on a federal basis for the preservation of their common interests during periods of dynastic crisis. It equally shows, however, that a lack of unity made these associations short-lived, particularly since minorities at some time came to an end. More was required to make communal representative institutions last.

This leads us to the observation that in regions with high levels of urbanization and commercial activity, the local elites spontaneously created representative structures to deal with the areas they needed to consult about with their neighbours and partners. They interacted frequently and the areas of negotiation were predominantly related to economic affairs. The form and composition of the assemblies varied according to the specific needs of the sector. Monarchs, ecclesiastical and aristocratic landowners were normally not involved in these forms of representation simply because they had no direct stake to defend or competence to deal with these matters. An interesting exception was the intensive involvement of the Teutonic Order in the Prussian grain trade, for which they entertained close ties with the merchants in the cities along the Vistula as well as with buyers in Western Europe.

This brief discussion on the relative impact of monarchies and municipalities on the emergence of representation leads us to three insights:

1. both monarchies and municipalities strove towards absolute domination; representation emerged and continued to function only where and when a balance of diverse and relatively autonomous powers made negotiations and agreements necessary;
2. urbanization and commercialization induced frequent and functional negotiations on the scale of networks which generally did not coincide with the monarchical territories; the regional variation in form and content follows directly from the type of economic activity concerned;
3. assemblies dealing with rural problems such as irrigation, drainage and transport involved the participation and commitment of all male landholders; the social composition of urban representation was more restricted as a consequence of the greater population and the tendency of the large merchants to control the whole process of production and distribution, and therefore exclude artisans from decision making;
4. in a situation with a weak monarchy, urban leagues could extend their sphere of influence to temporary control over the government.

Until now, we have been discussing the exceptions in medieval Europe, viz. the highly urbanized fringes. The participants in most of their assemblies were peasants and burghers only, large landowners appeared rarely, in particular when their property or dynastic issues were at stake. We can call them the communal model of representation. These were certainly not the Parliaments and Assemblies of Estates headed by a monarch, we all have in mind, with references to famous constitutional acts such as Magna Carta of 1215 or the Joyous Entry of Brabant of 1356. Such formal and plenary assemblies convened on average less than once a year, mostly when the dynasty was in crisis. Magna Carta's impact may be somewhat overestimated as it was sure not the oldest formulation of popular rights of control on government; in reality, it was

essentially an act of feudal resistance against abuse by the king, and Parliamentary representation including burghers became a regular feature only a century later. The earliest mention of the communal model concerns an assembly which did not actually meet in reality.

Count William of Normandy had been inaugurated as count of Flanders in 1127 under condition that he respected the privileges of the land and particularly those of the fast growing cities.⁸ Within a year he had violated so many stipulations that citizens rebelled in Saint Omer and Lille and a broad opposition movement arose. In Ghent, the citizens formulated an extensive request addressed to the count in their name by a sympathetic nobleman. After the enumeration of the count's violations of privileges, the text as reconstructed in a contemporary chronicle, pronounces remarkably clearly and early on the principles of constitutional government under the control of the representatives of the three estates, clergy, aristocracy and citizens. This concept emanates from the feudal notions of contract: a vassal had the right to resist if he was wrongly treated by his lord. The argument introduced the widening of this concept to all citizens; it was grounded on their mutually sworn fealty on the basis of law. This very principle was put into practice by the dismissal of the Duke of Brabant and the appointment of regent by the states in 1420. It also was the basis for the dismissal as prince and lord of the Low Countries of King Philip II of Spain by the States General in 1581.⁹

Another well known case in which the disputed succession to the throne gave rise to broad consultation with powerful groups of society is that of King Alfonso IX in León in 1188, who summoned the 'archbishops, bishops, the religious orders, the counts and other nobles of his realm, together with the elected burghers from the different cities.' Before them, he swore to respect the *mores bonos*, the good customs and not 'to wage war, make peace or have a solemn court without the counsel of the bishops, nobles and good men with whose counsel I have to

reign'. In their turn, they all 'swore fealty in my council, to keep justice and to bring peace in my whole realm.' Scholarship and national pride have hailed this assembly as the first ever in which elected representatives of cities participated actively.

We should not, however, overestimate even exceptional events like this coronation ceremony. That of Alfonso VII as Emperor of Spain in 1135 was embedded in a solemn assembly of dignitaries among whom a chronicle mentions the presence, as the last in the enumeration, of 'judges' who may well have been the same elected members of the town councils as in 1188. The haphazard survival of documents, as well as the terminology used by those who wrote them, present today's historians with difficulties. Moreover, in 1187 in neighbouring Castile, a meeting of the king's court (*curia*) had been summoned to recognize Berenguela's right of succession. The *maiores* of fifty towns promised to guarantee the observation of her marriage contract with Conrad of Hohenstaufen. So it is likely that the leaders of these towns had been summoned to the same *curia* in 1187 where the contract had been prepared.

Rather than highlighting one date, it should be noted that participation of representatives of the cities gradually assumed an increasingly significant role in the political life of Castile and León: in the latter kingdom they certainly participated in *cortes* (a term that did not occur until 1250) in 1202 and 1208, in the former also in 1222. Meetings remained rare, and it was only after 1250 that assemblies reached an average frequency of one in two years – which, in comparison to the urban leagues discussed earlier, is very low.

Notwithstanding the reputation of Magna Carta, Parliamentary representation, including citizens, developed comparatively late in England.¹⁰ The summons by King John of England in 1213 of 'four discreet knights' from the counties of England clearly referred to the representation of districts by elected representatives. In England, the

courts and counties naturally developed out of the Anglo-Saxon period into constituencies for political representatives, as is clearly seen in the first appearance of the knights of the shire in parliament in 1254. This early and systematic organization of rural communities on a national scale was the consequence of the exceptional administrative centralization achieved by the Norman kings, making this advance possible. Yet, in the English counties, the constituencies were not free to elect representatives of their own social status, as occurred in religious, urban or rural communes. Nevertheless, King John's refusal to respect his feudal obligations led to opposition by the barons who enumerated the abuses perpetrated in the famous Magna Carta of 1215. Although this document certainly did not derive from a representative assembly since the barons could speak only in their own name as the king's vassals, many of its articles were nevertheless referred to later as a constitutional act enouncing essential principles, such as 'no taxation without consent'. The separate mention of the city of London can only be understood as referring to an independent feudal status on a par with the tenants-in-chief, not as the representation of the commune.

The first record of the appearance of representative burgesses in a parliament for the whole realm dates from 1265, but it was not until the 1320s that these would become a permanent factor. In 1295, 114 cities and boroughs were represented, later on their number fluctuated between eighty and ninety; each of them sent two Members while London sent four. Thus, the English parliament grew out of gradual extensions to the king's council under the pressure of increasing financial and military needs. The Welsh and Gascon wars in the period (1268-95) brought a shift in the notion of defense of the realm as a national concern to be borne by all subjects. Together the estates heard the king's demands in the solemn opening session of parliament. Cathedral clergy, barons, knights and burgesses deliberated separately and returned different answers. Only in the middle of the fourteenth century did the

Commons form a separate house of the commons of the knights and the burgesses elected to parliament.

Throughout the periods of intensive warfare in 1294-98 and the opening years of the Hundred Years' War 1338-42, when taxation reached an unprecedented high, Parliament associated petitioning for the redress of grievances with the supply of money, thus considerably extending its competence in all spheres of government. Indirect taxation, especially that on exported wool, was first introduced in 1275; in 1354 the Commons granted it for a period of six years. The wool subsidy became permanent crown revenue under the control of Parliament as it was granted only for short periods and adaptations were constantly made to the duration, the amount, the appropriations of supply, the nomination of special treasurers, and the relative weight on native and foreign merchants.

Conclusions

The plurality of powers in the political system, and the need for those with opposing interests to reach a compromise, were the preconditions for the emergence and continuity of representative institutions. Regional variations in timing, types and evolution were essentially determined by the interaction between downward and upward organizational initiatives. The monarchical and the communal models of representation met at some point in the evolution. Cities could only play a prominent role in areas of high urbanization. As states grew more powerful in the later middle ages, they tended to incorporate hitherto independent cities, by integrating their ruling elites. The accumulated capital and monetized economy of the cities offered immense competitive advantages to princes. They started by borrowing from individual merchants, and finally tried to impose continuous indirect taxation on trade, ensuring them a regular and easy income without having to deal with the unpleasant demands of their subjects. Nonetheless, the communal model was to

demonstrate its strength in later centuries, even when the cities had to play their role in the framework of assemblies of estates. The Dutch Republic clearly demonstrates the vitality of a representative system based on communal autonomy. In this respect Barrington Moore's statement 'no bourgeoisie, no democracy' can be extended to the medieval and early modern period he did not study. As a matter of course, for that period the concept of 'democracy' is not applicable; however, the development of constitutional conditions for effective control on the government by the representative bodies can be understood in that sense.

The fundamental weakness of the medieval representative institutions was a lack of continuity in the monarchical model, and both models suffered from a lack of unity. The sense of community in all sections of society lagged far behind the means of centralization that the princes had at their disposal. This meant the princes were able to play off estates and corporate participants against another. Because representatives, personally and institutionally, saw more advantage in setting up particular arrangements with the government than in collective action, representative institutions became decreasingly effective. Two reasons thus explain their decline during the second half of the fifteenth century: relative or even absolute loss of power, and the incorporation of local and regional elites in the state apparatus.¹¹

Conversely, a monarch was incapable of creating any enduring representative institution if this did not already rest on existing, politically well organized, local and regional communities. Nor would he even bother to do so if he had the means at his disposal to reach his goals independent of others, a situation that each late medieval prince constantly strove to achieve.

The cases I have discussed are all set in the early urbanized and commercialized regions of Europe. In the more rural central parts of Castile, France, Germany and Central and South Europe, the impact of

burghers fighting to protect their privileges and common interests was far less noticeable. There, feudal and monarchical powers were the main contenders in the political arena, while honour and a display of faith was the standard. In these regions, Barrington Moore's quote 'no bourgeoisie, no democracy' seems equally applicable, this time in its negative sense. Until deep into the twentieth century, aristocracies held a firm grip on these societies. This means that Europe has always been divided between two political cultures, one based on the accumulation of commercial capital and market mechanism, the other on coercion of unfree landless labourers. However, its boundaries were not clear-cut between East and West, even if urbanization, commercialization and industrialization have always been more intensified in the West, coastal areas and the valleys of major rivers have been cores of social differentiation, long-distance communication and the capacity to negotiate about differences.

The current difficulties and political tensions in Central, South and East Europe have to be seen in the light of an enduring lack of institutions for and traditions of negotiating, bargaining and striking compromises, aspects so typical of the urbanized regions. We must, therefore, realize that a period of eighteen years to accommodate and adapt to a new political situation is nothing when we compare it with the eight hundred years, since the twelfth century, that Western Europe has needed to standardize and develop the democratic mindset we have today. And, to conclude with the Rumanian prime minister's warning from January 2007: Rumanian politicians have to stop quarrelling since they need to deserve the respect of their European colleagues. One can hope indeed that the intensive collaboration in the context of the EU will bring them faster towards current Western standards than the eight centuries our ancestors have needed.

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The Europaeum Record

I. Mobility Schemes

- ❑ The *Europaeum New Initiatives Scheme* provides seed funding for innovative and imaginative forms of academic collaboration within the Europaeum academic community.
- ❑ The *Europaeum Visiting Professors Scheme* supports the movement of professors from one partner institution to another, for periods of up to two weeks for the purposes of lecturing, study, research and project development.
- ❑ *Europaeum Mobility Schemes* support individual academics and selected graduate students from member institutions participating in selected European events and activities, including conferences, seminars and summer schools.

II. Academic Conferences

- | | |
|------------------------|-----------------------------------------------------------------------------------------------------|
| 1993 Oxford | <i>Are European Elites Losing Touch with their Peoples?</i> |
| 1994 Oxford | <i>Europe and America after the Cold War: the End of the West</i> |
| 1995 Bonn | <i>Integration of East Central Europe into the European Union</i> |
| 1996 Geneva | <i>Defining the Projecting Europe's Identity: Issues and Trade-Offs</i> |
| 1997 Paris I | <i>Europe and Money</i> |
| 1998 Leiden | <i>Human rights, the plight of immigrants and European immigration policy</i> |
| 2000 Bonn | <i>The Implications of the new Knowledge and Technology</i> |
| 2001 Oxford | <i>Democracy and the Internet: New Rules for New Times</i> |
| 2001 Berlin | <i>European Universities Project: Borderless Education: Bridging Europe</i> |
| 2002 Paris | <i>European Universities Project: New Times : New Responsibilities</i> |
| 2003 Oxford | <i>Whose Europe? National Models and the European Constitution</i> |
| 2003 Bonn | <i>European Universities Project: New Partnerships: Opportunities and Risks</i> |
| 2004 Leiden | <i>Moving the Frontiers of Europe: Turkey, Risk or Opportunity</i> |
| 2005 Oxford | <i>US-Europe: Americanisation and Europeanisation: Rivals or Synonyms</i> |
| 2006 Oxford | <i>Diaspora/Homeland relations: Transnationalism and the Reconstruction of Identities in Europe</i> |
| 2007 Washington | <i>Does the 'West' still exist? - America and Europe towards 2020.</i> |

2007 Helsinki	<i>Inside Globalisation: Interpreting the New Order</i>
2008 Oxford	<i>Dilemmas of Digitalization</i>
2008 The Hague	<i>Human Rights, Democracy, Tolerance</i>

III. Student Summer Schools

1994 Leiden	<i>Concepts of Europe</i>
1995 Bologna	<i>The Problem of Political Leadership and the Ethnic Nation</i>
1996 Bologna	<i>The Civic Nation and the Ethnic Nation</i>
1998 Budapest	<i>Risk Policy Analysis</i>
1998 Oxford	<i>Human Rights</i>
1999 Paris I	<i>NATO and European Defence</i>
2000 Bologna	<i>European Policy and Enlargement</i>
2000 Oxford	<i>Church as Politeia</i>
2001 Oxford	<i>Human Rights and the movement of People in Europe</i>
2002 Oxford	<i>The Economics of European Integration</i>
2003 Prague	<i>Old and New Ideas of European Federalism</i>
2004 Leiden	<i>Islam and Europe: Building Bridges</i>
2005 Geneva	<i>Multilateral Governance: Effective Ways Forward?</i>
2006 Krakow	<i>Bridging the Divide: US-Europe Relations after 9/11</i>
2007 Helsinki	<i>Borders of Europe - where do they end?</i>
2008 Bonn	<i>Sacred Buildings in European Cities</i>

IV. Teaching Courses and Study Programmes

1992	<i>European Community Law</i> (Oxford, Leiden and Sienna).
1999	<i>Economics of European Integration</i> (Paris - BA module option).
1999	<i>Political Cultures and European Political Systems</i> MA (Bologna, Oxford and Leiden).
2000	<i>International Refugee Law</i> (Geneva and Oxford).
2004	<i>European Business, Cultures, and Institutions</i> symposium (Leiden and Oxford).
2004-7	<i>MA in European History and Civilisation</i> (Leiden, Paris I and Oxford).

The Europaeum played the key role in the creation at Oxford of the *Oxford Institute of European and Comparative Law*, the *European Humanities Research Centre*, the *Centre for European Politics, Economics and Society*, plus a number of fellowships, including the *Chair in European Thought* and, the *Bertelsmann Europaeum Visiting Professorship in 20th Century Jewish History and Politics*.

V. Linked Scholarship Programmes

- ❑ **The El Pomar-Europaeum Transatlantic Junior Fellowship 2008** - One Europaeum student to USA research fellowship.
- ❑ **The Roy Jenkins Memorial Fund 2004** - Four Europaeum students to Oxford and two outgoing Oxford students per annum.
- ❑ **The Oxford-Geneva Bursary Scheme 1997-2008** Annual bursaries for student exchanges between Oxford and the HEI.
- ❑ **The Scatcherd European Scholarships 1997** - Fully funded places at Oxford for European graduates, and for Oxford graduates at European Universities.
- ❑ **The Europaeum Scholarships in Jewish Studies 1995-2001**
- ❑ **Henry R Kravis Scholarships 1990s** - Allowed students read an M.Phil or M.Juris in at Oxford;

VI. Joint Research and Support Projects

- ❑ The **Future of European Universities Project 2001-4**, supported by Daimler-Chrysler Services A G, was a three-year investigation into the impact of new technology and the Knowledge Revolution with international expert conferences on *Borderless Education: Bridging Europe* (Berlin 2001); *New Times : New Responsibilities* (Paris 2002); and *New Partnerships: Opportunities and Risks* (Bonn 2003).
- ❑ The **Europaeum Research Project Groups** scheme encourages collaborative research across the association, supporting groups looking at such themes such as *Party System Changes*; *Churches and the Family*; *European Economic Integration*; *The Kosovo Stability Pact*; *European Identity*; *Regulation of E-commerce*; *Liberalism in 20th Century Europe*; *Transmission and Understanding in the Sciences*; and *Cultural Difference in Europe*, *Political Concepts in Europe*, *Race in European Universities*.
- ❑ **Islam-in-Europe Programme 2004-8** is supporting workshops and other events around this key theme, culminating in an international lecture series and conference.
- ❑ **Culture, Humanities, and Technology in Europe 2004-8** is supporting workshops and other events around this key theme, culminating in an international conference.
- ❑ The **US-Europe TransAtlantic Dialogue Programme 2005-8** is supporting workshops and other events around this key theme, culminating in an international workshop and conference.

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- **November 2006, Oxford**
Professor Wladyslaw Strozewski on *Human Being and Values*
- **June 2007, Oxford**
Will Hutton with Lord (Chris) Patten and Dr Kerry Brown, on *Challenge from the East: is the West ready for China?*
- **October 2007, Krakow**
Professor David Marquand on *The Challenges for Democracy in Europe*

*Je vois avec plaisir qu'il se forme
dans l'Europe une république
immense d'esprits cultivés.
La lumière se communique de tous
les côtés.*

VOLTAIRE

in a letter to Prince Dmitri Alekseevitch Golitsyn
14 August 1767

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