

European Law and Cultural Policies

Droit européen et politiques culturelles

Céline Romainville (ed.)



European Law and Cultural Policies

Droit européen et politiques culturelles

Céline Romainville (ed.)



Préface

Marc VERDUSSEN*

Le 15 novembre 2013, à Bruxelles, un colloque international a été consacré aux rapports entre le droit de l'Union européenne et les politiques culturelles : *Droit européen et politiques culturelles/European Law and Cultural Policies*. Cette réunion scientifique s'est déroulée au Parlement européen, avec le soutien du groupe des Verts et de madame Isabelle Durant, alors vice-présidente du Parlement européen. Le colloque a été organisé par le Centre de recherche sur l'État et la Constitution de l'Université catholique de Louvain (CRECO – UCL) et l'Institut d'études européennes de l'Université Saint-Louis de Bruxelles (IEE – USLB), en association avec l'Observatoire des politiques culturelles. Il a permis de réunir tout à la fois deux centres de recherche, des politologues et des juristes, des constitutionnalistes et des européanistes, des universitaires et des acteurs de terrain.

Le présent ouvrage publie un certain nombre de textes présentés à cette occasion. À l'instar du colloque, il est placé sous la direction scientifique de Céline Romainville, chargée de recherche du Fonds national de la recherche scientifique (FNRS) à l'UCL. Je tiens à la remercier chaleureusement pour avoir été à la fois la compositrice et la chef d'orchestre de cette partition scientifique. Céline Romainville a acquis, en droit public de la culture, une expertise et une visibilité incontestables. Sa thèse de doctorat l'a conduite à étudier les dimensions constitutionnelles du droit de la culture et à les envisager par rapport à des données essentielles du droit international¹. Au cours de son post-doctorat, elle poursuit cette exploration par un examen approfondi de l'articulation entre le droit constitutionnel et le droit européen de la culture.

Le thème de l'ouvrage renvoie à la problématique plus générale des politiques publiques en matière culturelle, avec toutes les interrogations que cette problématique charrie. Qu'est-ce que la « culture » ? Qu'est-ce

* Professeur ordinaire à l'Université catholique de Louvain (UCL) – Directeur du Centre de recherche sur l'État et la Constitution.

¹ C. ROMAINVILLE, *Le droit à la culture, une réalité juridique – Le régime juridique du droit de participer à la vie culturelle en droit constitutionnel et en droit international*, Bruxelles, Bruylant, 2014.

que la « diversité culturelle » ? Qu'entend-on par « identités culturelles » ? Y a-t-il un « droit à la culture » ou, selon les termes de la Constitution belge, un « droit à l'épanouissement culturel » ? Quelle est l'effectivité d'un tel droit ? Comment articuler les préoccupations culturelles avec d'autres priorités, justifiées elles aussi par l'intérêt général ? Comment les préoccupations culturelles peuvent-elles « irradier » l'ordre juridique, pour reprendre une expression bien connue de la Cour constitutionnelle fédérale allemande ? Autant de questions qui touchent au rôle des pouvoirs publics dans les activités culturelles. Aujourd'hui plus que jamais, ces questions, et tant d'autres qui y sont liées, fédèrent les chercheurs en droit constitutionnel et en droit européen et, plus largement, les spécialistes des sciences humaines en général.

En Belgique spécialement, il est notable que la politique culturelle se décline au pluriel. C'est bien de politiques culturelles dont il convient de parler. Ces politiques se croisent et se concurrencent dans un système institutionnel marqué par un enchevêtrement complexe des compétences. Certes, en vertu de la Constitution, les « matières culturelles » sont de la compétence de ces entités fédérées que sont les communautés – la Communauté française, la Communauté flamande et la Communauté germanophone –, qui assument donc dans ce domaine une responsabilité de principe. Cependant, cette dernière n'est pas exclusive. D'autres collectivités politiques jouissent d'attributions culturelles déterminées. Ainsi, ces autres entités fédérées que sont les régions – la Région wallonne, la Région flamande et la Région bruxelloise – ont des compétences qui leur permettent de subventionner des emplois dans les institutions culturelles, à travers les programmes régionaux de résorption du chômage, ce qui génère parfois d'inextricables chevauchements avec les politiques des communautés. À ces compétences régionales, s'ajoutent celles de pouvoirs locaux qui, au nom de l'intérêt provincial ou de l'intérêt communal, ont la possibilité de soutenir des initiatives culturelles déterminées. Quant à la collectivité fédérale, ses compétences culturelles sont loin d'être négligeables, depuis le statut fiscal et social des artistes et des techniciens du spectacle jusqu'à la gestion d'un certain nombre d'institutions culturelles fédérales, comme le Théâtre Royal de la Monnaie, l'Orchestre National de Belgique ou le Palais des Beaux-Arts de Bruxelles (« Bozar »). Cinq niveaux de pouvoir – communal, provincial, régional, communautaire et fédéral – cohabitent ainsi sur le même terrain, celui des activités culturelles.

La culture est, en Belgique, une illustration emblématique des écueils inhérents au partage des compétences dans les États fédéraux. Les difficultés sont d'autant plus complexes que les différentes politiques menées à l'intérieur des frontières doivent se conjuguer avec les politiques qui sont initiées dans le cadre de l'Union européenne et qui ne sont pas

dénuées d'ambiguïté. À cet égard, l'intuition sur laquelle se fondait le colloque s'est trouvée passablement confirmée.

Certes, il est entendu que le droit européen veut protéger et promouvoir les politiques culturelles nationales tout en s'attachant à la construction d'une identité culturelle européenne. « L'Union européenne contribue à l'épanouissement des cultures des États membres dans le respect de leur diversité nationale et régionale, tout en mettant en évidence l'héritage culturel commun », énonce l'article 167-1 du TFUE.

Certes encore, il est acquis que le droit européen veut encourager l'intégration de considérations culturelles dans tous les domaines communautaires, y compris dans la mise en œuvre des libertés de circulation. Cette transversalité est voulue par le TFUE, qui, en son article 167-4 du TFUE, dispose que « l'Union tient compte des aspects culturels dans son action au titre d'autres dispositions des traités, afin notamment de respecter et de promouvoir la diversité de ses cultures ».

En somme, il n'est pas contestable que l'Union européenne se veut à la fois une Europe des cultures et une Europe culturelle.

Il reste qu'en favorisant la dérégulation des marchés de la culture, le droit européen contribue à la fragilisation de ces mêmes politiques culturelles nationales et questionne la place de la culture dans un processus d'intégration économique. Dans les États multinationaux, cette fragilisation s'ajoute à la difficulté, voire l'impossibilité, de concevoir, à l'échelle de l'État, une politique culturelle commune.

Il reste surtout que l'identité culturelle européenne doit encore être pensée. Par là, il ne s'agit pas de fonder la démocratie politique européenne sur une identité culturelle, ce qui serait « mettre la charrue avant les bœufs au regard de l'histoire », comme l'observe très justement Florence Delmotte dans le très beau texte publié dans cet ouvrage. À ce stade, l'essentiel n'est pas tant de construire une identité culturelle que de s'interroger sur la possibilité de contribuer à la formation d'une conscience européenne à partir des patrimoines culturels des États européens. Ce questionnement exige de chacun une disposition à l'ouverture, à la tolérance et au dialogue.

Le défi est de taille. Comme l'écrit si bien le penseur portugais Eduardo Lourenço, il n'est pas aisé « d'attribuer un contenu à un projet européen qui, au-delà de sa performance économique et politique, soit aussi une réalité culturelle qui puisse être appelée européenne », c'est-à-dire une réalité qui soit « davantage que cette fluidité dans les échanges culturels relatifs au passé et au présent », cet « espace élargi de jouissance extérieure de biens culturels »². Si le défi est de taille, l'enjeu

² E. LOURENÇO, « Culture », in Y. HERSANT et F. DURAND-BOGAERT (dir.), *Europes – De l'Antiquité au XX^e siècle – Anthologie critique et commentée*, Paris, Robert Laffont, coll. Bouquins, 2000, p. 790-791.

de l'entreprise européenne nous impose pourtant de le relever. Car la pensée européenne nous enseigne que l'Europe « est faite de cette foi dans le progrès, de cet en-avant pétri des questions qui nous permettent de mieux avancer ensemble »³. C'est là une exigence de la modernité, qui requiert que nous nous projetions dans l'avenir. La modernité ne désigne-t-elle pas « la conception qu'une société se fait de son avenir, de ce qu'elle y imagine, de ce qu'elle en souhaite, de ce qu'elle y refuse »⁴ ? Point d'Europe de la culture sans une Europe moderne.

³ J. SEMPRUN et D. DE VILLEPIN, *L'homme européen*, Paris, Plon, 2005, p. 232.

⁴ J. ATTALI, *Histoire de la modernité – Comment l'humanité pense son avenir*, Paris, Robert Laffont, 2013, p. 7.

INTRODUCTION

The Multidimensionality of Cultural Policies Tested by European Law

Céline ROMAINVILLE*

Complex and polysemous, the concept of culture remains irreducible to any form of definition, especially when it is envisaged in the wide variability that is its meaning at the European level.¹ A return to the sources of the term ‘culture’ confirms the ambiguity of its significations and its multiple paradoxes. First, one must note that the Latin term ‘cultura’ does not have an equivalent in the Greek world.² Roman in origin, it comes from the term ‘colere,’ which signifies ‘to live somewhere,’ ‘to cultivate’ or even ‘honour.’ The concept referred initially to agriculture³ and religious cults, meaning care given to gods. It seems that it was Cicero who, for the first time, applied the word ‘cultura’ to the human spirit by creating a relationship between agriculture and education in a famous sentence: ‘[As] fertile as a field can be, it cannot be productive without culture, and it’s the same thing for humans without teaching.’⁴ The metaphorical use of the word ‘cultura’ outside of agriculture favoured the explosion of a general notion of culture as an element for the enriching of man, translating the ancient idea of natural skills through human action.⁵ Starting in the 10th century, thinkers used the word ‘culture’ in a figurative way. In the Age of Enlightenment, the term culture ‘referred to (...) the development of spiritual functions by extensive studies and

* Researcher at the FNRS at UCL – Lecturer at UCL, at USL-B and ULB.

¹ See T. Eagleton, *The Idea of Culture* (Oxford: Blackwell, 2000), 9-13 and P. Sticht, *Culture européenne ou Europe des cultures? Les enjeux actuels de la politique culturelle en Europe* (Paris: L’Harmattan, 2000) specifically 14-33.

² The Greek influence is limited to assigning an aesthetical dimension to the term ‘cultura’. In effect, and in contrast to the Romans, the Greeks perceived agriculture as a technique developed by man to dominate the environment, and not as a human activity expressing a concern for nature.

³ C. Jenks, *Culture* (London: Routledge, 1993), 8.

⁴ Cicéron, *Tusculanes*, II, 13. We need to highlight that, paradoxically, the term ‘cultura’, previously used figuratively, means ‘the contrary of the state of manufacturer or creator of a work of art’ (H. Arendt, *La crise de la culture* (Paris: Gallimard, 1972), 272.

⁵ W. Jaeger, *Paideia. La formation de l’homme grec* (Paris: Gallimard, 1988), 361-362.

exercises, as well as the acquisitions stemming from intellectual work.⁶ The philosophies of progress further deepened this distinction between nature and culture by insisting on the distance that humanity had built from the animal world.⁷ Finally, in the 19th century, emerges the collective scope of the word ‘culture.’ While the French and British preferred to designate, using the word ‘civilization,’ groupings of humans having acceded to a form of unity, the German language opted for the term ‘Kultur’ to designate this phenomena,⁸ the term ‘Bildung’ referring to the general culture of an individual.

Faced with such entangling of meanings, the institutions of the European Union have not taken the risk of defining the notion ‘culture.’ As such, in its communication of November 22, 1977, the European Commission tautologically referred to the ‘cultural sector’ as a socio-economic whole, made up of persons and companies that deal with the production of cultural goods and services. It clarified that this socio-economic whole ‘is not culture’ while ‘Community action in the cultural sector is not a cultural policy.’⁹ In 1982, the Commission established more explicitly that it did not intend to take part in ‘the academic debate on the definition, the purpose and the content of culture.’¹⁰ In 1996, it confirmed that in its eyes it is not up to an institution to determine the content of the concept of culture.¹¹ Concerning the disposition dealing with culture in the Treaty on the Functioning of the European Union (Art. 167) it contains no definition of the term, nor in Art. 87, 3(d) of the Treaty relating to the European Union, concerning assistance to Admitted States in order to promote culture and the protection of heritage. In the same fashion, the notion of ‘cultural diversity,’ which is at the heart of European integration and European law, has never been explicitly defined by Community institutions.¹²

⁶ C. Rivière, ‘Culture’, in S. Auroux (ed.), *Les notions philosophiques: dictionnaires* (Paris: PUF, 1990), 529. As such, Hobbes linked the concept of culture working for education, while Locke highlights the importance of good manners and taste.

⁷ C. Rivière, above fn 6, 529.

⁸ This term reflects early on a national connotation linked to desires of identity, and is often understood in relations with ‘Zivilisation’; see E. Blondel, *Nietzsche, le corps et la culture. La philosophie comme généalogie philologique* (Paris: L’Harmattan, 2006), 53-54.

⁹ Suppl. 6/77 – Bull. CE, p. 5-6, § 3.

¹⁰ Communication of the Commission to Parliament and the Council, 12 October 1982, Stronger Community Action in the Cultural Sector, COM(82) 590 final, 15 Bull. CE, suppl. 6/82, § 4.

¹¹ 1st Report on the Consideration of Cultural Aspects in European Community Action. COM (96) 160 final, 17 April 1996, COM(1996) 160, 3.

¹² The ratification by the EU of the UNESCO Convention on the protection and promotion of the diversity of cultural expressions of October 20, 2005 (Decision No. 2006/515/

Given that culture and cultural policies have remained undefined at the European level, it is necessary, in order to analyse the articulations between European law and cultural policies, to first examine the multidimensional aspect of these two concepts. Secondly, this introduction examines the evolution of the status of cultural policies in European law. Finally, the reader is introduced to the main thesis of this book, which deals with the multidimensionality of cultural policies in the face of European law.

1. The multidimensionality of culture and cultural policies

Confronted with a complex, fluid, omnipresent and extremely polymorphic phenomenon at the European level, this conceptual introduction offers the reader not a definition of culture in European law, but rather an identification of five dimensions of the concept of culture, to then proceed, throughout the book, to analyse their reception and their articulation (as these diverse dimensions are sometimes contradictory, often interdependent and indivisible).

The first dimension of culture is linked to identity, meaning to ‘the understanding that a person or group has of themselves.’¹³ It is tied up with an anthropological conception of the extent of culture as ‘a complex totality that includes knowledge, beliefs, art, laws, morals, customs and all other capacities acquired by man as a member of society.’¹⁴ This anthropological conception allows one to understand how culture, in the sense of the human condition, is characterized in the spaces of experiences and in space-time, as a ‘social figure,’ a given ‘historical community.’¹⁵ It allows one to understand the identification of individuals with a distinctive

CE of the Council of May 18 2006 relating to the conclusion of the Convention on the protection and promotion of the diversity of cultural expressions JOUE No. L 201 du 25/07/2006, p. 0015-0030) certainly gives hints about the content of the community notion of cultural diversity. Article 4 of the Convention stipulates that the notion ““Cultural diversity”” refers to the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies. Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.’ However, the attractiveness of this definition by UNESCO (the reconciliation within a definition of cultural diversity of antagonistic positions on the question) is also its weakness (the concept, legally speaking, remains imprecise).

¹³ J. Ringelheim, *Diversité culturelle et droits de l’homme. La protection des minorités par la Convention européenne des droits de l’homme* (Bruxelles: Bruylant, 2006), 7.

¹⁴ E. B. Tylor, *Primitive Culture* (London: Murray, 1871).

¹⁵ G. de Stexhe and M. Thomas, ‘La culture comme unité complexe: un enjeu médiatique et politique’, in H. Dumont and A. Strowel (eds.), *Politique culturelle et droit de la radio-télévision* (Brussels: Publications des FUSL, 1998), 30.

national community, but also the processes of identification and claims made by members of certain minority groups or groups ‘belonging to the diversity,’ in opposition to other communities perceived as being ‘dominant.’ In political philosophy, the communitarian¹⁶ approach is particularly concerned with explaining the importance of this identity dimension of culture. Charles Taylor evokes a ‘frame of reference’ that allows us to give meaning to our choices and coherence to our lives,¹⁷ as such insisting on the cultural attachments of individuals.¹⁸ Michael Sandel evokes a ‘constitutive’ community of the individual which engages individuals ‘in a type of citizenship that is more encompassing than a disengaged self⁹ could tolerate.’²⁰ Multiculturalism thinkers share this idea of a central importance of cultural links in the creation of identity. But they believe that if our identity is profoundly linked to culture, it is not totally determined by it, individuals being able to adopt a critical distance from their culture.²¹ Will Kymlicka believes, for example, that culture allows us to place our choices in a context, allows us to exercise our freedom by giving it meaning.²² Finally, it is important to highlight that some liberal authors also refer to the contribution of culture for the construction of identities. As such, Ronald Dworkin considers that culture allows individuals to forge their identity and choose among different conceptions of the ‘good life.’²³ Individuals are part of a social²⁴ and cultural network, but are able to question this network.²⁵ We can add

¹⁶ See in general: A. Berten, P. Da Silveira and H. Pourtois, ‘Introduction générale’, in A. Berten, P. Da Silveira and H. Pourtois (eds.), *Libéraux et communautariens* (Paris: PUF, 1997) 4.

¹⁷ See note C. Taylor, *Les sources du moi. La formation de l’identité moderne* (Trad. C. Melançon, Paris: Seuil, 1998) 46.

¹⁸ See C. Taylor, ‘The Politics of Recognition’, in A. Gutman (ed.), *Multiculturalism, Examining the Politics of Recognition* (Princeton: Princeton University Press, 1994) 25-73.

¹⁹ What he sees as being promoted in political liberalism.

²⁰ M. Sandel, ‘La république procédurale et le moi désengagé’, in *Libéraux et communautariens*, above fn 16, 263.

²¹ B. Parekh, ‘Rethinking Multiculturalism – Cultural Diversity and Political Theory’, (London: Macmillan Press, 2000) 158.

²² Parekh, above fn. 21, 82-84 and 126.

²³ R. Dworkin, *A Matter of Principle* (Oxford: Oxford University Press, 1985) 221-233 and W. Kymlicka, ‘Dworkin on Freedom and Culture’, in R. Dworkin and J. Burley (eds.), *Dworkin and His Critics: With Reply by Dworkin* (Oxford: Blackwell Publishing, 2004), 113-133.

²⁴ J. Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986) 309.

²⁵ A. Patten et W. Kymlicka, ‘Language Rights and Political Theory: Context, Issues, Approaches’, in A. Patten and W. Kymlicka (eds.), *Language Rights and Political Theory* (Oxford: Oxford University Press, 2003), 11; W. Kymlicka, ‘Liberal Theories of Multiculturalism’, in L.H. Meyer, S.L. Paulson and T.W. Pogge (eds.), *Rights*,

that this first dimension, identity based, cultural, is often polemic. It is especially so in dealing with questions of relations between national, regional and European cultural identities.

The second dimension of culture is aesthetic. Culture is as such seen in relation to a set of artistic expressions and elements of heritage. The identification of what artistic dimensions culture covers is controversial,²⁶ and it is not the intention of this work to enter into this never-ending debate, which extends beyond its framework. One must simply recall that art can be defined, in a traditional way, on the basis of set concepts, certain properties (representative, expressive and formal) and institutional characteristics.²⁷ In a conventionalist perspective, influenced by modern art, art is distinguished either by its institutions²⁸ or by its history.²⁹ A third alternative sees art in its relation to aesthetic function broadly defined, and is structured mainly on subjectivity and aesthetic experience.³⁰ In the three perspectives, what seems to characterize the artistic dimension of culture, in modernity and post-modernity, is its relation to criticism, expressivity, and ‘giving meaning.’ Luc Ferry proposes, for example, to see the art work in a non-conceptual way as ‘the link between a particular emotion and a universal idea operationalized by the reflection in view of establishing a direct communication between individuals, a common meaning not conceptually founded.’³¹ The ‘essential vocation of art’ is as such to ‘stage – we could also say present, exhibit, embody – in a sensitive material (colour, sound, stone) a truth seen as higher.’³² Works of art as such have this specificity of crystallizing, contributing to the construction and deconstruction of meaning.³³ The work of art or aesthetic experience has the thematic goal of working on the meaning of human and social experiences that they incorporate, embody and objectify,³⁴ and from which this work can be completed.

Culture and the Law, Themes from the Legal and Political Theory of Joseph Raz (Oxford: Oxford University Press, 2003), 233-234.

²⁶ For a panorama see: G. McFee, *Artistic Judgment: A Framework for Philosophical Aesthetics* (London: Springer, 2011).

²⁷ See for example: E. Kant, *Critique du jugement*, Trad. A. Renaut (Paris: Flammarion, 2000) 44.

²⁸ G. Dickie, *The Art Circle* (New York: Haven, 1984).

²⁹ J. Levinson, *Music, Art, and Metaphysics* (Ithaca: Cornell University Press, 1990).

³⁰ J. Dewey, *Art as Experience* (New York: Putnam, 1934).

³¹ L. Ferry, *Le sens du beau. Aux origines de la culture contemporaine* (Paris: Éd. Cercle d'Art, 1998), 61.

³² Ferry, above fn 31.

³³ C. Levine, *Provoking Democracy. Why we need the Arts* (Oxford, Blackwell Publishing, 2007) 35.

³⁴ de Stexhe and Thomas, above fn 15, 42.

The third dimension of culture is economic. Culture generates important economic transactions, which have intensified following globalization and the globalization of trade³⁵ and the appearance of ‘mass culture.’ The production of the latter has increased during the 20th century, notably through television.³⁶ For the 21st century, it is marked by an increase in the participation of the cultural sector in the world economy. It contributes up to 7.3% of the global GDP,³⁷ and is now one of the most dynamic sectors of the economy, with a growth rate within international trade of about 8.7% during the 2000-2005 period.³⁸ In OECD countries, cultural industries have seen an annual growth rate of 5 to 20%. Within the EU, according to a study by KEA on the cultural sector, the business revenue of this sector in 2003 reached 654 billion euros, the value added of this sector to the EU GDP was 2.6% in 2003, and its contribution to growth was 19.7% between 1999-2003.³⁹ This same study revealed that in 2004, the sector employed 5.8 million people (3.1% of the total jobs in the EU), a number that has continued to grow over the past decade. The cultural consumption evolves rapidly and has increased overall. The sector of cultural industries, closely linked to the development of the knowledge economy and a creative economy,⁴⁰ is reputed to encourage innovation, and has an important potential for employment and exports.⁴¹

The fourth dimension of culture is ‘social’: it acts like ‘capital’ that transmits to social classes a set of behaviours that locate individuals in society. Theories of ‘cultural legitimacy’ show in this perspective the determining link between social position and cultural practices: tastes are

³⁵ J. Heilbrun and C. Gray, *The Economics of Art and Culture* (Cambridge: Cambridge University Press, 2004).

³⁶ F. Balle, ‘Culture de masse’, in S. Auroux (ed.), *Les notions philosophiques: dictionnaire* (Paris: PUF, 1990), 532.

³⁷ J. Howkins, *The Creative Economy: How People Make Money from Ideas* (New York: Penguin Global, 2001), 126.

³⁸ UNESCO Statistical Institute, *Mesure de la contribution économique des industries culturelles Examen et évaluation des approches méthodologiques actuelles* (Montréal: Unesco Publishing, 2013, accessible on <<http://www.uis.unesco.org/culture/Documents/FCS-handbook-1-economic-contribution-culture-fr-web.pdf>>).

³⁹ KEA, *Etude sur l'économie de la Culture en Europe*, Study prepared for the European Commission (Directorate-General for Education and Culture) October 2006, accessible at <http://www.keanet.eu/ecoculture/executive_summary_fr.pdf>.

⁴⁰ R. Florida, *The Rise of Creative Class* (New York: Basic Books, 2002).

⁴¹ European Commission, Green Paper. Unlocking the potential of cultural and creative industries. COM (2010) 183/3; HKU, *The Entrepreneurial Dimension of the Cultural and Creative Industries*, Hogeschool voor de Kunsten Utrecht, Utrecht, 2010. <<http://ec.europa.eu/culture>>; CSES, *Study on the contribution of culture to local and regional development – Evidence from the Structural Funds*, 2010, <<http://ec.europa.eu/culture>>.

studied as a social usage of culture, which legitimizes social positions and allows for their reproduction. For Pierre Bourdieu, the position in the social space corresponds to a cultural heritage and shapes cultural behaviours,⁴² which constitute the symbolic reproduction of objective differences. As a consequence, even if mediation exists through use of taste, the conditions of existence and belonging to a certain social class determine overall cultural practices, and model the culture of a given social group.⁴³ Cultural capital, notably conditioned by the level of diploma, shapes people's systems for perception, structures tastes and attitudes, and in return, identifies social positions. Bourdieu's conclusions were revised by sociologists such as Bernard Lahire,⁴⁴ Richard A. Peterson,⁴⁵ Tony Bennett and Mike Savage,⁴⁶ who confirm that the access and participation in cultural life today remains principally influenced by the possession of a certain level of cultural capital, itself determined by the socio-cultural origins of individuals, even if a certain level of dissonance exists in cultural consumption. In effect, this research highlights new dominant cultural profiles that modulate the mechanisms of cultural distinction by outlining the separation between high and low culture in a multitude of new axes. These axes are no longer only structured around the legitimacy of certain cultures, but also around a concept of cultural voracity, as an aptitude for consumption and participation in a multitude of cultural forms, and around new types of relationships with culture, more or less 'omnivore,' more or less 'hedonist,' more or less 'lover of art,' more or less 'experimental' (adepts for novelty, experiences and creation).⁴⁷

Finally, the last dimension of culture is 'democratic': it targets the contribution of culture to the democratic training of citizens, but also to the creation and functioning of a vigorous public space.⁴⁸ This dimension

⁴² P. Bourdieu and A. Darbel, *L'Amour de l'art. Les musées et leur public* (Paris, Minuit, 1969) and P. Bourdieu, *Les Héritiers. Les étudiants et la culture* (Paris, Minuit, 1964).

⁴³ P. Bourdieu, *La distinction – Critique sociale du jugement* (Paris, Minuit, 1979).

⁴⁴ B. Lahire, *La Culture des individus. Dissonances culturelles et distinction de soi*, (Paris: La Découverte, 2004) and B. Lahire, 'The Individual and the Mixing of Genres: Cultural Dissonance and Self-Distinction' (2008) 36 *Poetics*, 166-188.

⁴⁵ R. Peterson, 'Problems in Comparative Research: The Example of Omnivorousness', (2005) 33 *Poetics*, 257-282; R. Peterson, 'Understanding audience segmentation: from elite and mass to omnivore and univore' (1992) 21 *Poetics*, 243-258.

⁴⁶ T. Bennett, M. Savage, E. Bortolaia Silva, A. Warde, M. Gayo-Cal et D. Wright, *Culture, class, distinction* (London: Routledge, 2008).

⁴⁷ These typologies were identified by Laurie Hanquinet in her thesis, *L'art de la représentation et la représentation de l'art. Du sens et du bon usage des musées d'art moderne et contemporain en Belgique*, thesis defended April 27, 2010, published to the Edition of the Free University of Brussels.

⁴⁸ See note, in the European context: J. Habermas, *The Crisis of the European Union. A Response* (Cambridge: Polity Press, 2012,) 48-70.

is tightly linked to the hermeneutic conception of culture, which highlights the specificity of the work operated by culture on meaning of social and human experiences.⁴⁹ In this perspective, culture is what structures and gives meaning to the human experience: information, knowledge, understanding and expression. Because it deals specifically with research about meaning, culture has a central importance for any democratic regime. It acts at the level of the socio-cultural conditions necessary for the establishment and functioning of a democracy, meaning the creation and vitality of the public space. For democratic theorists, the importance of inclusion of citizens in the public space is primordial for the constitution and functioning of a vigorous democratic space.⁵⁰ Democracy is considered as the result of a public space for discussion, in which the diversity of opinions can be expressed, the collective will is built, and dialogue on the principles of equality and autonomy is deepened.⁵¹ Yet rightly so, the cultural public sphere can lead to seeing things differently, make visible different options for the creation and functioning of the modern economic, social and cultural system, and allow for a discussion on the possible alternatives.⁵²

To these multiple dimensions of culture correspond different cultural policies, meaning different forms of public action in culture. Historically predominant, nationalistic cultural policies, ‘rallying,’ had the objective of the sublimation of the national feeling by the artistic education of an elite, the valuing of heritage and its communication, the support for the creation of excellence exalting national links. Those same policies for support of artistic creation and the conservation of heritage were in the two last decades assigned the task of promoting an identity based on dialogue and tolerance and on a certain number of values, such as the rule of law, the respect for human rights, allowing for the creation of a political community through the establishment of a vigorous public space. Policies for the democratization of culture and democratic culture arrived in the 1950-1960, having respectively the objectives of ensuring all equal access to cultural expression or recognizing each as a cultural actor, critical and creative. These cultural policies were complemented, through the influence of multiculturalism and communitarianism, by policies aiming at promoting cultural diversity and intercultural dialogue. Starting in the 1980s, we note an economic reorientation of cultural policies, called on to

⁴⁹ See note on this conception: de Stexhe and Thomas, above fn 15 and J.-L. Genard, *Les pouvoirs de la Culture* (Brussels: Éd. Labor, 2002).

⁵⁰ See J.-M. Ferry, *La question de l'État européen* (Paris: Gallimard, 2000).

⁵¹ P. Gérard, *L'esprit des droits. Philosophie des droits de l'homme* (Brussels: Bruylant, 2007), 131.

⁵² The extension of this democratic dimension of culture is the consecration, in a multitude of texts relating to fundamental rights, of the right to participate in cultural life.

support the creative economy and cultural and creative industries,⁵³ given their contribution to growth and their positive benefits for the economy.

These ‘positive’ cultural policies, calling on an active intervention by the state, interacted with, upon the opening of art and cultural markets, ‘negative’ cultural policies aiming at the suppression of barriers, the promotion of the diversity of cultural goods and services through the liberalization of trade.

2. Cultural Policies in European Law

The different cultural policies noted in the previous paragraph, articulating different dimensions of culture, seem, to a greater or lesser extent, decisive for European integration. First, the development of a European cultural policy is preceded by a pragmatic requirement, once we consider the need for a European ‘challenger’ in the face of the American giant and the overproduction of heavily financed cultural products. While in the field of the global export of films, music and TV shows, Europe loses 8% market share per year, the US gains 10%. Secondly, the deployment of cultural policies in the European space appears crucial if we accept the idea that the future of European integration relies on the creation of a political community at the European level. Two options seem available: said European political community relies either on a strengthened European identity – followed by the national path – or on a vigorous public space where daring cultural policies must contribute to openness, criticism, dialogue, the knowledge of the other and the continent’s history. Whatever path is taken (a reflection of national systems or the invention of a new one), the deployment of cultural policies will be necessary. Thirdly, The EU must be able to address the risk of homogenization of lifestyles and cultural expression at the European level – the risk that goes hand in hand with the development of a common market – by developing a policy for support of cultural diversity, allowing all to have a wide choice of lifestyles. This constitutes an ethical requirement accepted in political philosophy. Fourthly, culture is directly connected to the principle of equality of opportunity, which for the EU constitutes a major challenge, intrinsically linked to its legitimacy.

However, these issues remain largely underestimated by the builders of European law, in the same fashion as the depth of the hold of European law has on culture⁵⁴ and the impact of European integration on culture.

⁵³ N. Garnham, ‘From cultural to creative Industries: An analysis of the Implications of the creative industries: Approach to arts and media policy making in the UK’ (2005) 11 *The International Journal of Cultural Policy* 1, 15-29.

⁵⁴ C. Audet, ‘Le rôle grandissant des organisations internationales dans le domaine de la culture: regard sur le Conseil de l’Europe, l’Organisation internationale de la

Because the authors of the Treaty on the European Economic Community (EEC) of 1957 associated culture with jurisdictions of the Council of Europe or UNESCO, they limited themselves to developing an exception to the application of the principle of free movement of goods to the benefit of ‘national treasures’ in Article 36 of the EEC Treaty (becoming 30 in the Treaty on the European Community then 36 in the TFEU).⁵⁵ Yet the impact on culture and cultural policies of European law and European integration, positive and negative, has largely surpassed the simple question of protecting national treasures. In effect, starting in 1968, the confirmation of the application of the principles of the free movement of cultural goods and services, in the decision *Commission v Italy*,⁵⁶ opens the door to a vast questioning, by invoking economic freedoms, of all cultural policies involving barriers to the internal market and, more specifically, all measures aiming at excluding foreign cultural goods and services to benefit national goods and services. This application of economic freedoms to the ‘cultural sector’ brought on a weakening of member state cultural policies, whether they aimed at conserving and promoting culture, democratizing it or initiating a cultural democracy. By basing themselves on their jurisdictions in internal market matters, the institutions of the EU were forced to regulate almost entirely and exclusively the commerce in cultural goods and services, employment in the cultural sector, international negotiations on cultural diversity and the protection of cultural heritage, the media sector and copyright.⁵⁷

It was precisely on the occasion of the regulation of freedom of movement in fields linked to culture (such as the film or audiovisual industry, copyright and media) that the EU developed its first actions in cultural matters (by basing itself on its jurisdictions in economic matters) and it continued to develop its most important cultural actions, in terms of impact and depth. As such, the negative cultural policies of the EU are much more powerful than their positive cultural policies. The economic bases, on which European action in cultural matters should have long ago

Francophonie, l’Unesco et l’Union européenne’, in C. Audet and D. Saint-Pierre (eds.), *Tendances et défis des politiques culturelles. Cas nationaux en perspective*, (Québec: Presses de l’Université de Laval, 2010), 345-385.

⁵⁵ For a larger study of the status of cultural goods and services in European and international commercial agreements, see: L. Mayer-Robitaille, *Le statut juridique des biens et services culturels dans les accords commerciaux internationaux*, (Paris: L’Harmattan, 2008).

⁵⁶ Case 7/68 *Commission v Italy* [1968] ECR 617, para. 3, at 430.

⁵⁷ On European interventions in culture prior to the adoption of the article relating to the European cultural jurisdiction, see: B. de Witte, ‘The Scope of Community Powers in Education and Culture in the Light of Subsequent Practice’, in R. Bieber & G. Ress (eds.), *Die Dynamik des Europäischen Gemeinschaftsrechts* (Baden Baden, Nomos, 1987) 261-281.

attached themselves, as such sustainably influenced the nature of future cultural interventions. The latter remain principally dominated by the objective of liberalizing the sector or supporting the cultural industry,⁵⁸ even if the concern for respecting cultural identities of the Member States and cultural diversity appear to be growing, notably at the international level.⁵⁹

The hold of European law on culture translated itself explicitly and more positively during the adoption of the Maastricht Treaty. First, Article 128 of this Treaty (which became 151 of the Amsterdam Treaty then 167 of the TFEU) expressly foresees a place for culture in the European project, and a role for Europe in cultural matters.⁶⁰ This disposition consolidates the judicial bases previously invoked to justify European interventions in cultural matters. It establishes, in its 1st paragraph, that '[t]he Community contributes to the development of Member State cultures in the respect of their national and regional diversity, while highlighting the common cultural heritage.' This phrasing reflects the long debates aiming at recognizing a place for culture in the European Treaties, the difficulty of assuming a cultural role at this level, and the lack of consensus on the role of the Union as well as on the model of public action to promote in cultural matters. Article 128 of the Maastricht Treaty also highlights, more fundamentally, the controversies surrounding Europe's cultural identity and the place of culture in the process of economic integration, as long as it imposes conditions on the Union's action in matters of cultural policy. The Union only 'contributes' to the 'development of Member State cultures' while 'highlighting the common cultural heritage,' which seems to distance the Union from the current 'non-national' cultural diversity. Article 128, § 2, among other things, states that the Union's cultural action does not aim at 'encouraging' cooperation between Member States and, only

⁵⁸ R. Craufurd Smith, 'Community Intervention in the Cultural Field: Continuity of Change?', in R. Craufurd Smith (ed.), *Culture and European Union Law* (Oxford: Oxford University Press, 2007) 19-78; A. Littoz-Monnet, *The European Union and Culture: between economic regulation and European cultural policy* (Manchester: Manchester University Press, 2007); D. Ward (ed.), *The European Union and the Culture Industries. Regulation and the Public Interest* (London: Ashgate, 2008).

⁵⁹ B. de Witte, 'Trade in Culture: International Legal Regimes and EU Constitutional Values', in G. de Búrca and J. Scott (eds.), *The EU and the WTO – Legal and Constitutional Issues* (Oxford: Hart, 2003) 237-255.

⁶⁰ For an evaluation of this contemporary disposition, see: H. Dumont, 'Les compétences culturelles de la Communauté européenne', in J. Lenoble and N. Dewandre (eds.), *L'Europe au soir du siècle. Identité et démocratie* (Paris: Esprit, 1992) 224-225; B. de Witte, 'Recht en cultureel beleid in de Europese Gemeenschap: ruimte voor eenheid in verscheidenheid?', in *Recht en Europese cultuur – Europees recht en cultuur* (Antwerpen: Maklu, 1994) 63-85.

if ‘necessary, to support and complement their action’ in a series of fields from which care was made to remove commercial cultural trade, excluding any form of cultural policy hindering the economic field. The third paragraph favours cooperation with third-party states and competent organizations in cultural matters, particularly the Council of Europe. Finally, it needs to be mentioned that, in virtue of Article 128, § 5, of the Maastricht Treaty, unanimity was required in European cultural matters (this unanimity requirement has been maintained until the Lisbon Treaty of 2007), while all forms of harmonization are excluded. With regards to the fourth paragraph of Article 128, it establishes the principle of a transversal integration of cultural considerations in all EU policies, stipulating that ‘the Community takes into account the cultural aspects in its action pertaining to other dispositions of the present Treaty.’ But this disposition, leaving large and important latitude to European institutions in the implementation of the integration of cultural considerations, has not always been taken seriously and considered in a systemic way, notably in key sectors of the legislation relating to the internal market and the four freedoms of movement.⁶¹ The Maastricht Treaty is not limited to recognizing a European cultural jurisdiction; it will also more explicitly devote the notion of cultural diversity as an objective of this new jurisdiction (Article 128, § 1st), and as a purpose of the process of European integration (Article 3). Finally, this treaty proceeds with the insertion of Article 92, § 3 of the EC Treaty (which became Article 87, § 3 EC Treaty then 107 TFEU) with point d) establishing the compatibility with the internal market of ‘assistance for the promotion of culture and the conservation of heritage, when they do not alter the trade conditions and competition in the Union in way contrary to the common interest.’

The Amsterdam Treaty refines the notion of transversal integration of cultural consideration in the Union’s actions, by establishing that the Community ‘takes into account’ these considerations ‘in order to notably respect and promote the diversity of its cultures.’

The Charter of Fundamental Rights of the Union, adopted in 2000, modified in 2007 and having received, starting with the entry into force of the Lisbon Treaty, the same legal force as the Treaties, does not pay much attention to fundamental rights linked to culture, to cultural policies and to cultural dimensions of fundamental rights. It is limited to evoking cultural diversity in its preamble, to protecting the freedom of arts and sciences

⁶¹ On the taking into account of cultural considerations, see: E. Psychogiopoulou, *The integration of cultural considerations in EU law and policies* (Leiden: Martinus Nijhoff Publishers, 2008) and J.-C. Barbato, *La diversité culturelle en droit communautaire. Contribution à l’analyse de la spécificité de la construction européenne* (Aix-Marseille: PUAM, 2008); M. Niedobitek, *The Cultural Dimension in EC Law*, Trad. J. Benn and R. Bray (London, Kluwer Law International, 1997).

(Article 13) and recognizing the rights of seniors to participate in social and cultural life (Article 25). It also establishes that ‘[The] Union respects the cultural, religious and linguistic diversity’ in Article 22. This concern for the respect and promotion of cultural diversity, which can clearly play a protective role for cultural policies,⁶² was reiterated during the adoption of the Lisbon Treaty, in 2007, in Article 188 C of the Treaty (replacing Article 133 of the EC Treaty, becoming article 207, § 4 of the TFEU). This disposition requires unanimity in decisions relating to commercial agreements that risk affecting cultural diversity, and as such explicitly aims a protecting culture from an overly important attention being accorded to its economic dimension. This precaution must be put in relation to the diplomatic efforts expended by the Union in the UNESCO Convention of the Protection and Promotion of the Diversity of Cultural Expressions, an International Treaty that notably aims at legitimizing and validating national cultural policies.

Without being explicitly linked to the cultural question, a body of rules contained in the Treaty clearly relate to it. For instance, Article 4, § 2, of the EU Treaty, establishes that ‘The Union respects the national identity of its Member States.’

3. The Multidimensionality of Cultural Policies tested by European Law

The present book intends to critically examine the paths taken by the EU for cultural questions and how it integrates it into the whole of its parts, mainly from an internal perspective.⁶³ This means describing, explaining and evaluating the objectives, the nature, the extent and the impact of European interventions in matters of cultural policy in order to understand in what measure European law assumes, respects, protects and promotes the multidimensionality of cultural policies, and, *in fine*, of culture itself. The contributions brought together in this book show that the multidimensional aspect of culture and cultural policies mentioned above has not always been fully assumed by European law. This difficulty of integrating the multidimensionality of cultural policies at the European level, balancing economic objectives with other objectives, reconciling national identities and other identities, can be explained notably by the ambiguities and uncertainties noted above, around the terms ‘culture’ and ‘cultural policy,’ but also for asymmetrical reasons,

⁶² H. Schneider and P. Van den Bossche (eds.), *Protection of Cultural Diversity from an International and European Perspective* (Antwerp, Intersentia, 2008).

⁶³ The book in effect does not deal with the external dimension of cultural policies, and rather concentrates on the interactions between Member State internal cultural policies and European law, as well as on internal cultural policies of the EU itself.

both institutional and substantial, in cultural matters. The contributions show that this difficulty in assuming the multidimensionality of cultural policies is mainly manifested by the implicit or explicit bias towards negative cultural policies and the economic dimensions of cultural policies (which win out over their democratic, social and aesthetic dimensions). If all the contributions admit that the objectives of the EU in cultural matters cannot be reduced to the removal of barriers to the internal cultural market, it still remains that they also reveal that this economic objective, which is accompanied by a certain form of cultural logic (the opening of all societies of Member States to a diversity of cultural products and services), remains a priority. Article 167, § 4, of the TFEU only evokes the obligation to ‘take into account’ cultural considerations, while other dispositions impose, for example, ensuring a ‘high level’ of protection of health or consumers. For Rachel Craufurd Smith, ‘Culture is thus something of a joker in the pack, whose value is not pre-determined.’⁶⁴ Admittedly, the Court accepts, since the *Cinéthèque* decision,⁶⁵ that cultural objectives can be invoked to justify restrictions on the four freedoms of movement. But the weight of this argument remains uncertain. First, the recognition of a cultural justification against a state measure does not exclude that the Court qualifies *in fine* the protectionist measure. Additionally, this recognition of the cultural value of a policy does not fundamentally change the parameters of proportionality test. The analysis of Court of Justice jurisprudence reveals, as such, that the use of cultural arguments remains a risky strategy. In certain sensitive fields, with regards to certain measures, the cultural argument can be lucrative, notably in regards to protection of language or traditions considered as being at the heart of the cultural identity of Member States. Other measures aiming at ensuring the diversity of cultural expressions will be, on the other hand, quickly judged incompatible, in spite of their cultural purpose, because the Court will implicitly consider that the measure is, above all, protectionist in nature. And the positive measures adopted by European institutions with regards to cultural and creative industries, essentially based on economic considerations, do not seem to imply a revision of the suspicious attitude of these institutions when they have to deal with national cultural support policies for their cultural industry. In other words, if the cultural economic protectionism is justified, or even desired, at the European level, it is excluded at the national level, even when it supports authentic cultural policies.

⁶⁴ R. Craufurd Smith, ‘Introduction’, in *Culture and European Union Law*, above fn 58, 11.

⁶⁵ Joined Cases C-60 and 61/84, *Cinéthèque SA v. Fédération Nationale des Cinémas Français* [1985] ECR 2605.

The exploration of the multidimensionality of cultural policies in European law is structured in four sections.

In the first section, the book clarifies the extent of the ‘culturally specific jurisdictions’ of the EU and ‘positive’ integration implemented by the EU in the cultural field, mainly on the bases of Article 167 of the TFEU (ex 128 EC Treaty). The objective is to precisely delimit the contours of the specifically cultural jurisdictions of the EU and their relationship with the cultural policies of the Member States. More specifically, we aim at determining if the EU’s internal cultural jurisdictions can be considered as a tool for the promotion both of national cultural policies and the European cultural identity. This first section inevitably asks questions about the relationship between the cultural jurisdictions of the EU, cultural jurisdictions of the Member States and the principle of subsidiarity, but also about the role of the European Court of Justice as guarantor of the division of cultural jurisdictions. Rachel Craufurd Smith retraces the evolution of European cultural jurisdictions and their translation into European cultural policies that could have been daring but which, recently, are evolving towards the development of a support policy for the European cultural industry. Hugues Dumont shows that the EU’s cultural jurisdictions are not sufficient to compensate for the negative integration it is leading. The elaboration of a positive cultural policy is not enough to counterbalance the negative economic integration that is weakening the cultural policies of Member States by excluding all measures that favour, in a discriminatory way, national cultural productions over other cultural productions.

In the second section, the book analyses the integration of cultural concerns in European law in a general way and in key sectors, such as state aid regulation or the law of the freedoms of movement. The objective is to examine in what way European law, in integrating cultural consideration in internal market law, is able to protect national cultural policies and promote specifically European cultural policies. The study also deals with the regulation of cultural industries, and identifies the cultural policy considerations that underlie the negative integration policy of the EU. Evangelia Psychogiopoulou develops an overview of the situation of the principle of integration, in European law, of cultural considerations, a principle outlined in Article 167, § 4, of the TFEU. She shows that while the ‘mainstreaming’ foreseen by this disposition functions in a more systematic and homogeneous way than previously, this progress can be explained by the vast heterogeneity of the viewpoints about the importance of cultural diversity for the EU. The analysis of the integration of cultural concerns in European law continues in the subsequent contributions, with the identification of admissible cultural policies pertaining to internal market rules. With the goal of fulfilling the

latter, European law, from its origins, is reluctant to admit the validity of measures implicating a closing of national cultural markets. The objective followed is both economic and cultural, given that the completion of the internal market does not only aim at freeing commerce from existing barriers, but also, implicitly, making societies more culturally open, more diverse. Cultural nuances were nonetheless applied to this internal market logic. States benefited early on from important latitude to regulate, even forbid commerce in cultural goods when it affects the protection and the promotion of their cultural heritage.⁶⁶ Subsequently, local traditions were progressively protected from market assaults. As Antoine Bailleux reminds us in his contribution, the Court of Justice and European institutions have accepted the legitimate character of certain national interventions aiming at protecting certain cultural products and their specificities. The objective here is to ensure that European citizens have access to an authentic diversity of ‘typical’ cultural services and products (even if the risk remains high that the operation of opening to markets of these protected goods and services brings on a homogenization of their production, which aims at making them desirable to all potential consumers).⁶⁷ Finally, as Alain Strowel shows in the case of copyright, certain sectors are managed both by an economic and cultural logic, which can be complementary and mutually reinforcing.

In the third section, the objective is to evaluate, in a legal perspective, the impact of European law on culture and cultural policies. This effort at evaluation is complex, as it means isolating the influence exercised by European interventions from other variables that affect it (stemming notably from creators, publics, etc.). Three particular problems are examined. First, Jean-Christophe Barbato examines how European cultural interventions have contributed to progressively defining the notion of cultural diversity at the European level. Then, Céline Romainville evaluates the impact of European law and European interventions on the respect, protection and promotion of the right to participate in cultural life. Finally, Marie-Sophie de Clippele and Eadaoin Ni Chaoimh, starting from the concept of ‘regulatory intensity,’ try to measure the impact of European measures in matters of the protection of cultural heritage on national regulatory autonomy and on private actors in the European art market.

⁶⁶ See A. Biondi, ‘The Gardener and Other Stories: the Peregrinations of Cultural Artefacts within the European Union’, in R. Craufurd Smith, *Culture and European Union Law*, above fn 58, 153-165; G. Carducci, *La restitution internationale des biens culturels et des objets d’art volés ou illicitement exportés* (Paris: L.G.D.J., 1997) 100; B. De Witte, ‘A jurisdiction to protect: the pursuit of non-market aims through internal market legislation in The Judiciary’, in P. Syrpis (ed.), *The Legislature and the EU Internal Market* (Cambridge: Cambridge University Press, 2012) 25 and f.

⁶⁷ Craufurd Smith, above fn 64, 4.

In the fourth section, several political analyses are brought together to evaluate the relationship between European law and national laws for cultural policies. This evaluation is led, from a national point of view, by Jean-Gilles Lowies, who highlights the complexity of the process of the cognitive Europeanization of cultural policies. This author indicates that the effects of European interventions take place at the level of declared objectives for cultural policies, but also within their founding ideas. Renaud Denuit evaluates the impact of European interventions from a European point of view. Recalling the weakness of budgets affected to support actions by the EU, which he refuses, outside of the audiovisual case, to qualify as real policies, this author sketches the surprising boundaries of European cultural intervention as well as the resistance by Member States to the idea of a European cultural identity. Finally, Florence Delmotte proposes a discussion of the two last contributions, returning to the weakness and the indirect character of European cultural policies, while also highlighting the increased importance of the growing awareness of cultural issues at the European level, and the difficulty of understanding the notion of European cultural identity.

All the contributions, while focusing on the question of cultural matters, also help clarify certain founding principles of European law. As such, the theme of this work reveals the existence of unresolved questions, discomforts, even unconsidered postulates of European integration and European law. First, it identifies the problematic relationship that the main founding mechanisms of European legal integration maintain with redistributive policies,⁶⁸ notably cultural ones. The book frequently comes back to the modalities of the proportionality test and their consequences for national policies of a redistributive nature, such as certain cultural policies. Subsequently, the articulation between European law and national law of cultural policies asks the question dealing with the complexity of relations between judicial levels, the difficulty of reconciling sometimes contradictory objectives and often antagonistic political options, which are sometimes favourable for interventionism and regulation, sometimes for deregulation. Finally, the relationship between European law and cultural policies, because they touch on the notions of European cultural identity and European cultural public spaces, asks the question about the meaning of the future of the European integration project. How can one conceive of a political community without a common cultural identity, based on an irreducible diversity of cultures? How to fan the flame of an authentic European public space, which would allow citizens and people

⁶⁸ See: F. Scharpf, *Community and Autonomy. Institutions, Policies and Legitimacy in Multilevel Europe* (Frankfurt/New York: Campus Verlag, 2010) specifically Chapter 13 'The Double Asymmetry of European Integration – Or: Why the EU Cannot Be a Social Market Economy', 353-391.

of Europe to invest in the latter? Is the European Union able to build a 'critical and self-reflecting pluralism,'⁶⁹ which would allow it to develop specific cultural policies while promoting the diversity of national cultural policies?

This book's ambition is certainly not to offer definitive answers to all these questions. More modestly, it tries to open up to new perspectives on the role played by culture in European law, examining the ambiguities of cultural arguments that are raised and, in the end, assess the objectives of European Union law.

⁶⁹ Dumont, above fn 60.