

Acquis Communautaire and
European Exceptionalism: A Genealogy

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A GENEALOGY

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1. INTRODUCTION

This paper examines the genealogy of the *acquis communautaire* of the European Union (EU). *Acquis communautaire* is a phrase that defies easy translation into English. At times it has been rendered simply as “Community patrimony.”¹ Academics have tended to leave it untranslated, but to describe it in greater detail. For example, Philippe Schmitter defined *acquis communautaire* as “the sum total of obligations that have accumulated since the founding of the [European Coal and Steel Community] and are embedded in innumerable treaties and protocols.”² Roger Goebel is perhaps best at capturing the “settled” quality of the *acquis*, if one may borrow that term from jurisprudence. He states that the “*acquis communautaire* essentially conveys the idea that the institutional structure, scope, policies and rules of the Community (now Union) are to be treated as ‘given’ (‘acquis’), not to be called into question or substantially modified by new states at the time they enter.”³

To date, investigations into the genesis of the *acquis communautaire* have proved inconclusive. The term *acquis communautaire* rose out of obscurity sometime in the 1960s to become the project of European integration’s “holiest cow of all.”⁴ Although a variety of

¹ European Communities, *Glossary the Reform of the European Union in 150 definitions* (Brussels: Office for Official Publications of the European Communities, 1997).

² Philippe Schmitter, “Imagining the Future of the Euro-Polity with the Help of New Concepts,” in Gary Marks, Fritz W. Scharpf, Philippe C. Schmitter and Wolfgang Streeck, et al., eds., *Governance in the European Union* (London: Sage, 1996), p. 162.

³ Roger J. Goebel, “The European Union Grows: The Constitutional Impact of the Accession of Austria, Finland and Sweden,” *Fordham International Law Journal* 18 (April 1995), pp. 1141-43.

⁴ Joseph H. H. Weiler, “The Reformation of European Constitutionalism,” *Journal of Common Market Studies* 35, no. 1 (1997), p. 98.

historians, lawyers and political scientists have explored the matter, they have all restricted their scope of their studies to the postwar era and none have definitely established its origins.⁵

Limiting the examination to the postwar years, however, lifts the *acquis communautaire* out of its larger historical context, silencing the deeper historical legacy that accounts for its very existence.

This paper argues that a full understanding of the significance of the *acquis communautaire* for European and international politics requires an analysis that extends beyond the spatial and chronological confines of postwar Europe. It posits that the provenance of the *acquis communautaire* can be traced back to the concept of “standard of civilization,” which the European colonial powers crafted during the late nineteenth and early twentieth centuries to justify colonial rule. The genealogy of the *acquis communautaire* reveals that the concept is embedded within a discourse that necessitates the construction of a less-than-civilized, non-European “other.” By definition it places EU members above other nations and precludes the acceptance of difference as equal. Moreover, the *acquis communautaire* as currently constituted

⁵ Studies of the origins of the *acquis communautaire* by legal scholars include: Goebel; Christine Delcourt, “The Acquis Communautaire: Has the Concept had its Day?” *Common Market Law Review* 38, no. 4 (August 2001), pp. 829-70; Carlo Curti Gialdino, “Some Reflections on the *Acquis Communautaire*,” *Common Market Law Review* 32 (1995), pp. 1089-1121; and Pierre Pescatore, “Aspects judiciaires de l’*acquis communautaire*,” *Revue Trimestrielle de Droit Européen* 21 (1981), pp. 617-57. Some political scientists have also looked at this question, for example, Christopher Preston, “Obstacles to EU Enlargement: The Classical Community Method and the Prospects for a Wider Europe,” *Journal of Common Market Studies* 33, no. 3 (1995), pp. 451-63; and Antje Wiener, “The Embedded *Acquis Communautaire*: Transmission Belt and Prism of New Governance,” *European Law Journal* 4 (1998). Knud Erik Jørgensen has conducted a constructivist analysis of the *acquis communautaire*, focusing on the failed enlargement discussions of the early 1960s (“The Social Construction of the Acquis Communautaire: A Cornerstone of the European Edifice,” *European Integration Online Papers* 3, no. 5, posted 29 April 1999, <http://eiop.or.at/eiop/texte/1999-005a.htm>).

and employed invests the European Union as the exclusive author of the values and practices of “civilization,” and the sole judge determining which nations belong to the club of the “civilized.” Using the *acquis communautaire* as the cornerstone of European integration is therefore particularly problematic for the conduct of EU foreign policy. The construct, which is inherently hierarchical and hegemonic, risks encouraging a revival of European chauvinism.

This paper has three parts. Part one discusses the conceptualization of the “standard of civilization.” It shows that the “standard of civilization” took three forms in European politics before the Second World War: a legal doctrine, a device to sort regimes and peoples, and a hegemonic ideal. Part two investigates the demise of the “standard of civilization” and the impact of this collapse on European identity during the mid-twentieth century. It suggests that the *acquis communautaire* represents a reconfigured retrieval the “standard of civilization.” Part three delves into the usage of the *acquis communautaire* in the postwar project of European integration.

2. THE “STANDARD OF CIVILIZATION”

In the sixteenth and seventeenth centuries, European conceptualizations of “international society” comprised only Christian rulers and peoples.⁶ Others fell outside of the realm of society. This began to change towards the end of the eighteenth century, writes Hedley Bull: “As religious influences on international politics gave place to secular ones, the belief that international society was distinctively Christian went into decline, but was replaced by the belief

⁶ Hedley Bull, “Foreword,” in: Gerrit Gong, *The Standard of “Civilization” in International Society* (Oxford: Clarendon Press, 1984), p. vii.

that it was a society confined to states of European culture and civilization.”⁷ The decline of the power of religious authority, increased contact with peoples of non-European descent, and the ascendancy of positivist legal conceptions led European nations to re-define “the conditions under which they would or would not admit non-European political communities to membership of the international society they formed among themselves. Thus arose the idea that independent political communities which aspired to membership of international society had to meet a standard of ‘civilization’.”⁸

By the turn of the twentieth century, the “law of Christian nations” had been “slightly altered and largely redefined as the ‘law of “civilized” nations’.”⁹ One can define a “law” or “standard of civilization” as “an expression of the assumptions, tacit and explicit, used to distinguish those that belong to a particular society from those that do not.” By definition, “those who fulfill the requirements of a particular society’s standard of civilization are brought inside its circle of ‘civilized’ members, while those who do not so conform are left outside as ‘not civilized’ or possibly ‘uncivilized’.” Until World War II, this “standard of civilization” played three roles in international affairs: a legal framework, a sorting mechanism to judge peoples and states, and a hegemonic ideal. Each of these roles is addressed below.¹⁰

2.1 The “Standard of Civilization” as a Legal Framework

⁷ Ibid.

⁸ Ibid.

⁹ Gong, p. 5.

¹⁰ Ibid., p. 3.

The ‘standard of civilization’ was first and foremost a legal principle. “By 1905, at the latest,” writes Gerrit Gong, “a standard of ‘civilization’ had emerged as an explicit legal principle and an integral part of the doctrines of international law prevailing at the time.”¹¹ The principle divided the world into three categories: “civilized,” “semi-civilized” and “barbaric.” According to the Hedley Bull, the “standard” emerged as a response to the “need for reciprocity in dealings between European and non-European peoples.”¹² To enter what nineteenth century publicists called the “Family of Nations,” a state needed to show that it could honor the obligations and responsibilities attributed to a “civilized” nation as defined by Europeans. This left the Ottoman Empire, Japan, China, Siam and other ‘eastern’ states on the fringes of “civilized” society.

Until the end of the nineteenth century, the “standard” by which the Ottomans and others were judged remained unsaid. Increased contact with non-European peoples, however, led European powers to make previously implicit assumptions explicit requirements. “In the course of intense interaction with countries unfamiliar with the European international society’s customary practices and unspoken assumptions, these standards needed to be explicitly articulated.”¹³ To codify the “standard of civilization,” international legal scholars developed a set of five requirements:

1. a “civilized” state guarantees basic rights, i.e. life, dignity, and property; freedom of travel, commerce, and religion, especially that of foreign nationals;

¹¹ Ibid., p. 14.

¹² Bull, p. viii.

¹³ Gong, p. 38.

2. a “civilized” state exists as an organized political bureaucracy with some efficiency in running the state machinery, and with some capacity to organize for self-defense;
3. a “civilized” state adheres to generally accepted international law, including the laws of war; it also maintains a domestic system of courts, codes, and published laws which guarantee legal justice for all within its jurisdiction, foreigners and native citizens alike;
4. a “civilized” state fulfills the obligations of the international system by maintaining adequate and permanent avenues for diplomatic interchange and communication.
5. a “civilized” state by and large conforms to the accepted norms and practices of the “civilized” international society, e.g. suttee, polygamy, and slavery were considered “uncivilized,” and therefore unacceptable.¹⁴

The impact of this codification on the Ottoman Empire is particularly interesting. The 1856 Treaty of Paris gave the Sublime Porte a kind of provisional admittance into European society. Yet, in the words of one early twentieth century scholar of international law “her position as a member of the Family of Nations was anomalous, because her civilization fell short of that of Western states.”¹⁵ When the Treaty of Paris was signed, the “standard of civilization” remained a largely subjective, uncodified set of assumptions. There were certainly a number of stipulations that the Ottomans were required to meet in order to join the “*concert européen*” in 1856, but these were not articulated in terms of a “standard of civilization.” By the 1907 Second Hague Conference, however, the “standard” was clear. At the Hague Conference, the Ottomans were placed among the “second-class” powers largely because of the “capitulations.” During the

¹⁴ Ibid, pp. 14-15.

¹⁵ L. Oppenheim, *International Law*, Ronald Roxburgh, ed., 3rd edition (London: Longmans, Green and Co., 1920), p. 34.

twelfth century, the Sultan extended extra-territorial jurisdiction to European “infidels.” These legal rights—known as the “capitulations”—were originally granted as a means of allowing European nationals to be judged by their own civilizational standards rather than by rules of the Sublime Porte. Over the centuries, however, the capitulations “became a symbol in European eyes of Ottoman inability to uphold ‘civilized’ standards.”¹⁶ Europeans, in other words, interpreted the capitulations as evidence that the Ottoman legal system was not up to the “standard of civilization” now written into international law.

A few non-European nations did manage to achieve “civilized” status—most notably Japan and the United States. Yet the power to grant “civilized” status remained in European hands. And this brings us to the second function of the “standard of civilization,” its sorting role.

2.2 The “Standard of Civilization” as a Sorting Tool

Although the “standard of civilization” emerged as a legal doctrine, it went well beyond the realm of international law. It also “reflected Europe’s need to explain and justify its overlordship of non-European countries in other than merely military terms.”¹⁷ By the late nineteenth century, colonial expansion was frequently justified along moral and civilizational lines. Placing colonized or non-European peoples into the “uncivilized” category did not mean that non-Europeans were deemed incapable of achieving “civilization.” Indeed, colonial powers saw colonialism as means of spreading “civilization” to the backward, unenlightened regions of the globe.

¹⁶ Gong, p. 107.

¹⁷ Ibid., p. 42.

In Britain this became the “White Man’s Burden,” typified by Cecil Rhodes’ famous call for “equal rights for every civilized man.” In France, political leaders and colonial administrators spoke of their “*mission civilisatrice*.” The French traced their “civilizing mission” back to 1789. The Revolution produced a widely held ethos within France that “*la grande nation* had an obligation to carry the revolutionary ideals beyond France’s borders.” Revolutionary ideology “helped transform the Enlightenment belief that barbarians *could* be civilized into the imperial doctrine that France *should* be civilizing fettered and depraved peoples everywhere.”¹⁸ The ultimate goal of the French “civilizing mission” was the transformation of “uncivilized” peoples into liberated French citizens in accordance with the “Declaration of the Rights of Man and the Citizen.”

The distinction between the rights of “Man” and the rights of the “Citizen” is crucial for in the French colonial vision. In the French colonial empire, meaningful citizenship—citizenship that carried the same rights and privileges as it did in Paris—was granted to only a handful of *évolués* who had achieved educational, cultural or political standards. Colonial French leaders at times expressed the hope that they could ultimately turn all the “subjects” of Overseas France into French “citizens.”

“Superior races,” in the words of Jules Ferry, who served as Prime Minister in Paris during the 1880s, “have a right *vis-à-vis* the inferior races...they have a right to civilize them.”¹⁹ The ideas of Ferry guided French colonial policy for decades. In 1954 François Mitterand, then

¹⁸ Alice L. Conklin, *A Mission to Civilize: The Republican Idea of Empire in France and West Africa, 1895-1930* (Palo Alto, California: Stanford University Press, 1997), p. 17.

¹⁹ Quoted in Conklin, p. 13.

Minister of Overseas France, declared that “the work of Jules Ferry serves as an example and model of the most modern initiatives.”²⁰ For many French politicians, whether socialist or Gaullist, the goal of turning the ‘inferior races’ into “civilized” French citizens fell squarely in line with the republican ideology of 1789. The constitutions of the Third and Fourth Republics each extended limited citizenship rights to “subjects” within the French empire.

The French, of course, were not the only ones to use the “standard of civilization” as a justification for colonial conquest. At the 1885 Berlin Conference, all European powers agreed to “bind themselves to watch over the preservation of the native tribes, and to care for the improvement of the conditions of their moral and material well-being,” with the ultimate aim of “instructing the natives and bringing home to them the blessings of civilization.”²¹ This “sacred trust of civilization” was later incorporated into the League of Nations trusteeship system that entrusted the “tutelage” of those less “civilized” to “advanced” nations. The “standard of civilization,” then, was not simply a legal instrument. It also served as a sorting mechanism to justify the domination of non-European peoples by portraying colonial expansion as a humanitarian and civilizing mission.

2.3 The “Standard of Civilization” as a Hegemonic Ideal

Finally, the “standard of civilization” served as a hegemonic ideal. Codifying civilizational “standards” into international law and threading them through treaties signed with

²⁰ Quoted in Frederick Quinn, *The French Overseas Empire* (Westport, Connecticut: Praeger, 2000), p. 114.

²¹ Gong, p. 77.

non-European nations effectively invalidated the possibility of other “civilizations” or other “standards.” European values, norms and institutions were deemed universally valid and used to gauge the progress of other nations. Japan, for instance, entered the “civilized” world at the turn of the century after it revised its civil and criminal codes, signed an alliance with Great Britain and proved its military capacity by defeating the Russians in 1905. The Ottomans, on the other hand, remained a “second class” power because their legal system differed from that of “civilized” Europe.

For colonial powers, conceptualizing European civilization as universal legitimated European expansion throughout the world. It also meant that the non-European world would be judged by Europeans using a European set of criteria. Those heading towards European values were inching closer to “civilization,” while those pursuing different paths were regarded as descending deeper into despotism and “savagery.” For non-European powers, the “standard of civilization” became a principle of organization around which political systems and institutional structures were organized.

3. THE DECLINE OF THE “STANDARD OF CIVILIZATION”

The next question to ask is a simple one: what happened? If the “standard of civilization” was such an integral part of international law and international relations during the late nineteenth and early twentieth centuries, when and why did it fade into obscurity? Hedely Bull provides two answers. “The disappearance in the present century of the distinction between full and partial membership in international society,” he writes, “i.e., of the distinction between those states which had met the standard of ‘civilization’, was indeed in part the result of a successful

revolt of Asian and African peoples against European dominance. But it also reflected a continuing process which tended to lead to greater homogeneity of political communities.”²² For Bull, anti-colonialism sunk the “civilization” project of colonial powers. Interestingly, Bull does not suggest that the “standard of civilization” itself was problematic. In fact, he goes to lengths to remind us that it was not. “The arrogance of many Europeans,” he asserts,

in equating civilization with the particular civilization of Europe, was no less than that of the Chinese, nor was the belief of Europeans that their religion was the one true faith any less than that of Muslim people with whom they came into contact. The standard of “civilization” on which the Europeans insisted did indeed lead to unjust treatment, but the demand of Asian and African peoples for equality of rights in international law was one that the latter did not put forward until they had first absorbed ideas of the equal rights of states to sovereignty, or peoples to self-determination, and of persons of different race to individual rights, which before their contact with Europe played little or no part in their experience.²³

What Bull is saying, essentially, is that the colonialism may have lead to “unjust treatment” but in the end, it had its benefits. Asians and Africans, after all, “absorbed” the universal standards of equal rights, self-determination and individual rights. Putting aside the sweeping claim that none of these norms existed in Africa or Asia prior to European contact, Bull suggests that the “standard” failed because colonized peoples revolted before “civilization” was fully “absorbed.” In this sense, the “standard” was simply overtaken by events.

Bull’s second explanation—increased homogeneity of political communities—is equally interesting for it also implies that the “standard” succeeded to a certain extent. The “standard” was expressly designed, after all, to promote homogeneity. Bull suggests that the distinction

²² Bull, p. ix.

²³ Ibid.

between “civilized” and “uncivilized” has lost its meaning because all modern states have met the necessary criteria.

Gerrit Gong makes a slightly different argument. He suggests that two forces, one within Europe and one without, precipitated the decline of the “standard of civilization.” Like Bull, he locates the first force in colonial resistance. “The standard,” he writes, “was increasingly considered anachronistic and insulting by the growing number of non-European countries which were becoming for both political and legal reasons full International Persons and members of the Family of Nations.”²⁴ The moment of de-colonization, Gong suggests, triggered a “bandwagon” atmosphere. The number of African and Asian states to gain international recognition more than doubled from 1955 to 1961. This left the “standard of civilization,” as a means of differentiating between states “ready” to join international society and those that were not, largely irrelevant. This is similar to Bull’s first explanation. According to Gong, the “standard of civilization” collapsed not because of its internal inconsistencies but because it was overtaken by events. African and Asian states, in other words, jumped onto the “bandwagon” of independence, self-determination and international recognition before demonstrating their ability to meet the European “standard of civilization.”

The second force undercutting the “standard of civilization” came from within Europe itself and questioned the assumptions upon which the “standard” was based. “The introduction of extraneous requirements such as the degree of civilization, the legitimacy of origin, the religious creed and the political system of a new community,” wrote one legal scholar in 1950, “would shift the basis of recognition from the objective test of State existence to nebulous,

²⁴ Gong, p. 84.

intractable considerations.”²⁵ By the late 1930s, the “standard of civilization” was increasingly seen as ambiguous and arbitrary. Countries that were civilized *prima facie*, such as Japan, could obviously never meet all the “standard of civilization” criteria. The subjective and tacit assumptions about civilization made the ‘standard’ not only difficult to define but difficult to apply.²⁶ Furthermore, questions over the possibility of other standards or other civilizations challenged the idea of a single universally valid “standard” for all peoples and states.

Most importantly, however, was the failure of Europe to live up to its own “standard of civilization.” “Riddled as it was with overtones of discrimination against race, colour, and creed, the standard of ‘civilization’ withered as part of the corpus of beliefs that were rapidly becoming socially unfashionable.”²⁷ For Europeans and non-Europeans alike, fascism, Communism, two world wars, the holocaust and the brutalities of colonialism rendered Europe’s hegemonic claim over civilization increasingly untenable.

This does not mean that the “standard of civilization” disappeared altogether. Bull and Gong suggest that it may have been replaced with a new “standard of modernity” or a “standard of human rights.” Another argument, however, could suggest that the “standard of civilization” has not been replaced but only re-configured.

4. FROM “STANDARD OF CIVILIZATION” TO ACQUIS COMMUNAUTAIRE

²⁵ Ti-chiang Chen, *The International Law of Recognition*, London (Stevens and Sons, under the auspices of the London Institute of World Affairs, 1951), p. 60 (also quoted in Gong, p. 86).

²⁶ Gong, p. 22.

²⁷ Gong, p. 87.

This paper has outlined three uses of the “standard of civilization”: legal, discriminatory and hegemonic. One could also add a fourth role: identity construction. For some time, European nations have defined themselves in a similar manner. They have used terms such as “advanced,” “developed” and “civilized.” While there were clearly differences of identity within Europe, Europeans have seen the difference between the European “self” and the non-European “other” as much greater. The largely peaceful division of Africa, culminating in the 1885 Berlin Conference, illustrates the extent to which colonial powers were able to join together under the common banner of “civilization.” The “standard of civilization” moved the boundaries of the “self” and the “other” from the national level to the continental. In this way, the “standard of civilization” provided a “European identity” long before anyone began to talk about the possibility of European integration. It bridged the boundaries of language, culture, history and nationality to forge a new set of shared values, norms, culture and heritage.

In some ways, this “European identity” under the “standard of civilization” was much stronger than its contemporary EU counterpart, for it linked Europe’s discourses, treaties and policies. Belgians, British, Dutch, French, Italians, Germans, Portuguese and Spanish were all united by the “standard of civilization” and the need to extend it to the Asian and African “other.” “Identities are forged,” writes Anthony Smith in *The Question of Europe*, “out of shared experiences, memories and myths, in relation to those of other collective identities. They are in fact often forged through opposition to the identities of significant others, as the history of paired conflict so often demonstrates. Who or what, then are Europe’s significant others?”²⁸

²⁸ Anthony D. Smith, “National Identity and European Unity,” in Peter Gowan and Perry Anderson, eds., *The Question of Europe* (London: Verso, 1997), p. 339.

Smith suggests that the Cold War provided one set of significant others. If he were to cast his net back a few more decades, however, he would realize what this paper has already pointed out—until the collapse of the “standard of civilization,” the “barbarian,” and not the “communist,” was Europe’s significant other.

Smith does recognize the possibility of a non-European “other,” but he sees this as a potential future development rather than a historical artifact. “There is the prospect,” he writes,

of an increasingly affluent, stable, conservative but democratic European federation, facing, and protecting itself from, the demands and needs of groups of states in Africa, Asia and Latin America. To some extent this prospect is still mitigated by the remaining ex-colonial ties between certain European and certain African or Asian states. But were the European project to achieve its political goals, it would entail not just economic exclusion but also cultural differentiation and with it the possibility of cultural and racial exclusion. The forging of a deep continental cultural identity to support political unification may well require an ideology of European cultural exclusiveness.²⁹

Smith seems to have forgotten historical developments prior to the postwar project of European integration. This may be a function of the larger problem surrounding studies of the *acquis communautaire*—i.e., the tendency to limit research to the time-line of European unification, thereby missing many of the structural and institutional legacies that shaped the Union’s formation. Smith is clearly speaking of a hypothetical future situation, yet the “standard of civilization” provided a “European identity” based on exactly the kind of exclusion Smith describes.

The implosion of the “standard of civilization” by the mid twentieth century forced Europe to reassess its conception not only of the “other” but also of the “self.” Abroad, African

²⁹ Ibid., pp. 339-40.

and Asian nations achieved independence and joined the “family of nations” without reference to the suddenly “antiquated standard of civilization.” Post-colonial nations aptly used the references to self-determination in the UN and Atlantic Charters as well as the example of World War II which was promoted by the Allied powers—who used tens of thousands of Asian and African conscripts—as a fight for “liberation.”

With regard to the “other,” French colonial discourse employed the concept “*acquis colonial*” long before the start of the postwar project of European integration to rank the relative position and “progress” of its colonial possessions.²⁸ When an “other,” in this case Asia and Africa, succeeds in redefining itself, the identity of the “self,” or Europe, must also change. Hedley Bull and Gerrit Gong argue that the “standard of civilization” became irrelevant in the face of de-colonization. They also suggest that the “standard” was largely met—all states now belong to the “Family of Nations” and the dichotomy between “civilized” and “uncivilized” no longer applies. This paper offers a different explanation. It suggests that the Europe abandoned the “standard of civilization” at mid twentieth century because it had become plain to all that European claims to hegemony over civilization were bankrupt. European powers went back to the drawing board, so to speak. They initially focused internally to find a new sense of “civilization” at home as a means to reconstruct a new European “self.” This meant replacing the subjective, primordial elements of the “standard of civilization” with a clearly codified set of criteria delineating what it means to be European.

²⁸ For example, <http://www.guinee.net/bibliotheque/histoire/st25aout.html>; and <http://www.france.diplomatie.fr/francophonie/memoire/gdesdates.html>.

This is the context surrounding the *acquis communautaire*. It is no coincidence that the *acquis* stress many of the same components that formed the cornerstones of the “standard of civilization.” Adherence to the responsibilities and obligations of treaties, reciprocity, harmonized legal and institutional structures, and zero-sum membership (one is either in or out) are key elements of both the “standard of civilization” and the *acquis communautaire*. Here the parallels between the cases of the Ottoman Empire and present day Turkey are revealing. Elements of the “civilization” project worked their way into European unification—this is not surprising since many of the same politicians were influential actors in both systems. The Schuman Declaration of 1950 and the Preamble to the ECSC Treaty, for instance, declare that “la contribution qu’une Europe organisée et vivante peut apporter □ la civilisation est indispensable au maintien des relations pacifiques.”³⁰

Furthermore, the *acquis* plays the same roles as the “standard of civilization.” It serves as a legal doctrine, a sorting mechanism, a hegemonic ideal. It also has become the basis for developing a common European identity. The core difference is the extent to which the “standard” and the *acquis* produce a sense of common identity among Europeans. The “standard” forged a European identity largely because it had a clearly defined other. The *acquis*, on the other hand, is far more concerned with the interior architecture of Europe than with other regions of the world. This does not mean, however, that the *acquis* is incapable of producing an other along the same lines as the “standard of civilization.” Indeed, the tendency of EU officials to use the *acquis* as a proxy for European values and a measurement of the progress of non-EU states strikes a chord the world has heard before.

³⁰ From the text of The Robert Schuman declaration, 6 May 1950.

5. THE *ACQUIS COMMUNAUTAIRE* IN PRACTICE

The transition from the “standard of civilization” to the *acquis* was not immediate. During the early years of European integration, some public figures continued to invoke primordial arguments emphasizing race and religion.³¹ Although even today one need not look far to find racial or primordial rhetoric used in discussions on European integration, this approach is now thoroughly delegitimated in public discourse.³² Most contemporary appeals to European “values” and European “civilization” make a different argument. The legal and political standards embodied by the *acquis* have largely replaced the older, more visceral formulation. Still, one of the problems that plague analyses of the *acquis communautaire* is the slippery nature of the term itself. Although the *acquis* now covers more than 80,000 pages of documentation, it is, in the words of Anna Michalski and Helen Wallace, like “something that everybody has heard about...but nobody knows what it looks like.”³³

³¹ Charles de Gaulle, *Memoirs of Hope: Renewal and Endeavor* (New York: Simon and Schuster, 1970), p. 171.

³² For example, in November 2002, former French president and head of the European Union’s constitutional convention, Valéry Giscard d’Estaing, said in an interview with *le Monde* that Turkey’s Muslim population and high birthrate amounted to “a different culture, a different approach, a different way of life.” Giscard added, “Its capital is not in Europe, 95 percent of its population lives outside Europe, it is not a European country.” Giscard asserted that if Turkey were allowed into the European Union, other nations in the Middle East and North Africa would clamor to join. He concluded, “In my opinion, it would be the end of the European Union.” (*Le Monde*, 8 November 2002).

It is worth noting that Giscard was roundly attacked for these remarks and was forced to retract them.

³³ Anna Michalski, Anna and Helen Wallace, *The European Community: The Challenges of Enlargement*, (London: Royal Institute of International Affairs, 1992), p. 35.

Before the 1991 Treaty on European Union (TEU, a.k.a. the Maastricht Treaty) endowed the *acquis communautaire* with a constitutional status, “*acquis* had been used in at least four different contexts: the enlargement of the Community (the ‘accession’ *acquis*), the development of the European construct (the ‘institutional’ *acquis*), association with third countries (the ‘Lomé’ *acquis*), and the Agreement on the European Economic Area (the ‘EEA’ *acquis*).”³⁴ As Schmitter suggests, the oldest and most well known *acquis* is associated with accession. This is “the whole body of rules, political principles and judicial decisions which new Member States must adhere to, in their entirety and from the beginning, when they become members.”³⁵ This usage of the concept and term *acquis* to assess the worthiness of potential new members echoes the clinical gaze the French applied to their colonies to delineate the *acquis colonial*.

At first glance, one might argue the codification of “Europeanness” embodied in the *acquis communautaire* represents an improvement over the older conceptualization because it has replaced a subjective and ambiguous definition of “Europe” with an precise, seemingly objective standard of measurement. For example, the *acquis* enables the EU’s High Representative for Common Foreign and Security Policy, Javier Solana, to claim that 80 percent of the African, Caribbean and Pacific (ACP) countries “share European values” simply because that was the percentage of nations from those regions that signed of the 1995 revised Lomé convention.³⁶

³⁴ Gialdino, p. 1090.

³⁵ Schmitter, p. 162.

³⁶ Statement by Javier Solana in “Positive Comments From Both Parties After Signing of Revised Lomé Convention,” Europe Daily Bulletins, No. 6601-09/11/1995.

With each round of enlargement, the accession have *acquis* became longer and more elaborate. The second and third rounds of enlargement provided perhaps the strongest impulses toward expanding and formalizing the *acquis*, because the candidates pool consisted of the then emerging democracies of Greece, Portugal and Spain. The EU has currently organized the *acquis communautaire* into 31 chapters for the express purpose of facilitating accession negotiations with several nations in central and eastern Europe. During an enlargement round, these chapters become “the focus of intensive screening and negotiations between the EU and each of the candidate countries.”³⁷ The term “negotiation,” however,

is a bit of a misnomer...since a basic requirement of EU membership is that candidate countries accept and apply all of the *acquis*, as it stands at the point of accession. Only certain “transitional arrangements” are permitted, but these must be limited in number and scope, of a limited duration, and accompanied by detailed plans with firm deadlines for fully implementing the *acquis*. Thus, not much real bargaining occurs in the accession negotiations: the final outcome is pre-determined—full and complete acceptance of the *acquis*—and whatever bargaining there is focuses on these limited transitional arrangements.³⁸

Based on the above descriptions, it is possible to abstract the following principles.

First, the *acquis* cannot be separated from the treaties and agreements that bind member states.

Full and complete acceptance of the *acquis* means full and complete acceptance of EU treaties

and protocols. This ensures reciprocity between member states. It also ensures that member

states will fulfill the responsibilities and obligations associated with all EU agreements. In

return for meeting the performance requirements of the *acquis*, member states (and their citizens)

³⁷ Michael J. Baun, “EU Enlargement and the *Acquis Communautaire*: The Consequences for Transatlantic Relations,” AICGS/DAAD Working Paper Series, Washington, DC, 2002, p. 1.

³⁸ Ibid.

are granted the rights and privileges associated with EU membership. Second, to prevent members from “shopping around,” the *acquis* comprise a set of institutional ‘givens’ that must be accepted as a whole. Those who accept the *acquis* retain the possibility of becoming EU members. Those who cannot meet the requirements of the *acquis* will remain outside the European community. Finally, it is possible to identify a broader function of the *acquis*. Obviously, the *acquis* are used to differentiate prospective members who have the capacity and the willingness to honor EU treaties and protocols from those who do not. Yet, the codification of the *acquis* does more than this. It standardizes European ‘values’ in such a way that they can then be used as a meter-stick to take the measure of other, non-EU states.

6. CONCLUSION

This paper demonstrates that the genealogy of the *acquis communautaire* begins with the “standard of civilization” doctrine of the late nineteenth and early twentieth centuries. Like the “standard of civilization,” the *acquis communautaire* as currently constituted and employed privileges the European Union as the exclusive font of the values and practices of “civilization,” and invests the EU as the judge determining which nations belong to the club of the civilized. This formulation of European identity, with its inherently exclusionary framework, unavoidably divides the world into the admitted, the potentially admissible and an inferior non-admissible, non-EU “other.” These categories are all too reminiscent of the civilized, the semi-civilized and the barbarian found in the standards of civilization. Policy-makers and scholars should therefore take great care with the emerging notion of European identity and values, given this questionable

pedigree and inherent divisiveness. Non-judicious employment of it risks the reemergence of European chauvinism.