

Justifying Europe

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‘Results, results, results!’ I can still hear Herman Van Rompuy pronouncing these words in the dining room of Brussels’ Justus Lipsius building in response to the forceful plea Jürgen Habermas had just made in favour of an urgent strengthening of Europe’s supranational democracy.¹ Van Rompuy understood the logic of Habermas’s argument, but he insisted that the legitimacy of the European Union’s institutions does not hinge on further institutional engineering, but on what the Union realizes for the benefit of its citizens. In this essay, I shall side with both Van Rompuy and Habermas. I shall briefly present and defend a version of each of the two positions, though one that differs significantly from theirs. Somewhat less elliptically, the view I shall defend in the following pages can be summed up as follows.

I agree with Van Rompuy that results matter far more than procedures. However, there is a more sensible way of understanding results than the one that quickly leads, via jobs and growth, to the ‘neo-liberal’ dictate of competitiveness. It consists in regarding the main defect in the present state of the European Union as being neither an economic failure nor a democratic deficit, but rather its growing justice deficit; its failure to contribute to a fair distribution of resources among European citizens.

Nevertheless, I fully agree with Habermas that we absolutely need not only some form of democracy, but one that operates on the appropriate scale. Otherwise, we cannot possibly hope to be able to address the justice deficit in a lasting and effective way. However, the formal institutions of our representative democracies are not all that matter in this respect. Now more than ever, the civilising force of hypocrisy – to use a neat phrase coined by Jon Elster to refer to the key virtue of a well-functioning democracy – can fortunately use other tools than electoral pressure.

¹ Revised version of the epilogue to *After the Storm. How to save democracy in Europe* (L. van Middelaar & P. Van Parijs eds.), Tiel: Lannoo, 2015, 247-261. This collective volume, to components of which this essay is heavily indebted, is largely based on a series of encounters between Herman Van Rompuy and a set of European “thinkers”, which Luuk van Middelaar and I organised at his request during his second mandate as president of the European Council. The dialogue between Herman Van Rompuy and Jürgen Habermas referred at the beginning of the text was the first of these encounters.

Why a common market? Why a European public authority?

For those who believe in the primacy of results, democracy, sovereignty, legitimacy, federalism and much else are not valuable in themselves.² They are merely part of an unavoidably messy, imperfect, provisional, endless *bricolage* that needs to be tirelessly guided by an obstinate quest for justice. Institutions need to be created and scrapped, shaped and reshaped, powers need to be moved up and down and their use constrained, in such a way that decisions made by whoever is in charge – whether a government or an assembly, a central banker or an entire people consulted by referendum – are *justifiable* to all those affected as free and equal persons.³ From this perspective, democratising the European Union does matter, but only because and to the extent that it contributes to *justifying* it, to making it more just.

Do the institutions required for this purpose include the common European market in which the European Union originates? Quite plausibly. Firstly, justice requires peace, and sharing a market pacifies. As argued by many, from Montesquieu to Hayek, the development of commercial relations tends to turn passions, often national or ethnic, into interests. Mutual interest in trade and regular contact through trade reduce the drive to plunder and kill. In the immediate aftermath of the disaster of the Second World War, the plausibility of this rationale provided part of the steam for the European Economic Community. The fading of war memories weakens the appeal of this argument, but does nothing to undermine whatever validity it ever had.

A plausible conception of justice needs to incorporate peace. It also needs to incorporate efficiency. For social justice does not mean making the distribution of resources as equal as possible, but rather improving the condition of the worst off as much as is sustainable.⁴ This provides a second *prima facie* ground for justifying the market, even a capitalist market, and as large a market as possible. For markets possess an inbuilt tendency to gather and use widely disseminated information: agents whose fate depends on market success will be highly motivated to discover more about what people are keen to purchase and what resources are available to produce it. Moreover, the fear of being outcompeted forces capitalist firms to fight

² Referring to the standards proclaimed by Condorcet: 'Any society that is not enlightened by philosophers is deceived by charlatans' (Jean-Antoine-Nicolas Caritat, Marquis De Condorcet, *Prospectus* [1793], Quoted in Elisabeth Badinter And Robert Badinter, *Condorcet. Un Intellectual en politique* (Paris: Fayard 1988), p.9.

³ This conception of the relationship between justice and democracy is illustrated and defended in Philippe Van Parijs, *Just Democracy: The Rawls-Machiavelli Programme* (Colchester: ECPR Press 2011).

⁴ In *Real Freedom for All: What (if anything) can justify capitalism?* (Oxford: Oxford University Press 1995), I develop a conception of social justice as the sustainable maximization of the real freedom of those with least real freedom. But the argument in this essay does not hinge on adopting this specific conception. Any efficiency-sensitive conception of social justice as the equalization of opportunities would serve just as well.

their own inertia and continue to innovate. The less that supply and demand are trapped within national borders, the more efficiently the resources can be mobilised.

There are several powerful reasons, however, why the job of pursuing justice cannot be left to markets alone. Firstly and most obviously, markets cannot get off the ground without a public authority defining and enforcing the property rights they presuppose. Secondly, markets only function efficiently if prices register all relevant costs and benefits. This does not happen spontaneously if positive and negative externalities are involved, i.e. benefits and damages which it is impossible, or prohibitively cumbersome, to charge to the people who enjoy or cause them. In order to prevent or at least reduce the resulting inefficiencies, public intervention is essential, whether to regulate or prohibit, subsidise or tax.

Thirdly, and most fundamentally, justice is not only a matter of peace and efficiency. It is also a matter of fair distribution of resources. There is nothing intrinsic to even the best functioning market that comes anywhere close to guaranteeing this. The role of the public authority is again crucial. Yet, it needs to operate at the right level, on a scale that enables it to impose its rules on the market. If states are immersed in a market and have to compete with each other for capital, skilled labour and outlets, they will become just as obsessed with competitiveness as firms. From an efficient tool in the service of social justice, the market will then turn into a fatal device that gradually squeezes out of every state the capacity to pursue it.⁵

Why democracy?

This last point is of crucial importance for the question of what we need the European Union for and hence what sort of thing we should want it to become. Before turning to this point, let me briefly address another prior question: this public authority – which we obviously need, and need at the appropriate level – why does it need to be democratic? More precisely, why should those who exercise it be elected, directly or indirectly, by those over whom this authority is exercised? The answer boils down to three reasons.⁶

Firstly, democracy, like the market, comprises an inbuilt propensity to gather and process relevant information; actors whose fate depends on electoral success will be highly motivated to pay attention to the concerns of the set of people entitled to vote for them, which will often tend

⁵ It is precisely because of this disabling of the member states and because of his conviction that a multinational federation would be unable to take over this redistributive task that Friedrich Hayek was such an enthusiastic advocate of such a federation. See F. Hayek, “The economic conditions of interstate federalism” (1939), reprinted in *Individualism and Economic Order*, London: Routledge, 1948, 255-272. In “Thatcher’s plot — and how to defeat it” (*Social Europe*, 29 November 2019), I highlight the relevance of Hayek’s insightful text to the EU’s current predicament.

⁶ These three reasons are spelt out in Philippe Van Parijs, ‘Electoral democracy and its rivals’, in David Van Reybrouck et al., *The Malaise of Electoral Democracy and What to Do About It* (Re-Bel e-book 14, 2014, pp. 46–61, www.rethinkingbelgium.eu).

to overlap largely with the set of people affected by their decisions. This educational force of vote fetching provides democracies with a structural advantage over autocratic, technocratic or bureaucratic regimes.

Democracy's second virtue is the disciplining force of self-infliction. Once political power has lost its supernatural aura, electoral democracy offers, under appropriate circumstances, the best way of securing voluntary compliance with public rules and decisions one may dislike. You obey your rulers more easily because you chose them and because you believe you can kick them out in the next round of elections.

For the sake of justice, the third virtue of democracy, already hinted at above, is even more important: the civilizing force of hypocrisy. Electoral campaigns and parliamentary debates create a public space in which proposals are put forward and arguments exchanged, potentially seen and heard by all citizens. Discourses are thereby systematically driven into appealing to the general interest, or to fairness among all, or to the fate of the worst off. If all actors play their role sufficiently well – not only those in power, but also the opposition, the press, civil society, academia – it is not just words, but also actions that will be civilised in this sense. Never mind the most intimate motives. What matters are the words uttered in public and their grip on public policies and institutional reforms. Were it not for the operation of this mechanism, no one could reasonably hope that the dynamics of the market could be harnessed so as to benefit all, including the losers of the market game.

Why far more than a confederation? Why far less than a federal state?

If this is what democracy is for, how should it be designed in the European Union? This general question immediately bifurcates into two main sub-questions. Firstly, what should the distribution of powers be between the Union and the Member States? Secondly, how should decision-making be organised at the level of the Union?

In order to frame the first sub-question, it is useful to think of political entities with at least two levels of government – the centre and the components – as being all located on a continuum that ranges from a loose confederation to a unitary state. In between, there are many degrees, depending on the relative importance of the powers allocated to each level and on how entrenched this allocation is. It is convenient to speak of a *confederation* when all significant powers are entrenched at the level of the components, of a *federation* when some of them are entrenched at the centre, of a *federal state* when those entrenched at the centre include the ultimate authority over physical coercion, compulsory education and compulsory redistribution, and of a *unitary state* when all significant powers are entrenched at the centre. If these

definitions are adopted, it should be clear that the European Union falls far short of qualifying as a federal state, but also that it is far more than a confederation.

Must the European federation move back to being a confederation or move on to becoming a federal state? Neither. There is no need for it to become a fully fledged federal state. Indeed, its entrenched linguistic diversity gives special force to the subsidiarity principle, understood as a presumption in favour of retaining competences at a lower level of centralisation unless a strong case can be made for lifting them to a higher one. Each of the three virtues of democracy outlined above, works better with a population that shares a language. Hence, any transfer of powers to the linguistically more heterogeneous European level must be considered with special caution. On the other hand, there is no case for the European Union to shrink back to being a confederation. On the contrary: while not needing to concentrate such powers that would make it a federal state, it needs to urgently acquire sufficient further capacity for common action to be able to tame the single market, to handle the ever deeper interdependencies it creates. Why?

Combined with the progress of globalisation, the path followed by European integration has created a situation in which the pursuit of social justice is under threat. Instead of a market domesticated by a democracy that subjects it to a concern for distributive justice, we have democracies immersed in a market that subjects them to the obsession of competitiveness. The insecurity thereby created is arguably a central factor in the anti-European populism from both the right and the left. For those who see justice as the overarching aim, the proper response is not to recreate internal borders or make them thicker again. It is rather for the European Union to stop the dismantling of protective barriers and the disempowering of its Member States as a result of fiscal and social competition induced by globalisation and exacerbated by the single market. It is to enable the Union to protect its citizens and to be seen to care for them. This should involve, as persuasively argued by Fritz Scharpf and Dieter Grimm, a 'de-constitutionalisation' of much of the content of the Treaties, thereby facilitating EU-level legislative initiatives. More radically and no less urgently, it should also involve turning the Union into a 'transfer union', i.e. endowing it with the formal power to develop a transnational interpersonal redistribution system. Such a move would not undermine, but rescue the Member States' real sovereignty and chosen diversity in matters of social policy. If our welfare states are not to suffocate and homogenise downward under competitive pressure, they urgently need a European floor on which they can stand.

Demos-crazy with demoi-cratic features

If the concern is justice, it is not sufficient to transfer powers, or a capacity for action, to the central level. It is also important to ensure, as much as one can, that decisions taken at that

level will proceed in the right direction. This takes us to our second sub-question: how should decision-making be structured at the level of the Union? Here again, it is useful to think of a continuum. At one extreme, there is a purely *demos-cratic* regime, which assumes an undifferentiated demos at the central level and gives no special role to its components; the central executive simply needs to have the support of a majority in the assembly (under a parliamentary regime) or in the electorate (under a presidential regime), with all components lumped together as a single entity. At the other extreme, there is a purely *demosi-cratic* regime, which operates with as many demos as there are components, with decisions at the centre reached through bargaining between the representatives of each component.⁷

Where can the European Union be situated along this continuum? It does have a directly elected Parliament and, with the European Commission, some sort of *sui generis* executive whose members solemnly promise to serve exclusively the common European interest. This should suffice to disqualify it as a purely *demosi-cratic* polity. Nonetheless, there are countless features of decision-making at the level of the Union that reflect the segmented nature of its demos. Most saliently, they include the inter-governmental functioning of the European Council and the Council of Ministers, whether operating under unanimity or under a qualified majority rule. They also include the fact that the European Commission is required to count one commissioner from each Member State, the fact that Member State representation in the European Parliament is degressively proportional and that the conditions of admissibility and success for European Citizen Initiatives require initiators from and a minimum number of signatures in seven Member States.

In which direction do we need to move? If the democratic deficit is to be reduced, some argue that it is not just national governments but also national parliaments that must get directly involved in European politics. There are two main models of how this could be done. One consists in returning to a European Parliament made up of European Parliamentarians doing a second job. Whether well meant or not, this is a terrible proposal. National parliamentarians have sufficient work controlling and when possible steering what their governments do with the large powers that will and should remain at the national level. Where would they find the time to be in Brussels or Strasbourg interacting with the Commission, with

⁷ 'Demosi-cratic', so understood, is not to be confused with 'confederal': it is not about how extensive and entrenched the powers of the components are but about the role the components play in the exercise of the powers allocated to the centre. Nor is it to be confused with 'consociational', generally understood as covering both the devolution of powers to the components and the involvement of the components in decision-making at the centre. The distinction between *demos-cratic* and *demosi-cratic* is also distinct from (though related to) the distinction between the so-called community method and the inter-governmental method, for two reasons: the existing community method has, as we shall see, *demosi-cratic* features and a pure *demosi-cratic* regime could in principle be inter-parliamentarian, as will be discussed shortly, and not just inter-governmental.

the Council, and even more importantly with each other and with the EU-wide civil society, all essential to doing their job effectively, whilst at the same time remaining in touch with their constituencies? Regardless of how strong the arguments are against the radical version of the model, these arguments should not be discounted in the watered-down versions. For example, it may make sense to convene a congress consisting of subsets of national parliaments and of the European Parliament on specific issues such as the restructuring of public debts in the euro zone.⁸

A second, quite distinct model seems to be gaining in popularity. It consists in giving a greater role to national parliaments functioning separately. Allowing national parliaments, if in sufficient number, to block European decisions they consider to be in breach of the subsidiarity principle can be seen as a modest step in this direction. From the standpoint adopted in this essay, would it help to further ‘domesticate’ European politics in this way? I cannot see how. Indeed, I believe it would have the opposite effect. For what matters as regards justice is that the three virtues that make up the value of democracy, in particular the civilising force of hypocrisy, should operate at the right scale, in this case the European population as a whole. To facilitate this operation, members of national parliaments are less well positioned than members and especially leaders of national governments, and shifting power from the latter to the former on ‘democratic’ grounds would, therefore, be counterproductive. Why?

Unlike ministers, national parliamentarians are not socialised by regular contact into internalising the concerns of their European colleagues and, in the best cases, into showing solidarity with the challenges they face in their respective national contexts. Moreover, unlike heads of governments, and especially of those whose decisions matter most to other member states at a particular juncture, national parliamentarians are not regularly called upon to publicly justify EU-level decisions beyond their own electorates. The force that stems from this cross-border audience remains weak, because the audience national leaders care most about is still their national electorate. Nevertheless, it does exist. By contrast, a greater salience of EU-wide issues in national parliaments would just stir national party competition in defence of the nation’s self-interest without any structural countervailing force to induce a fair consideration of the interests of the rest of the European population. This holds true even more for separate

⁸ The ‘budgetary parliament’ suggested by Thomas Piketty (*Capital in the Twenty-First Century*, Cambridge, MA: Harvard University Press, 2014, p. 559) can be viewed as a variant of this idea. Incidentally, instead of involving additional costs, the creation of a new institution of this sort may provide an opportunity for ending the ‘travelling circus’ which undermines the European Parliament’s effectiveness and legitimacy while adding to its cost: Strasbourg could host all the meetings of exceptional salience which require the presence of national parliamentarians, while all more routine sessions of the Parliament would henceforth be held in Brussels.

national referendums, whether held in Germany or in Greece. Maximal national democracy is a very naïve understanding of the optimal democracy we need.

What should be done instead? Certainly we should not try to go all the way to a pure democracy, to a European democracy organised on the pattern of a nation-state, or even of a mono-national federal state. All stable democracies with a segmented demos, such as Switzerland or Belgium, have designed their political institutions at the centre in a way that takes this segmentation into account. In this sense, European democracy needs to remain democratic. However, the European demos needs to be strengthened. A modest step in this direction was taken, under pressure from the bigger European federations of political parties, through the nomination of so-called *Spitzenkandidaten* and the reluctant choice by the European Council of the *Spitzenkandidat* whose party federation came top at the European election. The chief purpose should not be to increase the turnout at European elections, by making European politics more personalised, more salient or more exciting. There are strong reasons to expect the turnout at European elections to remain much lower than at most national or local elections.

Firstly, the political orientation of the executive is even less sensitive to the composition of the parliament than it is in Switzerland, which has Europe's lowest average turnout at national elections. Secondly, the sheer size of the electorate, combined with the effort needed to grasp complex issues and arguments, is bound to lend special strength to the 'voter's paradox': why should I bother to collect information and cast my vote if the chance that it makes any difference is negligible? The purpose should rather be to locate the civilizing force of hypocrisy at the appropriate level; those who wish to govern the EU need to be systematically induced to make promises that make sense to all European citizens, not only to their co-nationals, and to be held accountable for these promises. From this standpoint, a further important step would be taken if some of the seats in the European Parliament were allocated on an EU-wide constituency. This would enable and indeed force the *Spitzenkandidaten* – and not only them – to campaign actively beyond the country in which they could be elected.⁹

⁹ Such a proposal was adopted by the European Parliament's Committee on Constitutional Affairs in May 2010. It was recently endorsed by former Italian Prime Minister Enrico Letta ("Pour un vote transnational", *Le Monde*, 25 mars 2017). It is analogous to the proposal of a federal constituency made in the Belgian context since 2007 by the Pavia Group (see Kris Deschouwer and Philippe Van Parijs, *Electoral Engineering for a Stalled Federation*, Re-Bel e-book 4, 2009, www.rethinkingbelgium.eu). Combining it with the requirement that commissioners would need to have been elected to the European Parliament would be difficult to implement but is nonetheless an interesting proposal (see Joseph Lacey, *Centripetal Democracy: Democratic legitimacy and political identity in Belgium, Switzerland and the European Union*, Oxford: Oxford University Press, 2017).

Beyond electoral democracy

In order to strengthen this democracy, institutional reforms of the sort just discussed matter greatly. Having a representative assembly entitled to access crucial information, to ask questions to the executive and to get public answers is an instrument of crucial importance for the civilising force of hypocrisy. However, casting a vote every five years along with hundreds of millions of others is not the only role a citizen can play at European level. A citizenry is not just an intermittent set of voters. It is also a more permanent set of observers, bloggers, Twitter users and protesters whose activity is not confined to the electoral periods. Besides the power of the ballot box, citizens possess a number of distinct powers that have been greatly amplified by the internet. As a powerful instrument of transparency, exposure and mobilisation, the internet makes it easier for many to access information, spread their interpretation of it, and organise actions without needing any form of a permanent organisation.

More than ever before, citizens can effectively express their support for or – more often – their opposition to what was decided or is being concocted. Of course, the impulse will often be the self-interested defence of one's interests – from corporatist strikes by air traffic controllers or train drivers to NIMBY protests – but both action groups and decision-makers will be forced by the publicity of their demands or responses to offer justifications that should be acceptable to all. The actions most difficult to dismiss by those in power will be those whose demands are not only carefully documented, but also manifestly justified by a concern for the general interest or for a fair treatment of the interests of all.

A general precondition for the effectiveness of this mechanism is transparency – understood not just as visibility, but also as intelligibility. Hence the importance of protecting and stimulating whistle-blowers, wikileaks, luxleakers, swissleakers and dirtleakers of all sorts. It is only by making things visible to all that one can force those who are responsible for them to make them justifiable to all. Hence the importance of collecting reliable data and of making these comparable and understandable using well-chosen indicators. The OECD's PISA indicators of educational performance, the set of indicators developed by the European Commission within the framework of the Open Method of Coordination, estimates of the proportion of a country's energy that comes from renewable sources, are all valuable tools of transparency if the data are reliable and the indicators suitably chosen to encourage decisions that serve greater justice and the general interest.

The combination of exposing and shaming what needs shaming, praising what deserves to be praised, expressing one's support or one's opposition by petitioning or boycotting, by striking or taking to the streets, can under favourable circumstances be far more effective than the electoral process at making those in power pretend to do what the pursuit of justice requires

them to do and, if all goes well, act consistently with this pretention. Moreover, contrary to the electoral process, this mechanism also applies to powerful private decision-makers. Today, thanks to the unprecedented potential force of transparency, exposure and focused mobilisation, it is not only political leaders and public officials, but also business leaders who have to constantly communicate and justify what they do and do not do. The fear of being outcompeted often restricts the leeway for firms more than for governments. Yet, in a world in which democratic governments are often unable to operate quickly enough and are themselves under acute competitive pressure, it is important that the civilising force of hypocrisy should also apply directly to the private sector.

Talking to each other

Let us sum up.

Yes, results. Yes, Herman Van Rompuy, continued allegiance to the European Union demands results, but not in the form of a promise of half a per cent of growth in exchange for further submission to the world market through the Transatlantic Trade and Investment Partnership (TTIP) and other deals. Nor in the form of a promise of half a per cent less unemployment in exchange for a stingier and more repressive workfare state. Nor in the form of a promise of a stable currency in exchange for subjecting the population of one of its Member States to lifelong debt bondage and the seizure of its national assets. Instead, this should be in the form of an effective social protection that can be viewed as fair by all Europeans without impairing the sources of a lasting prosperity.

Yes, an EU-wide democracy. Yes, Jürgen Habermas, we badly need more institutional reforms that will strengthen an EU-wide and especially euro zone-wide demos. However, Treaty changes take a long time, and we cannot wait. We must, therefore, count on those who currently wield power, starting with the heads of government. We must count on their ability to put themselves in the shoes of their European colleagues, to perceive the issues from their perspective, to trust each other, to identify intelligent compromises, to defend them before and possibly against their own parliaments and public opinions, and to help others defend them before theirs.

This will not always work, and never perfectly, and when the will of the powerful, regardless of how democratically it is exercised, crushes the legitimate claims of the vulnerable, when fairness loses too badly to self-interest, we must be prepared to put pressure, to shout, to protest, to march in the streets, to ignite the squares, as we did within our respective nation-states. Greater social justice within our nation-states did not arrive ready-made from the drawer of some bureaucrat, let alone from the bookshelf of some philosopher. It had to be fought for. Yet

at the European level, we face a huge hurdle. We do not all speak the same language, and this has several serious implications.

It is not just that it makes it more difficult for national leaders, and their ministers, and their aides, to establish the relationship of mutual understanding, of empathy, of connivance, that makes it less arduous to reach an agreement with their peers. It also means that national public opinions are sharply separated and, therefore, not systematically exposed to opinions and arguments that are dominant elsewhere, nor as self-restrained as they would otherwise be at airing ethnic generalisations hostile to other countries. Moreover, language diversity makes it more difficult to mobilise across borders, to build the solidarities and seal the alliances that are required by an effective fight for greater social justice at the level at which it needs to be fought today.

Strangely, therefore, the most hopeful sustained trend in Europe today is something that may at first seem quite trivial, the rapid spread of English as the *lingua franca* of its younger generations.¹⁰ A shared language is no guarantee against conflict, not even against violent conflict. One cannot hope for effective cross-border mobilisation, for less watertight public opinions, for more fluid contact between leaders, without a language they share. Whether as a weapon in our struggles, as a tool in our negotiations or as a medium in our deliberations, the ability to talk to each other is more important than ever in today's Europe. The fact that more and more can do so, not just the powerful and the wealthy, must give us trust and hope that our European Union is not bound to drift into ever-greater injustice, that it can be *justified*.

¹⁰ I defend this claim and discuss the injustices that arise from the dominance of one language and how they can be addressed in Philippe Van Parijs, *Linguistic Justice for Europe and for the World* (Oxford, Oxford University Press, 2011; German edition: Berlin: Suhrkamp, 2013; Dutch edition: Tiel: Lannoo, 2015). After the Brexit, the proportion of English native speakers within the EU will diminish sharply, but this should be seen as an advantage, not as a disadvantage, for the choice of English as a *lingua franca*, since it will make that choice more neutral among the remaining Member States. It is about time that we should reappropriate this mixture of German and French as a continental language imposed on the British population as a result of two successive invasions (in the 5th and in the 11th century) and abandon the silly habit, still present on some of our websites, of representing the English language by the British flag...