THE FEDERALIST

a political review

To look for a continuation of harmony between a number of independent unconnected sovereignties situated in the same neighbourhood, would be to disregard the uniform course of human events and to set at defiance the accumulated experience of ages.

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THE FEDERALIST

a political review

Editor: **Mario Albertini**

The Federalist was founded in 1959 by a group of members of the Movimento federalista europeo and is now published in English and Italian. The review is based on the principles of federalism, on the rejection of any exclusive concept of the nation and on the hypothesis that the supranational era of the history of mankind has begun. The primary value *The Federalist* aims to serve is peace.

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The Long Path Towards the World Federation

The perspective of world federalism has always been present in the history of federalist thought since Kant. Indeed federalism, as the institutional prerequisite for the achievement of peace through the overcoming of the sovereignty of the state, can be fully developed only in a global framework. For this reason, European federalism has conceived of, and increasingly emphasised over the decades, the idea of the creation of a European federation as the first step of the federalist phase of world history: a phase which is destined to complete itself through the foundation of the cosmopolitical federation.

In this perspective, the European federation necessarily comes to be regarded as a *provisional* state whose legitimacy is compromised by a sort of insurmountable internal contradiction. In this respect, the European federation finds itself in sharp contrast with the national state, which has always presented itself to its citizens, and continues to do so even now, with seeming coherence, as the political expression of the division of mankind into groups that are united within themselves (and separate one from the other) by a natural and therefore eternal bond; their legitimacy lies precisely in the correspondence of the state with each and every member of the *kin-groups* which mankind is made up of. The nature of this justification of the size of the state has also legitimised its structure, since the political expression of a group with a unique identity can not but reflect its natural homogeneity by adopting a unitary and centralised structure.

It is true that the idea of the nation is a myth, which is destined not to survive the people's gaining of awareness of its essential falseness. Yet this is a myth which, for as long as it has survived, has represented a formidable instrument for mobilising citizens' support for the powers-that-be and hence for endowing the state with a legitimacy which, while certainly fictitious (since based on a lie), has proved to be solid and lasting.

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This can not happen with the European federation since it will be born precisely out of the overcoming of the nation. It can not but possess a federal structure, in which the national, regional and local levels will keep (or recuperate) a marked capacity for being the reference point of the loyalty of citizens and therefore will exercise a decidedly centrifugal force. Moreover the federation will not present itself, at least in the moment of its creation, as the political expression of a human community which is defined by the possession by its members of certain natural characteristics, or characteristics which are felt to be such, that can permit the *a priori* demarcation of its borders; on the contrary, the federation will be an open community with uncertain boundaries.

On the other hand, the European federation will be a *state*, and the state is the political organisation of a *people*. The perspective of uniting a still undefined number of European nations in a federation therefore poses unavoidably the problem of the identity of the European people, as the basis of its legitimacy.

At this point it is necessary to deal with the contradiction between the world dimension of federalist legitimacy and the regional dimension of the European federation, whatever its borders are destined to be. This is a contradiction at the heart of which lies the fact that the very concept of the people, once purified of the contaminating idea of the nation, can be fully actualised only at the world level: in other words, the only people who will fully possess the right to call itself such will be the world federal people. The world federal people will have as the basis of its own identity the awareness on the part of its members of being united by a bond which is immensely stronger than any regional-sized affinity: that constituted by their common membership of the human race.

This contradiction has always existed, yet until the present it has been concealed by a myth, the most recent expression of which has been precisely the nation and whose function has been that of hiding from the collective awareness the fact that the "general interest" of which the national state claims to be the bearer and interpreter is nothing other than the special interest of a small part of mankind and as such represents the very negation of the common good of the human race.

Yet if this is true and if therefore any form of legitimisation of a regional-sized sovereign power can not but be based on a myth, does this mean that the European people which is now in the making is also a myth? The federalist answer to this question is negative, because Europe will find its legitimacy in the awareness of possessing a mission, whose nature will be inherent to the method of its creation: precisely that of providing the world with the example of the practical overcoming of national sovereignty by encouraging the transformation of the large groups of states which are taking shape in all parts of the world into federations; and in this way preparing the conditions for the transformation of the UN into a real world federal government. The identity of the European people-in-the-making is therefore a purely negative identity, which is limited to the fact of being the agent of its own overcoming, that is, the embryo of the world people.

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There is no doubt that this is the historical meaning of the creation of the European federation and that it has its roots in the slow but inexorable crisis of sovereignty, which in turn is based on the spreading of the perception that the world by now consists of a single community of destiny. The issue therefore is not whether the world heads toward its own political unity, but when and how this process will come about.

Now, everything indicates that this will be a long-term process and, as such, tortuous and difficult, marked by periods of deadlock, crisis and regression. Gorbachev's period of leadership of the then Soviet Union could have encouraged thoughts of a sharp acceleration of the course of history and the creation within a historically brief span of time of the conditions for the substantial convergence of the *raisons d'état* of the great powers of the North of the world. This would have radically transformed the facts of the world balance. In this context, Europe would have acted as a catalyst, by providing an example of openness, pluralism and peaceful co-operation with the other peoples of the world, and would have proposed through its actions a new form of civil co-habitation, which is able to impose itself by employing as its sole instrument the policy of the enlargement of the sphere of state solidarity and the promotion of unity wherever possible, to the point that the transfer of the armies of the member states to the federal government is rendered unnecessary.

Yet unfortunately the Gorbachev era has long gone, and with it the illusion that the process of world unification can be achieved rapidly. This can not but have an impact on the kind of state to which Europe will have to resort in order to fulfil its historic mission. In particular, it is no longer possible to propose the idea of a sort of *incomplete state*, which tends progressively to extend itself geographically and postpones its institutional completion until the end of the process. Europe will have to

face its mission over the long term, in a political context that will not be able to avoid severe conflicts and in which there will be no lack of pressures toward the disintegration of its own federal order.

* * *

It remains true that the creation of the European federation will bring about the marked acceleration of the weak unification processes currently underway in other regions of the world, such as NAFTA, MERCOSUR, ASEAN and others, and will direct them towards federal solutions. Likewise it remains true that the presence on the world stage of a new great state that is both open and responsible will make the UN more effective. Yet it is also true that today some of the largest unified areas of the world are still extremely far from the prospect of becoming active participants in the process of world federal unification, rather than being obstacles along the path toward its realisation. Russia is prey to disturbances whose outcome is unpredictable and does not seem to be evolving towards a peaceful and democratic internal balance. China is ruled by an uncompromising totalitarian regime. India, despite possessing a democratic government, has to face enormous demographic, economic and religious problems and tries to mitigate (or at least to conceal) their seriousness by resorting to nationalism in order to pursue a power policy in its own region. Even the United States does not seem able to escape from the choice between the equally ruinous options of imperialism and isolationism. And in the rest of the world there exist areas, such as South-East Asia, where a full-scale arms race is underway, and others, such as Africa, which are dominated by chaos and anarchy.

Certainly, the progress of history is subject to a continuous acceleration and many changes will presumably occur earlier than we imagine. Yet it should not be forgotten that the European unification process, which nevertheless is led by democratic states with a comparable level of economic development and by peoples who possess a substantially common culture, even in its different national expressions, has not yet achieved its federal outcome after a fifty year-long process and must face, in the decisive phase which it is now entering, serious difficulties which are endangering its successful conclusion. For this reason, while accepting that it is not possible to predict the future and that the historical process is bound to undergo further accelerations, it seems reasonable to start from the assumption that the path toward world unification will be a century-long process.

This leads to the conclusion that Europe's difficult mission of providing a model for the federal unification of other regions of the planet, and finally for the cosmopolitical federation, will have to be supported by a state structure which is strong enough to contribute to the pacification of the rest of the world, also with the means of power politics, when the methods of co-operation and example prove to be insufficient, and to resist the pressures toward disintegration which will emerge in periods of regression.

* * *

The above considerations will affect both the institutions and the foundations of legitimacy of the European federation. Today many Europeanists are motivated by the concern not to worry those who see Europe above all as a threat to national "identities" and bend over backwards to assert that the Union's European level of government should be lean, even extremely so: it should dispose of only a negligible budget, should renounce having a peripheral administration and, as far as defence is concerned, remain for a long time at the inter-governmental co-operation stage. The object here is certainly not to oppose this concept with the idea of a fortress Europe, of an aggressive and closed power, which places its own sacred egoism before its universal mission. Yet the reflections on what structure to give the European federation will have to take into account the difficulties and length of the path toward the political unity of mankind and of the fact that in order to be equal to its historical task, Europe, in addition to being a pluralistic state, will also have to be endowed with great institutional solidity, open to the rest of the world, yet supported by the strong approval of its citizens. Likewise while the main instrument of its foreign policy will certainly be the message of unity that it will be able to transmit both by the example that it will present and by the economic co-operation and cultural openness it will offer to the rest of the world, yet it will have to accept the consequences of the fact that it will nevertheless be a sovereign state in a world of sovereign states and put itself in a position to be able to guarantee its security as a condition of its being able to spread the values which it represents.

It seems necessary to conclude, therefore, that in the phase which will precede the foundation of the world federation, the European identity will be characterised by a basic ambiguity. Europe will take responsibility, in as much as it represents the first step of the federal phase of world history, for the general interest of mankind; yet at the same time it will be forced

by its nature as a sovereign state to protect and promote its own special interests. Hence, all of its great decisions will come about through the difficult solution of the permanent conflict between *raison d'état* and raison *tout court*. This conflict will at times be mitigated by the fact that the endless increase of interdependence, the contradictions which derive from it, and the historical evidence of the possibility to realise institutional means through which it can be governed democratically will encourage the creation of a degree of convergence among the *raisons d'état* of the great regional federations on which the new world balance will rest. Nevertheless it is difficult to imagine that such a convergence will prove stable and lasting, like that between the *raisons d'état* of the countries of Western Europe which has made the European integration process possible.

In fact, the integration process in Europe involves, on the one hand, states that are at the same level of economic and civil development; and, on the other, until the end of the cold war, has benefited from a stable political framework, which was guaranteed by the hegemony of an external power - so much so, that when this situation ended, the process arrived at a decisive stage, at the crossroads between political unity and disintegration. Neither of these two conditions, and certainly not the first one, will be realised at the world level for a very long time. Therefore, convergence will take place, since without it the objective of a world federation would become inconceivable; yet it will take place slowly and at the cost of tensions and disturbances, and even serious crises and conflicts. And Europe must be ready to face them.

* * *

It will be possible to consider the European federation as having been created when the framework of the political struggle concerning a series of essential decisions has been transferred from the nations to Europe, and consequently the European power will be supported by a high degree of popular consensus. This will not be able to happen without the achievement of monetary union and that which the federalists have always called the political and institutional minimum: a government that is answerable to Parliament, the extension of the European Parliament's legislative powers to all matters which lie within the Union's scope of authority and majority-voting in the Council of Ministers, itself changed into an upper house. Yet this will still not be enough, since monetary union alone will be a technical achievement, and institutional reform

which involves only the upper echelons of power will risk remaining an empty shell. It is vital that the European state be visible and present in the daily lives of its citizens. The European federation must be able to provide citizens, and especially young people, with a sense of belonging to a new motherland that is multinational and open to the rest of the world, and of their duties towards the federation, even through instruments such as the army, obligatory civil service and a peripheral administration; it will need to be able to translate its universal mission into symbols and rites which consolidate the loyalty of its subjects to a power whose size is destined to remain regional for a long time to come.

All this will pose those who will consciously live the problem of European identity in front of a structural contradiction, which can not but be experienced as conflictual. Yet, the more the European political and intellectual classes consciously take on board this contradiction, the more effectively Europe will carry out its role as the federator of the human race. The federalists' task, which will certainly not be exhausted with the creation of the European federation, will be that of remaining vigilant to ensure that the ideals which will lie at the basis of the federation's legitimacy will not be sacrificed on the altar of political "realism", without however forgetting that in politics power can never be separated from the ideal.

The Federalist

Wheare's Federal Government and Europe Today*

JOHN PINDER

When the first edition of Wheare's *Federal Government* was published fifty years ago, it was the first comparative study of modern federal government in English, and probably in any language; and it provides knowledge and insights about federal systems still unobtainable from any other single source. This Introduction will seek to explain its relevance in Europe today. But first, a reader whose impression of British attitudes to federalism is based on observation of the contemporary British political scene may wish to know why such a book came from what may seem to be an unlikely source.

Kenneth Wheare was born in 1907 (the same year as Altiero Spinelli) in Australia. So he grew up in a federal state, whose constitution had been enacted by the Westminster parliament only six years before. After studying at the University of Melbourne, he went to Oxford in 1929 and remained there for the rest of his life. He pursued a distinguished academic career, becoming Lecturer in 1934, Professor in the prestigious Gladstone Chair of Government and Public Administration in 1944, Rector of Exeter College in 1956 and Vice-Chancellor (the British term for Rector Magnificus) of the University of Oxford 1964-66. He was a leading specialist on constitutions, especially those of the British Commonwealth.[1] The Commonwealth contains a number of federal constitutions, all of them enacted by the Westminster parliament for former colonies or Dominions. But the knowledge of federal systems that stemmed from his interest in Commonwealth constitutions does not fully explain why Wheare wrote *Federal Government*.

* This text is a re-print of the "Introduction" to the new Italian edition of C.K. Wheare's *Federal Government*, which will be published in the "Collana Federalista" (publisher, Il Mulino, Bologna).

Wheare and Federal Union.

From 1939 to 1944 Wheare was a Fellow of University College, Oxford, where William Beveridge, who went on to become the founder of the welfare state, was the Master (another name for Rector) from 1937 to 1944. Beveridge had been the Director of the London School of Economics for eighteen years before coming to Oxford and had transformed it into one of the world's leading centres of scholarship in the social sciences. In the course of doing so he had attracted to the LSE a number of great scholars, including some who were notable federalists, in particular Harold Laski, Lionel Robbins, Ivor Jennings and Friedrich Hayek.[2] These were among the brilliant group of federalists whose thinking became crystallised in the British Federal Union movement and whose literature was, together with the writings of Luigi Einaudi, a decisive influence on the federalist commitment of Altiero Spinelli, which originated during his confinement on Ventotene.[3] When Derek Rawnsley, one of the three young founders of the movement and a former student at University College, asked Beveridge to become Chairman of a research centre that Federal Union intended to establish, Beveridge accepted.

Beveridge had an extraordinary ability to get other people to work for him and, until the fall of France in June 1940 when the British began to concentrate on a total war effort, the Federal Union Research Institute engaged in a remarkable burst of activity through committees and conferences organised to study the constitutional and economic aspects of a European federation, to be established after the war had been won.

These studies were undertaken by "the best talent available."[4] Beveridge chaired both the economic and the constitutional conferences, assisted by Patrick Ransome, another of Federal Union's young founders, and Harold Wilson, then a young Fellow of University College and subsequently the Labour Prime Minister who was responsible for Britain's second application to join the European Community. The economists included Robbins, who had recently written two path-breaking books that analysed the need for federal government to regulate the international economy, the second of which also urgently advocated European federation. These books were to have a profound influence on Spinelli when he read them while a political prisoner on Ventotene. They were the most-cited sources in the essays that Spinelli wrote while he was on the island; and he translated the second one into Italian.[5] Others among the economists were Barbara Wootton, later to be Leader of the Labour

Party in the House of Lords, who explained, in one of the series of Federal Tracts, why federation would be a prerequisite for a satisfactory socialism;[6] James Meade, of social democratic orientation, who was to become a Nobel Prizewinner; and Hayek, who had recently written an article explaining why liberals should advocate federation and whose books were also cited in Spinelli's essays.[7]

The principal participants in the constitutional conferences were Professor A.L. Goodhart, another Fellow of University College, who was to write a chapter on the US Constitution for a book that resulted from the Research Institute's work;[8] Lionel Curtis, a veteran federalist and co-founder of the Royal Institute of International Affairs;[9] Ivor Jennings, the most distinguished British constitutional jurist of his generation, who wrote in 1940 *A Federation for Western Europe*, expounding the need for a European federation and containing a draft constitution that was a result of the Research Institute's conferences; and last but not least, Kenneth Wheare. This brief description of the work done under Beveridge's chairmanship may give the reader some idea of the excitement that must have been generated by the common endeavour of these brilliant people, in the shadow of the terrible conflict that had just begun, to find out how to establish a permanent peace for Europe after Hitler had been defeated. That was the atmosphere in which Wheare began his work on federal government.

Wheare drafted, together with Goodhart, an outline of a European federal constitution for the Research Institute's first conference — the draft on which Jennings based the constitution published in his book.[10] Wheare's next step was to write a contribution to the series of Federal Tracts, entitled *What Federal Government is*,[11] which also became the title of Part 1 of *Federal Government*. His first paragraph in the Tract recognised that the British have no direct experience of federal government and therefore find it hard to understand what it is. He could equally have said that other peoples, for example the Italians, have no such direct experience. But in the post-war period there has been an important difference, in that more Italians than British have wanted to know because they have wanted to help build a European federation. The explanation of federal government that followed in Wheare's Tract was an outstandingly lucid exposition of the complex subject which was to occupy his subsequent classic volume. Since the latter is the subject of this Introduction, the main body of the Tract's text need not detain us here. But the hint of passion in its conclusion evokes the atmosphere in which it was written, by a man who was normally the epitome of anglo-

saxon pragmatism. These were his words: "It has usually been hard to establish a federal government... And when a federation has with difficulty come to exist, it is only with difficulty that it continues to exist ...Those who do propose such a federal government, however, may feel inclined to say to me at this point: The difficulties you have been talking about seem to us to be much less urgent and more remote. Our greatest difficulties come not from those who prefer a unitary government for Europe, but from those who do not believe that any form of *government*, strictly so called, for Europe is possible or desirable. The real obstacle for us is the supporter of the sovereign, independent state and not the supporter of the unitary state. That is true. It is also true that they must expect, when they overcome the objections of those who believe in the sovereign, independent state, to meet thereafter the objections of those who, used to the simple certainties of unitary government, declare that they do not believe in federalism. It has seemed wise therefore to recall that federalism is a form of government which is not always appropriate or always easy to work. It is fair to recall at the same time that federal government is at least government: it is order, not anarchy; it is peace, not war."

Federal Government.

Wheare wrote *Federal Government* while he was a Fellow at University College, with Beveridge as Master. There can be little doubt that Beveridge encouraged him in this study. It was sponsored by the Royal Institute of International Affairs; and the half-dozen people who read and advised on the text on behalf of that Institute included two, Goodhart and Wootton, who had like Wheare been active in the work of the Federal Union Research Institute. His involvement in that work certainly inspired the task that he was now to undertake. But Wheare was "devoid of ideological fervour."[12] *Federal Government* was a work of scholarship, not advocacy. For that very reason, however, it is perfectly adapted to serve its purpose of analysing why people have wanted to establish federations, the conditions under which they have been created and maintained, their powers and institutions, and the problems that are likely to arise. The book is full of objective information and ideas on these matters; and the aim of this Introduction is to suggest ways in which it may be relevant to Europeans today, whether in the building of a federal European Union or in reforming the internal structures of unitary states such as Italy or the United Kingdom.

The book is based on study of the "classical" federations that functioned in practice with federal governments before World War Two: the United States of America, Switzerland, Canada and Australia. Wheare defined federal government as existing when "the powers of government for a community are divided substantially according to the principle that there is a single independent authority for the whole area in respect of some matters and that there are independent regional authorities for other matters, each set of authorities being co-ordinate with and not subordinate to the others within its own prescribed sphere."[13] If the central government is subordinate to the member states, there is not federation but confederation, while if regional governments are subordinate to the central government, there is not federation but devolution.

While the idea that powers are divided in a federal system between regional and central governments that are co-ordinate with, not subordinate to, each other has been criticised,[14] this Introduction will argue that it is indeed a good working rule. We shall also bring to bear some comparisons with the Federal Republic of Germany, as the most relevant of the newer federations. Wheare, in the fourth edition of *Federal Government*, published in 1963, categorises the German Basic Law as quasi-federal, on the grounds that the powers of the centre are too extensive and the governments of the Länder have, through their representation in the Bundesrat, too great a role in the central institutions. But in the case of Canada Wheare argues that, while there are elements in the constitution which are not, by his definition, strictly federal, the practice of Canadian government is in fact federal; and the same reasoning can apply to the record of German government during what is now nearly half a century of the Federal Republic's existence. The German experience is indeed highly relevant, both as that of a major European country and because the prefederal European Community has adopted certain elements of the German system. It is also a valuable example of the creation, even if under highly unusual circumstances, of a federal structure within a pre-existing state: a process to which Wheare did not devote his attention, since his four federations were all examples of the union of previously separate states — and, we may recall, the inspiration for his study originated from the time of his participation in the Federal Union Research Institute, with its focus on the uniting of Europe.

Many other states have been classified as federal or as incorporating important federal elements. Daniel Elazar, for example, using a somewhat wider definition than Wheare, finds that nearly two-fifths of the world's population now lives within polities that are "formally federal," while a further one-third lives within states that "utilise federal arrangements in some way."[15] But this Introduction is about Wheare's book; and his four federations, together with Germany, are the most important examples for our purpose here.

Although Wheare's book is about completed federations, he lists among the conditions that facilitate union "some political association ... prior to their federal union either in a loose confederation ... or as parts of the same Empire;"[16] and Murray Forsyth, in his study of confederations, concludes that they are "usually stepping-stones to a federal state."[17] We shall, therefore, also consider what can be learnt from Wheare about the federal elements that have, over the years, accrued to the institutions and powers of the European Community and Union.[18]

Motives and Conditions for Establishing Federal Systems.

The great motives for establishing and building up the European Community and Union have been the desire for security and prosperity: or, as Wheare puts it with respect to his four federations, hopes for economic advantage and fears of military insecurity and of dependence on foreign powers. To these we should now add fear of cross-frontier environmental pollution. Science and technology have, indeed, created such a degree of interdependence among states, particularly in Europe but increasingly also world-wide, that the single states can no longer separately provide the effective governance which their citizens require in a growing number of fields, with a consequent growth in the need for common government.

Wheare goes on to consider what factors, in addition to these motives, facilitate the establishment of a union. Prior political association has already been mentioned. Geographical neighbourhood is another. Similar political institutions are a third, which, as Wheare points out, must be democratic if the participating states are to have the capacity to take part in a federal union. Wheare was also able to cite John Stuart Mill to the effect that a federation will not work properly if one member state is big enough to dominate the others, or indeed if two together can do so, for when they agree with each other the others must generally submit, while if they disagree there is deadlock.[19] Homogeneity of language, race, religion or nationality are not, Wheare found, necessary to establish a federation, but do, together with similarity of social institutions, help to produce the capacity to make the union a success. Thus Europeans face some obstacles that Americans and Australians were spared. But Swit-

zerland has shown that Europeans can overcome them; and the same may be said of the European Community, which has incorporated a number of federal elements and has been able to function, albeit not sufficiently effectively, despite the diversity among the peoples of the member states.

Such diversity is, indeed, a reason for the choice of a federal form of union rather than a unitary state. Wheare lists divergence of economic interests and diversity of political or social institutions as factors underlying this choice. He also mentions geographical barriers, which have however been reduced by modern means of transport and communication, and differing "nationality" together with "a distinct history and a distinct government"[20] which, with the resurgence of nationalism and the post-war growth of "big government", have certainly not become less important and are now the principal barriers to completion of the federal process in Europe.

Such factors also generate the desire to establish federal structures within previously unitary states. Perceptions of divergent economic interests among the regions or nations of the unitary state are significant in both Italy and Britain. Irish nationalism was the cause of a number of proposals for a federal United Kingdom made between the 1880s and the separation of the Irish Republic in 1921; and Scottish and Welsh nationalism stimulate similar proposals today. Proposals for a federal structure within Italy may be motivated by a history of cities and provinces as separate states with distinct cultures rather than by what would usually be called nationalism. Indeed many peoples share a desire, which need have nothing to do with nationalism or even regional egoism, to manage their own affairs as closely as possible to home; and a federal structure can be seen as the most effective means of ensuring this, against the natural tendency of central government to expand its powers, while at the same time maintaining the role of the central government for those matters that the component regions or nations cannot manage effectively by themselves.

The Division of Powers.

The constitutions of all the federal states contain lists that enumerate the fields in which the federal government has powers, divided into those where the federal power is exclusive and those where it is concurrent with the powers of what the Americans and Australians call the states; the Canadians call Provinces; the Germans, Länder; and the Swiss, Cantons. (In referring to these units collectively, where more than one of the

federations is concerned, we shall call them, for convenience, the constituent states.) As Wheare points out, the concurrent list is potentially an exclusive list, because in each of the federations, as in the European Community, the federal law prevails over the laws of constituent states if there is conflict between them, so to the extent that the centre has legislated, the federal power becomes exclusive. Only in Canada is there an exclusive list for the Provinces, as a safeguard against federal encroachment.

The lists exclusive to the centre in all the federations include the control of foreign policy and the right to declare war. Thus the American states may not conclude treaties or agreements with foreign states. The Australian and Canadian federal governments have exclusive control over armed forces, although the Swiss cantons have some powers in this field, within a firm federal framework, and the states of the US retain their own militias (now called National Guards), which were formerly an important element in the American armed forces. The European Union differs radically from these federal states in having no more than intergovernmental co-operation for defence and defence-related foreign policy; and unless and until it has a more integrated system, it will not become a federal state.

The EU, or more precisely its central pillar, the European Community, does however have exclusive competence for external trade relations, as do Wheare's four federal governments. For the EC this competence is limited to the area defined in Article 113 EC that has been deemed by the Court of Justice not to include the increasingly important field of trade in services, which will therefore not accrue to the Union without treaty amendment. But its exclusive competence over trade has made the Community, now the Union, into a great trading power, at least the equal of the United States in the world trading system. This, together with its concurrent power to provide aid in parallel with the member states, has enabled the Union to play the leading part in assisting the transformation of the Central European countries to market economy and pluralist democracy — although where military force is a factor, as in Bosnia, the Union is still ineffective in comparison with the United States. It does not require much imagination to foresee that the economic and monetary union will give the Union equivalent weight in the international monetary system.

Wheare points out that problems can arise from the federal power over external trade as a result of differing interests among the constituent states, typically in their emphasis on industrial or agricultural trade and

their liberal or protectionist attitudes. Such divergence was a significant factor leading up to the American Civil War. Wheare wisely concludes that it is necessary, in a federal system, to take great care of the interests of minorities.

Only a few fields of internal economic affairs, though highly significant ones, are common to the exclusive lists of Wheare's four federations: inter-state trade; currency, coinage and the raising of loans on the credit of the federal government; and immigration and emigration, which he rather oddly classifies as an economic matter. As it happens, the European Union does have competence for inter-state migration for economic purposes; it has at least as much competence over inter-state trade as does the United States; and it will likewise have, with the completion of the economic and monetary union, similar powers in the monetary field.

Wheare has an instructive story to tell about the establishment of the single market within the United States through the constitution's "commerce clause" which gives Congress the power "to regulate commerce with foreign nations, and among the several states." Not much was done, beyond the establishment of the customs union, in the first century after the federation was founded — as was the case of the EC until the Single European Act. But federal law then encroached increasingly on economic activity within the states on the grounds that the latter could influence inter-state trade. Since 1935, however, judgments of the Supreme Court have moved in the direction of limiting such encroachment, first by confining the grounds to direct, not indirect influences, then in 1942 ruling that federal intervention was permissible only where intra-state transactions have a "substantial" effect on inter-state trade. Given the acceleration of history, it is not surprising that relevant EC legislation is already carefully scrutinised to ensure that it conforms to the principle of subsidiarity.

With the derogations, which provide for later adoption of the single currency by those member states that do not at first meet the stipulated criteria, and the opt-outs which allow Britain and Denmark to choose later whether to adopt it or not, the road to full economic and monetary union is not a smooth one. But it remains probable that all member states will participate fully without too much delay; and when they do, the Union will have the major economic powers that are common to Wheare's four federations. Those federations also give the central government concurrent, and in some cases exclusive, powers with respect to a number of fields of microeconomic policy, including agricultural, industrial, research, transport and communications, as well as policy regarding

employment and labour conditions. States such as Italy or the United Kingdom, if they adopt federal structures, will doubtless also retain such powers at the centre, while their constituent regions or nations too would have concurrent powers. There is a similar sharing of powers between the European Union and its member states. But policy in most of these fields depends as much if not more on public expenditure as on legislation; and whereas in the federal states the central governments have become financially far more powerful than the member states, in the European Union the reverse is the case.

The same is true of social services such as education, health, social insurance, pensions and sickness and unemployment assistance. The federal constitutions evidently intended such policies to rest mainly with the constituent states. But the powers of the central governments in Wheare's four federations have increased over time through a combination of constitutional amendment, judicial decisions and grants from the federal budgets to the states. In Germany, a series of constitutional amendments have tilted the balance towards the centre; and Article 91a of the Basic Law, enabling the federal government to intervene in order to "improve living conditions," points clearly in that direction. If Italy or the UK should embark on the drafting of a federal constitution, they would have to decide whether to incline towards the German example or that of the more decentralist Canadians and Swiss. But the principal device whereby the federal power has been augmented in Wheare's federations is financial: the constituent states have become dependent on federal grants. The division of powers in the field of public finance is, then, a crucial determinant of the ability of the states to remain really autonomous in their main fields of competence.

The federal principle requires both the federal government and the constituent states to have, each under its independent control, sufficient financial resources to carry out the responsibilities attributed to them by the constitution. Otherwise the system is in practice a confederation or a unitary state. But the rise of welfare politics and the occurrence of wars have increased the taxing power of the centre and jeopardised the independence of the member states. Various devices have therefore been adopted to prevent arbitrary constriction of the tax money available to the states. Australia has an independent Grants Commission, which advises at intervals on the share of budgetary resources to be allocated to the states, and whose advice had always been accepted. Thus although a unitary element in the constitution allows federal tax laws to override those of the states, the practice has been federal; and broadly the same has

applied in Canada. The power of the US federal government to tax was severely restricted for well over a century by the form of the constitutional provision for it. But the sixteenth constitutional amendment in 1913 relaxed that restriction and the World Wars provided a precedent for vastly increased federal expenditure and taxation. In Germany there is, at intervals, a carefully negotiated division of tax receipts between the federal government and the Länder to take account of changes in the cost of their respective responsibilities, which has to be approved by the Bundesrat, comprising representatives of the Länder governments, as well as by the citizens' representatives in the Bundestag. In Switzerland, a change in the fiscal rights of the cantons and the federal government requires amendment of the constitution; and in the European Union the still very modest share of the centre can be increased only through a process involving unanimous ratification by the member states, similar to the rigid procedure for treaty amendment.

In all these federations, then, despite the financial power of the federal governments and the tendency towards the accretion of their legislative competence, the constituent states retain a real basis of power in social matters, such as education and health, and in microeconomic policies, particularly those pertaining to regional development. The enormous financial resources of the US federal government have been at least partly offset by the Supreme Court's interpretations of the constitution, in particular of two amendments that responded, soon after it entered into force, to demands similar to those that led the European Union to adopt the principle of subsidiarity: the tenth amendment, which provides that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or the people;" and the fifth amendment which requires that "no person shall be deprived of life, liberty or property, without due process of law." While the fifth amendment applied the due process clause only to the actions of the federal government, the fourteenth, passed soon after the civil war with the experience of slavery in the southern states in mind, extended its application to actions of the authorities within the states. These constitutional amendments acted as a brake on encroachments by the federal government. In Canada the allocation of education and health as exclusive provincial powers certainly offsets the unitary right of the federal government to veto provincial legislation. In Switzerland a profoundly federal political culture has defended the rights of the cantons. In Germany, despite the more homogeneous political culture, the powers of the Länder remain entrenched in fields such as education; and the

presence of their governments in the Bundesrat helps them to defend their autonomy. Even the more unitary delegation of the execution of federal laws and policies to the Länder enlarges their political capacity, which the constitution guarantees them in other fields of policy.

An adequate role in the central institutions for representatives of the constituent states is, according to one view, a more significant criterion of a federal system than an adequate allocation of powers.[21] It certainly acts as a defence against diminution of the powers of the states. But without a solid foundation of autonomous powers which can be reduced only by a process of constitutional amendment in which the states play a major part, their representatives will lack a substantial political base and their citizens will be over-exposed to the risk of government becoming increasingly remote.

While the question in these federations is whether their constituent states retain enough autonomy, for the European Union we have to ask whether the Union itself has the autonomy to perform the functions that its member states independently can no longer undertake effectively.

Interdependence has drastically diminished the capacity of the member states for adequate independent action in the fields of internal and external trade, currency, cross-border environmental pollution, external security and some aspects of internal security. The Union has, as we have seen, been given sufficient powers to deal with internal and external trade and, when economic and monetary union is complete, with currency; and it has considerable powers with respect to cross-border pollution. The Court of Justice has also established that the actions of the Community must respect fundamental rights and the Maastricht Treaty has confirmed this. The Union has a modest but significant budget, financed by tax resources to which it is legally entitled. So it can be said, apart from the modest size of its budget, that the Union has economic and environmental powers broadly equivalent to those of the federations; and while its powers in the fields of social policy are less than theirs, that may be regarded as appropriate since among the federations, at least Australia, Germany and the United States have a much more homogeneous political culture. As regards external security, most of the member states have been content to remain dependent on the United States, mainly for objective reasons. But subjectively, they have remained unwilling to move towards reducing that dependence, owing to their reluctance to begin mutual integration of their defence capacities in what they see as the citadel of national sovereignty.

The economic and environmental powers of the Union nevertheless

give it a very considerable field of political activity, at least as important as that which remains to the constituent states of the federations in social and microeconomic policy. Thus it can hardly be said that the Union has insufficient powers to sustain its autonomous role in a federal system. Without the power to control armed force, the Union cannot be called a federal state. But given a preponderance of federal elements in its institutions, it could legitimately be called a federal union. We must see, then, what Wheare has to tell us about federal institutions.

Federal Institutions.

In accordance with the federal principle, neither the central government nor those of the constituent states should control the other. It follows that the federal government must not depend too heavily on the goverments of the states to carry out its decisions, but must have direct relations with the citizens. Both the federal institutions and those of the member states must be guaranteed by the constitution. Both must be democratic, based on the rule of law and representative government (or, in the exceptional Swiss case, in part on direct democracy), or they will be unable to be bound by the law of the constitution, to accept the division of powers, or to be legitimate in the eyes of the citizens of the federation who will be subject to laws for which their vote may have determined the outcome.

As the federation is based on the law of the constitution, it is logical that this should be interpreted by lawyers in a supreme court. Except in Switzerland, where challenges to the legality of acts of the federal government may be decided by referendum, such a court both interprets the constitution and reviews legislation to ensure that it is constitutionally legitimate; and if federal laws are legitimate, they prevail over the laws of the states. There is a dual system of courts in Australia, Germany and the United States, both federal and constituent state. But in Switzerland cantonal courts are responsible for applying federal as well as cantonal law, although there is also a Federal Tribunal as a court of appeal and a court of original jurisdiction for some federal matters; and the European Union's system is somewhat similar, though the Court of Justice interprets Community law for the member states' courts rather than acting as a court of appeal against their judgments. For enforcement of the law, Canada and the United States have parallel systems of federal and state police and prisons, whereas the Australian and Swiss constitutions provide only for state prisons and police.

While it is the function of the judiciary to guarantee the rule of law, the principle of representative government is embodied in the legislature and the executive; and the federal legislature comprises a people's house and a states' house, reflecting the special character of the federal union which binds not only the citizens but also the constituent states.

The smaller states, like the larger, have two representatives each in the US Senate, as a counterweight to the greater representation of the larger ones in the people's house; and the same is true for the Swiss cantons, except for the six tiny half-cantons, which have one representative each. In Australia, Canada, Germany and the European Union, the representation in the states' house is weighted in favour of the larger, while still giving the smaller a proportion of the votes well in excess of their proportion of the population. The representatives are directly elected by the citizens in each of Wheare's four federations; and a principal reason why he does not regard Germany's Basic Law as properly federal is that the representatives in the Bundesrat are appointed by the governments of the Länder, "subject to instruction, recall and replacement by those governments", so that the federal legislature is "to some degree dependent on them."[22] But a crucial distinction between that and a confederal system is that the Bundesrat votes by majority: there is no veto for any one of the Länder. The powers of the Bundesrat are moreover less than those of the people's house, the Bundestag, which among other things appoints and can dismiss the government. While the Bundesrat does give the Länder a status in the federal system that helps to offset the preponderance of exclusive and concurrent powers allocated to the federal government, to which Wheare also refers, experience shows that the Länder do not thereby dominate the central institutions.

Wheare admits that until the Constitution was amended in 1913, the US Senators were appointed by the states' legislatures, and this was, by his definition, a non-federal element in the US Constitution. But there can be no doubt that the United States was effectively a federation, with sufficiently independent governments for both the centre and the states. Indeed, the powers of the Senate, with its right to approve treaties (by a two-thirds majority) and presidential appointments, to propose, amend or reject legislation and to impeach the President, give the states' representatives a more dominant role than that of the representatives of the Länder. While this is not the same as giving such a role to the governments of the constituent states, there is a powerful logic in giving them a substantial place in a federal legislature that will enact laws in fields where they either have concurrent competence or will be responsible for

administering the federal legislation. The same logic may be applied to the European Union, where the Council, like the Bundesrat, contains representatives of the governments of the member states. But contrary to the German example, the Council dominates both the executive (European Commission) and the people's house (European Parliament) and retains the veto for each member state for some important decisions in the Union's central, Community pillar and for virtually all decisions in the other two "pillars" that are supposed to deal with external and internal security.

In the federations the seats in the people's house are distributed in proportion to population, whereas in the European Parliament there is, as in the Council, an element of weighting in favour of the representation from the smaller states. The directly elected European Parliament is otherwise similar to the people's houses of the federations, with the crucial exception of its deficiency of powers in relation to the house of the states. The European Parliament's powers have been substantially increased through successive treaty amendments. For the budget, it is at least the equal of the Council, though with the important exceptions of the agricultural expenditure and the power over tax. For legislation, it has the right of codecision with the Council, which has applied to over a quarter of the Community's legislation since the Maastricht Treaty entered into force, and an influential, though not decisive, role for most other legislation. For acts of accession, treaties, many international agreements and some other matters its assent is required. And, since Maastricht, it has the power to approve, or not, the appointment of each new Commission. These powers are certainly significant, but they still fall far short of those of the people's houses in the federations.

Wheare also emphasised the importance of a good system of political parties if the federal legislature is to be effective. Like many anglosaxons, he believed the two-party system, which applied in Canada and the United States, was best. But multi-party systems function well enough in Australia, Germany and Switzerland, as in most European unitary states. The general European pattern is reflected in the European Parliament, three-quarters of whose members, since the 1994 elections, have belonged to the three main party groups. But the party system, like the Parliament, is still in the process of evolution and may not achieve maturity until the Parliament has full federal powers.

Control over the enactment of legislation by the citizens' elected representatives is one main principle of representative government. Control over the executive is the other, which can be exercised either by

entrusting that control to those representatives or by giving the executive power to a representative elected for that purpose by the citizens. The former system, of a parliamentary executive, is normal in Europe and applies in the Australian, Canadian and German federal systems, where the federal government is appointed and can be dismissed by the federal legislature, with the proviso in Germany that the decision to dismiss must be accompanied by the appointment of the succeeding government. In Switzerland there is a yet stronger safeguard against governmental instability, in that the Federal Council, as the executive is called, remains in office for the four-year term of the legislature, following its appointment by a joint session of both houses. This amounts to a partial separation of powers, and leads us to the fuller separation in the presidential system of the United States.

The intention of the American Founding Fathers was to entrench the separation of powers at the centre in order to guard against the danger of too-strong government. While the role of the President has been greatly enhanced during the course of two centuries and two World Wars, the ability of both President and Congress to frustrate each other's actions is still a source of weakness in the system, and hence of comfort for those who oppose the idea of big government. While the separation of powers between the judiciary on the one hand and the legislature and executive on the other, once the judges have been appointed by some combination of these two, is common ground between Americans and Europeans, the European system of a parliamentary executive does not seek to weaken central government by separating the appointment of legislature and executive.

A parliamentary executive may be weak because it is dominated by the parliament, as has been the case with most of the post-war Italian governments. Or the parliament may be weak because it is dominated by the government through its control of a majority party, as in Britain. But a constitution can be designed, as in Germany or Switzerland, to secure a balance between legislature and executive in order to avoid both the deadlock to which the American system is prone and the dominance of either legislature or executive which can result from the European system.

The President of the European Commission is nominated "by common accord" of the governments of the member states and the governments also nominate the Commission's other members, in practice each government nominating the representative, or for the larger member states the two representatives, from its own country. The Commission

thus nominated is "subject as a body to a vote of approval by the European Parliament" (Art. 158 EC). The Parliament was given its right of approval by the Maastricht Treaty, before which the procedure had been totally in the hands of the governments, and hence a fully confederal element in the institutions. The Parliament now has the chance to exercise its power over the appointment so as to make the procedure more federal. The Commission also has to regard itself as accountable to the Parliament as well as to the Council because, among other things, of the Parliament's role with respect to legislation and the budget, which the Commission has to propose and execute, and the Parliament's ultimate power to dismiss the Commission — although the requirement of a two-thirds majority of the votes representing a majority of its members makes this sanction hard to apply. But the executive, like the legislature, remains dominated by the Council; and the Union will not have democratic federal institutions until the parliament can make its right to approve the appointment of the Commission fully effective, and until it attains full legislative codecision with the Council so that all laws must be approved by the house of the people as well as the house of the states.

While the main problem facing the European Union is the dominance of its institutions by the governments of the member states, the question for Wheare's federal states is, rather, whether the governments of the constituent states are sufficiently independent of the federal government. There is some diversity among their institutions. Thus all the American state legislatures have two houses save Nebraska, which has only a senate, while all the legislatures of the German Länder have only one house, except for Bavaria, which has two. But in each federation the institutions of the constituent states are guaranteed by the constitution, except that the federal government has the right to intervene if they cease to respect fundamental rights. While the Court of Justice has a duty to guarantee that the institutions of the Community, though not the other two "pillars" of the Union, respect such rights, the Treaty does not provide for intervention in a member state that fails to do so. The United States constitution was amended to provide for that in order to ensure that such denials of rights as slavery would no longer be possible. The motive for the European Union would be rather different. It cannot be acceptable for democratic member states which respect the principles of rule of law and representative government that any of their partners should not respect those principles, thus failing to apply the Union's laws and perhaps placing representatives of undemocratic governments in the Council where they might cast the deciding vote. The Treaty must surely

be amended, before the accession of a substantial number of countries whose democracies are insufficiently mature, to allow for measures of either intervention or suspension with respect to member states whose democratic standards may fall short of what is acceptable. Such considerations lead us to the question of the replacement of the Treaty by a constitution.

Constitution.

A democratic constitution differs from a treaty in being, whether implicitly or, preferably, explicitly, a contract among citizens, as well as, in federations, among states. Without such a constitution the structures of union or devolution will remain precarious. Nothing in politics can be absolutely certain; but a federal constitution enhances the prospect that two or more levels of government will coexist independently within a single polity. The European Union is based on an inter-state treaty, drafted in a form and in language that is incomprehensible to the citizens whose support for its institutions and activities is required, and with insufficiently effective and democratic institutions. Sooner or later, preferably sooner, and before the process of enlargement proceeds much farther, the treaty will have to be replaced by a constitution or the Union will remain unsound and liable to disintegrate. Wheare's book helps us, in considering the implications of this, to answer the questions that arise. What should be the content of such a constitution? Who makes the constitution? Who interprets it? How is it amended to take account of past experience and new developments? Can it really ensure that the governments of the centre and the states are co-ordinate and not subordinate?

The substance of Wheare's book, and hence of this Introduction which reflects it, concerns mainly the content of the constitution and its relationship with the practice of federal government.

The first federal constitution, as is well known and as Wheare records, was drafted in Philadelphia by representatives of the participating states and ratified by Assemblies elected for the purpose, though initially not accepted by all of them. Now that, in the European Union, the dual character of a federal system as a contract between citizens as well as states is represented by the existence of a house of the people and well as by the member states, it is logical to envisage that a constitution should be drafted by a process of codecision between the European Parliament and representatives of the member states, and of their legislatures in particular. It should be adopted by the Parliament, approved by referen-

dum and ratified by the member states. While it is highly desirable that all the member states should ratify, it may be necessary to proceed in the first instance without some of them, while remaining open, as did the USA, to their future accession. The proposal of the Draft Treaty of European Union, inspired by Spinelli and approved by the European Parliament in 1984, was that when one-half of the member states containing at least two-thirds of the Community's population had ratified, their governments should meet "to decide by common accord on the procedures by and the date on which this Treaty shall enter into force."[23] Whatever the detailed arrangement, a federal union is not likely to be established if those member states that wish to adopt the federal constitution accept a veto from those that do not.

Interpretation of the constitution is, as we have seen, normally entrusted to a supreme court. But if the politicians do not like what the judges decide, they can seek to amend the constitution on which the judgment was based. The procedure for amendment is, indeed, a vital element in a federal constitution, because it, like the constitution itself, must place neither the federation nor the states in a subordinate relationship one to the other. The procedure in the United States is that an amendment must be proposed by either a majority of two-thirds in each house of Congress, or a convention called by Congress, or on application by the legislatures of two-thirds of the states; and in order to be enacted, the amendment must then be ratified by either the legislatures of three-quarters of the states or conventions in three-quarters of the states, whichever of the two methods the Congress shall choose.

While such a procedure, like that of other federations, gives the states a full part in the process of amendment, it does not allow a single state, or a small minority of states, to impede it. This, Preston King has argued, gives the constituent states a subordinate position within the federation.[24] While the logic of this argument is open to question since the states can likewise overrule the central institutions in the amending process, it undoubtedly has political force. If a single state or a minority of states is seriously opposed to the constitution, or to an amendment that is enacted by a sufficient majority, the result can be either violent conflict, as in the American Civil War, or a non-violent secession, such as will doubtless occur if a majority vote for it in a referendum in Quebec. King suggests that the individual state is in a dependent position unless the constitution gives it the right to secede, which is not normally allowed by federal constitutions; and though that of the Soviet Union made formal provision for it, there was no question that it would be permitted so long as the

Communist Party remained in power. But in modern democratic federations the opposite is the case. Who would suppose that the other Canadians would go to war against a secessionist Quebec? Secession may not be formally allowed by the constitution, or indeed by the Treaty of the European Union, but this does not mean that secession would be an act of war. The seceding state would therefore be liable to painful sanctions on the part of the federation, which could be justified in regarding the illegal act as damaging its interests. The other constituent or member states would, however, be entitled to regard it as an illegal action unless it had been accepted by the due process of constitutional or treaty amendment. Just as Wheare was right to regard Canada as a federation in practice even though there are significant unitary elements in its constitution, so the constituent states can be regarded as autonomous in practice within their own fields of competence, even if the constitution does not formally provide for secession. So it is legitimate to say that the central and state authorities are, as Wheare affirmed, co-ordinate with each other. Wheare held, moreover, that secession was not inconsistent with the federal principle as a matter of logic, but that the right to secede would open the federal government to blackmail by individual states and thus weaken it.[25] It may be wise not to provide for it in a European constitution; and it should be understood that illegal secession could be punished by appropriately severe sanctions. But it would also be wise not, except in extreme circumstances, to regard it as a *casus belli*.

Wheare often encountered the criticism, common among the British, that federal government is legalistic and conservative. While accepting that this was so, his reply was that this was the price to pay for the advantages of a federal system, and that change could moreover be effected through the development of usage, judicial decision and constitutional amendment. None of his federations made the latter so difficult as does the European Union, with its requirement of unanimity for treaty amendment. Yet it is remarkable how far the Community has nevertheless progressed towards a federal system, with the establishment of the European Coal and Steel Community followed by the Treaties of Rome, then the amending treaties giving the European Parliament its budgetary powers, the decision for direct elections to the Parliament, and the Single European Act and Maastricht Treaty, all of them requiring unanimous agreement.

As the Union approaches the core of sovereignty, however, and as the number of member states grows, this procedure for amendment becomes more and more impracticable. The major reforms still required to make

the Community institutions federal involve a relative reduction in the power of the Council, and hence of the governments of the member states: generalisation of voting by qualified majority and of legislative codecision with the Parliament, and a shift of responsibility of the Commission to the Parliament. Given completion of the economic and monetary union, there would then be federal institutions with federal powers in the economic and environmental fields: a federal union, though not yet a federal state.

The number of essential reforms is modest, but the prospect that the governments of all the member states will accept such a sharing of sovereignty may appear modest too. Hence the proposals for a federal nucleus of states to move ahead, in the expectation that the others will follow when they see the enterprise succeeds, as they have done with the enlargement from six to the fifteen member states of the Union today, with a dozen further applicants.

European federalists expect that the logic of their proposals will sooner or later prevail, as it becomes more and more evident that the European Union in its present form is too ineffective and undemocratic to deal with the challenges that confront Europeans now, and will increasingly confront them in the future. Many federalists also believe that federal structures will be found increasingly necessary within existing unitary states. Wheare's *Federal Government* helps us to think about these propositions and to know how to deal with the relevant problems. Despite his scholarly objectivity, Wheare also conveys an inspiriting message for federalists. Federal government is designed, he writes in the final paragraph of his book, to make "the combination of unity and diversity, independence and interdependence, safe and workable" and is thus the way to achieve "a high and necessary ideal in the sphere of government." It is, one may add, echoing the words of his Federal Tract, order not anarchy, prosperity not poverty, peace not war.

NOTES

[1] His books included *The Statute of Westminster* (1931, 1933), *The Statute of Westminster and Dominion Status* (1938, 5th edn 1953), *Federal Government* (1946, 4th edn 1963), *Abraham Lincoln and the United States* (1948), *Modern Constitutions* (1951), *Government by Committee* (1955), *The Constitutional Structure of the Commonwealth* (1960), *Legislatures* (1963).

[2] For more information on Beveridge and these four, see John Pinder, "Pre-war Ideas of European Union — The British Prophets", in Martyn Bond, Julie Smith e William Wallace (eds), *Eminent Europeans: Personalities Who Shaped Contemporary Europe*, London, The Greycoat Press, 1996.

[3] See Altiero Spinelli, *Come ho tentato di diventare saggio: Io, Ulisse*, Bologna, Il Mulino, 1984, pp. 307-8; see also A. Spinelli, "The Growth of the European Movement since World War Two", in C. Grove Haines (ed.), *European Integration*, Baltimore, John Hopkins Press, 1957, pp. 38-42; Sonia Schmidt, "Intervista con Altiero Spinelli", in Altiero Spinelli e Ernesto Rossi, *Il Manifesto di Ventotene*, Napoli, Guida, 1982, pp. 171-4; and Altiero Spinelli, *L'Europa non cade dal cielo*, Bologna, Il Mulino, 1960, p. 15. A full bibliography of the literature produced by the Federal Union movement and the federalists associated with it is given in Richard Mayne e John Pinder, with John Roberts, *Federal Union: The Pioneers — A History of Federal Union*, Basingstoke, Macmillan, 1990, pp. 250-63. Extracts from and studies of this literature in Italian are to be found in Mario Albertini, *Il federalismo. Antologia e definizione*, Milan, Giuffré, 1963 and *Il federalismo*, Bologna, Il Mulino, 1979; Mario Albertini, Andrea Chiti-Batelli, Giuseppe Petrilli (ed. Edmondo Paolini), *Storia del federalismo europeo*, Turin, Edizioni RAI, 1973, pp. 21, 38-40, 134-5, 138-42; Andrea Chiti-Batelli, *L'unione politica europea*, Rome, Senato della Repubblica, 1978, pp. 30-7, 72-5; Lucio Levi, *Federalismo e integrazione europea*, Palermo, Palumbo, 1978, pp. 39-46; Edmondo Paolini, *L'idea di Europa*, Florence, La Nuova Italia, 1979, pp. 46-50; Sergio Pistone (ed.), *Politica di potenza e imperialismo*, Milan, Franco Angeli, 1973; Francesco Rossolillo, "La scuola federalista inglese", in Sergio Pistone (ed.), *L'idea dell'unificazione europea dalla prima alla seconda guerra mondiale*, Turin, Fondazione Luigi Einaudi, 1975.

[4] Ivor Jennings, A *Federation for Western Europe*, Cambridge, Cambridge University Press, 1940, p. viii.

[5] The citations are to be found in Altiero Spinelli, "Gli Stati Uniti d'Europa e le varie tendenze politiche", in A. Spinelli e E. Rossi, *op. cit.*, pp. 66, 70; and A. Spinelli, "Politica marxista e politica federalista", *ibidem*, p. 103. The two books by Lionel Robbins were *Economic Planning and International Order*, London, Macmillan, 1937 and *The Economic Causes of War*, London, Jonathan Cape, 1939;

[6] Barbara Wootton, Socialism and Federation, Federal Tracts n. 6, Londra, Macmillan, 1941, reprinted in Patrick Ransome (ed.), *Studies in Federal Planning*, London, Macmillan, 1943, reprinted London, Lothian Foundation Press, Londra, 1990.

[7] Friedrich A. Hayek, "The Economic Conditions of Inter-State Federalism", in *New Commonwealth Quarterly*, September 1939, reprinted in F. A. Hayek, *Individualism and Economic Order*, London, Routledge & Kegan Paul, 1949. The citations by Spinelli are in "Gli Stati Uniti d'Europa", *op. cit.*, p. 83 and in "Politica marxista e politica federalista", *op. cit.*, p. 112.

[8] A. L. Goodhart, "The Constitution of the United States", in P. Ransome, *op. cit.*

[9] Lionel Curtis was also the author of a massive study of the historical development towards federal government: *Civitas Dei*, London, Allen & Unwin, 3 vols., 1934-37.

[10] The draft constitution by Goodhart and Wheare, together with a record of the discussion on it, is presented in the "Report on Conferences on the Constitutional Aspects of Federal Union", in the Federal Union Research Institute's *First Annual Report 1939-1940*, London, FURI, 1940.

[11] Kenneth C. Wheare, *What Federal Government is*, Federal Tracts n. 4, Londra, Macmillan, 1941, reprinted in P. Ransome, *op. cit.*

[12] Max Beloff, "Sir Kenneth Clinton Wheare", in *The Dictionary of National Biography 1971-1981*, Oxford, Oxford University Press, 1986, p. 896.

[13] K. C. Wheare, *Federal Government*, p. 35 (The page numbers in this and subsequent

notes refer to the 2nd edition, 1951, except for n. 22 which refers to the 4th edition, 1963).

[14] See for example Preston King, *Federalism and Federation*, London, Croom Helm, 1982.

[15] Daniel J. Elazar, "Introduction", in D. J. Elazar (ed.), *Federal Systems of the World*, Harlow, Longman, 1991, p. xv.

[16] K. C. Wheare, *Federal Government,* p. 37.

[17] Murray Forsyth, *Unions of States: The Theory and Practice of Confederation*, Leicester, Leicester University Press, 1981, p. 208.

[18] For further consideration of this question, see John Pinder, *European Community: The Building of a Union*, Oxford, Oxford University Press, 1991 (2nd edn 1996); "The New European Federalism: The Idea and the Achievements", in Michael Burgess e Alain-G. Gagnon (eds), *Comparative Federalism and Federation: Competing Traditions and Future Directions*, Hemel Hempstead, Harvester Wheatsheaf, 1993; and "Building the Union: Policy, Reform, Constitution", in Andrew Duff, John Pinder and Roy Pryce (eds), *Maastricht and Beyond: Building the European Union*, London, Routledge, 1994.

[19] K. C. Wheare, *Federal Government*, pp. 52-3, citing John Stuart Mill, "Of Federal Representative Governments", in his essay *Considerations on Representative Government* (1861), reprinted in *Utilitarianism, Liberty and Representative Government*, London, J. M. Dent, 1910, pp. 367-8.

[20] K. C. Wheare, *ibidem*, pp. 40-41.

[21] Preston King, *op. cit.*, p. 137.

[22] K. C. Wheare, *Federal Government* (4th edn., 1963), p. 26.

[23] *Draft Treaty Establishing the European Union* (European Parliament, February 1984), Article 82.

[24] Preston King, *op. cit.*, pp. 113-16.

[25] K. C. Wheare, *Federal Government,* p. 91.

The Origins of Modern Federalism: the "Covenant" in American History

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Introduction.

The history of modern federalism began with the foundation of the United States of America. The "Convention for the revision of the federal system of government," better known as the Philadelphia Convention, approved 17th September 1787, established the first example of a federal pact between sovereign states.

This outcome was not a foregone conclusion, nor one on which the congress members had previously set their sights, but was instead the result of a genuine compromise. "The most important points of the constitution were conceived as pure and simple transactions between the diverging opinions of the opposing parties and in no sense whatsoever as the elements of a coherent design."[1]

The compromise was the brilliant intuition of the congressmen of that time, yet this is not sufficient alone to answer two important questions:

1) Why were the conditions for the development of federalism created only in that part of North America?

2) Why again was it only in North America that the implied federalism declared in the principles of the Philadelphia Convention was perceived by society as an integral part of their own historical and cultural baggage?

To find the answer to such questions means being able to identify which circumstances determined that, at the end of the 18th century, a federal society was established in North America; it means elaborating what Albertini[2] defines as "the historical framework of that particular federalistic social behaviour;" it means finally contributing to the analysis of the political, social and cultural motivations of modern federalism.

As we seek to demonstrate in this article, there existed an element (Puritan contractualism), which had moreover always been present in colonial society since its first settlements, that can provide an initial answer to these questions. Puritan contractualism was in fact a decisive influence on the development model the communities employed, and

brought about a transferral from the religious sphere to the social and political ones of proto-federal behaviours that were forebearers of the attitudes and mentalities that were to lead the congressmen of Philadelphia to identify, probably unconsciously, the fundamental mechanisms of the federal system.

An event that took place in the summer of 1775 at the Continental Congress meeting in Philadelphia illustrates the degree to which Puritan contractualism permeated the society of the time.[3] This was the eve of the decisive conflict between the thirteen colonies and Great Britain. The Congress faced the crisis of imminent war with methods and forms which may seem to be at the very least unusual; in fact, it invited the peoples of the colonies to live the day of 20th July 1775 as "a day of publick humiliation, fasting and prayer." This would serve to "confess and deplore our many sins and offer up our joint supplications to the all-wise, omnipotent and merciful disposer of all events" so that He may be moved to "forgive our iniquites, to remove our present calamities, to avert those desolating judgments with which we are threatened." The effect of this recommendation was far from disappointing: everywhere, from New England to the Carolinas, there were widespread manifestations of genuine consternation, contrition, prayer and repentance. In this way the Continental Congress (composed partly of followers of the Enlightenment and deists) gained the favour of the people in the imminent struggle with Great Britain.

The meaning of the Congress's appeal was immediately understood because the Congress had touched an extremely delicate and sensitive nerve among the colonists themselves; the mechanism that the Congress used to spread its message was a continuation of that which had been practised for at least 150 years in New England.

In New England[4] Puritanism had accustomed society to live a direct contractual relation with God and to dedicate one day in the week to confession and the repentance of sins. Every human omission damaged the contractual agreement with the Omnipotent, and in this way brought about a proportional punishment.

The profoundly religious mentality rooted in Puritan New England was, during the preceding century and a half, sufficiently diffused also among the other colonies as to convince the Congress that it was opportune to address the colonists with precisely the typical forms and elements of Puritan culture.

In such a society, infused with a religious sentiment based on contractualism between the people and God and accustomed to the practice

of voluntary association among the different Christian confessions, modern political federalism found an ideal substratum for its first positive application, being seen not as something different, artificial or complex, but rather as a model of civil organisation that had already been previously delineated in the religious and political culture of the Puritans.

For confirmation of the importance that the particular nature of society had on the birth of federalism it is useful to recall the case of Mexico, along the lines of the reflections already made in the last century by de Tocqueville in the fundamental work *Démocratie en Amérique*. In 1824 this state adopted the American Federal Constitution of 1787, copying the American original in its entirety; nevertheless, the results were very different and within a short space of time the Mexican federation degenerated first into anarchy and then into despotism. The causes of its failure were numerous, but the fundamental issue, in our opinion, was that the values of Puritan contractualism were unrelated to the Mexican way of life.

Focusing attention on Puritan contractualism in no way means underestimating the importance of other circumstances that favoured the birth of the federation of the United States. For example, the impact of the geographical context is more than evident: small groups of colonists, very distant one from the other, were to a certain extent "forced" to give themselves a decentralised and federally-leaning organisational structure. Likewise the political and philosophical ideas of the European Enlightenment (above all from Britain) provided the Founding Fathers with the cultural preparation that was indispensable for any modern ruling class. That said, it is however also correct to stress that Puritan contractualism, as we will examine below, preceded both the arrival of the colonists in the New World and the 18th century Enlightenment. It provided New England with the religious motivations of the particular political order that had been established there and influenced the new generations, preparing them culturally (and we could say almost instinctively) for the federalism of 1787.

In American historiography, Puritan contractualism[5] is usually associated with the English term "covenant", even if, as will be seen below, the identification of contractualism with the covenant may often seem arbitrary.

This article will present in turn a preliminary historical and theoretical study of the covenant, and its affirmation in the colonies of New England and from there to all the other colonies of North America.

Definition of the Term Covenant.

The term covenant derives from the old French covenant and was most probably introduced into England following the great Norman invasion of 1066.

Had it not played a decisive role in the creation of North American federalism, it would probably be now remembered only by the historians of Protestantism.

In its practical meaning, covenant signifies "convention", "promise", "agreement", "pact".[6] Each of these words possesses an individual and specific nuance in English, such that none can fully express the complex of meanings contained in the term covenant.

Various scholars have in recent years suggested more sophisticated definitions,[7] whereas others have been directly drawn from 16th and 17th century American texts.[8]

Covenant may therefore stand for "a formal agreement with legal validity, made under the seal of the Crown;"[9] "an agreement established or secured by the Divine Being;"[10] "a Pact or convention between the chosen people and God;"[11] "an agreement made among a certain number of obviously Christian people for the creation of a Church;"[12] a "social Pact through which a certain type of government is accepted;"[13] a "Pact by which a certain number of men creates a City."[14]

Evidently, the term covenant is used to describe different kinds of agreements with an equal number of different purposes. It is therefore difficult to summarise these many meanings effectively, and in fact such a process could prove counter-productive, given that every element of reasoning or logical discussion contained within a single phrase would emerge irremediably lessened.

Nevertheless, while containing all the limitations of a definition, it seems right to re-propose Sabetti's definition[15] since it is useful for tracing the very basic outlines of this essay. Sabetti defines covenant as the "voluntary association among peoples or parties having an independent status, for undertaking a common action or commitments to achieve limited or very general objectives, in conditions of mutual respect for the individual integrity of the associated members."

All the same, it needs to be emphasised that, whatever definition is chosen, the concept of covenant nevertheless always contains the most specifically contractualistic aspect of the mutual correspondence of many distinct wills.

Yet in England the terms which recur to describe something similar

to our "agreement" were not limited to covenant alone, but included also the terms "contract" and "compact". While the former, as we have already seen, could take on a wide range of meanings, a contract was simply an "agreement of mutual responsibilities on a specific matter ... The contract would be enforceable by law but did not itself have the status of a law."[16] On the contrary, a compact was "an agreement that affected the entire community in some way, or relations between communities.... The compact was not as specific as a contract, and was more like a settled rule than an agreement with specific responsibilities."[17]

Federal Theology.

With the Protestant Reformation the covenant developed more religious and metaphysical characteristics, and differentiated itself from the albeit similar contract and compact.

A new and more elaborate conception of covenant became evident in various English Protestant fellowships that were intent on uniting through pacts founded on the free consent of the contracting parties. These pacts committed the contracting parties not only to live in a Christian way in all circumstances, but also to enter into a new and more Christian community. Behind a varied ritual and an apparent simplicity with regard to expressing their consensus, were hidden on the one hand a different conception of the Church and society, and on the other a real, practical theology.

The followers of these sects (who we will call from now on by their proper name, Puritans) strongly disassociated themselves from the official confession of the King and the English people (Anglicanism), yet also from confessions that were much closer to theirs (such as Presbyterianism), since, as discussed above, they were oriented towards a specific theology: federal theology.[18]

This theology, which was a minority element in the varied world of Protestant religious theories, was the result of a long and complex intellectual process started in Switzerland by Zwingli and Bullinger and in the Rhineland by Ecolampadius[19] and Martin Bucer.[20] Its first exhaustive conceptualisation was achieved by the Dutchman Zacharias Ursinus and his English pupil Thomas Cartwright.[21] The latter spread federal theology in England, whose principles were definitively established by some important members of the Reformation intelligentsia, such as William Perkins, William Ames and John Preston.[22]

The federal theology was able fully to express and partly anticipate

the new intellectual climate which was spreading from England onto the continent through the new religious ferment of Protestantism. In fact, by taking up with unusual zeal and dynamism the very ancient idea of the pact, of the alliance (precisely the covenant) between God and man, which had been widely described in the Old Testament, the federal theologians unconsciously sowed also the seed of a new social mentality (and subsequently of a new political and institutional order) that was no longer based on "nature" but rather on human voluntarism. The premises of this voluntarism were very different from the various forms of mediaeval *foedera*,[23] since they referred back directly to the bible, and hence interpreted all the contractual relationships of ecclesiastical and social life under Puritan contractualism as "divine right."[24]

In this way, the biblical experience of ancient Israel, modelled on the sacred alliance of the chosen people with God, was reinterpreted and re-proposed as an authentic benchmark of political relations; from the outset, therefore, the theological covenant began to influence profoundly the ecclesiastical, political and institutional spheres of the English Puritans.[25]

The Ecclesiastical Covenant and Congregationalism.

Taking the theological covenant and federal theology as their starting point, the English Puritans (who, at the time, were still part of the larger family of Presbyterians) developed new aspects within the overall framework of covenant ideas. They believed in the absolute need to found churches through a public contract, in the presence of God, between a certain number of Christians. The signatories of such a solemn contract could not be the whole of Christendom, but only that small group which had taken the theological covenant with God to heart. Such people were none other than the true Christians, "the elect" and, by definition, the Puritans themselves.

It was not easy to identify who, out of the vast sea of humanity, had been predestined (elected) to salvation by God. It was necessary to judge people's actions and behaviour, their successes (a sign of divine grace) or failures. Only the visible saints, those who demonstrated already on earth to be in receipt of divine grace, could consider themselves to be the chosen ones and authentic Christians, and therefore gather together in a free church.

In this regard, it is useful to describe the way in which a new church was born: a group of visible saints solemnly met together and, through a

free and voluntary covenant, gave birth to a Puritan church.

The roots of this covenant (ecclesiastical covenant) are biblical: the Old Testament is full of alliances (covenants, according to federal theologians) stipulated among groups of the elect. The New Testament (as interpreted by the Puritans) also gave Christians the task of uniting in order to spread the gospel.

The Puritan churches were established therefore to the exclusion of all non-Christians and at the same time did not include the whole of Christendom. In other words, they were *not ecumenical* but *selective* and confined to *that specific* group of stipulators and *that specific* ecclesiastical covenant. Hence, there existed as many Puritan churches as signed covenants; every Puritan group endowed itself with a church that was equal and at the same time different from all its sister churches; none of these churches could prevail over the others in as much as each of them was directly wished by God.

From these theoretical premises, which derived from the developments of federal theology and the bible, the so-called congregationalism, that is, the ecclesiastical organisation that the Puritans adopted, gradually took shape.

Congregationalism was the cause which persuaded the followers of federal theology to split from the larger family of Presbyterianism. The Presbyterians, just as the Anglicans, claimed that the church had by its nature to be one and spread throughout the territory of the Crown. It could not be based on the consensus and voluntarism of a restricted number of people, but had to include the totality of Christians, regardless of any underlying covenant. The Anglican Church rested on these foundations; and it was for this reason that the Presbyterians remained within it.

A part of the Congregationalist Puritans did not accept such a compromise and decided officially to leave the Church of England. Others, probably the majority, argued that it was not opportune to abandon the Anglican church in as much as they believed it still possible to reform it from the inside. In this way, two distinct groups of Puritans were born: the separatist Congregationalists and the non-separatist Congregationa-lists. The non-separatists constituted the majority of those subjects of the Crown that crossed the ocean in order to venture into the New World.

The differentiation between separatists and non-separatists very soon involved also the ecclesiastical structure as such. In fact, while both churches were based on free covenants, and while every church enjoyed independence from the others, the separatists developed this basic form

of organisation to its extreme. In short, since the separatist churches did not benefit from any solid reference point at a higher level of organisation, they ended up becoming increasingly different one from the other (also at a doctrinal level) and within a short space of time, fell into complete anarchy, which endangered their very survival. On the contrary the non-separatists, in part because they never renounced their membership of the Church of England, managed to achieve an organisation of the system of churches which, when carefully considered, reveals some similarities with what would become the federal system of 1787. In fact, every church enjoyed full freedom and autonomy. In 1636, a special body, called Synod, was created above the churches and given a few, well-defined functions (set down in Chapter XVI of the Cambridge Platform). The Synod was made up of pastors sent from the various churches, so that continuity and uniformity of religious and political action was developed between the two levels of ecclesiastical organisation.

The Covenant in the Experience of the British Settlers in North America.

Had the hard-line British Puritans not left their home country, they would probably over time have been re-absorbed into the large family of Presbyterianism. And today, dealing with their history and explaining their ideas would have no sense beyond a historical account. Instead, these men left a lasting impression of their presence in the New World.

A few historical facts will suffice to explain the extraordinary importance that these conventicles of the visible saints had. In 1620, the Pilgrim Fathers, during the voyage towards the American coasts, entered into (as was their usual practice) a covenant.[26] "We do solemny and mutually, in the presence of God and of one another, covenant and combine ourselves together, into a civil body politic."[27] This covenant, that already had the characteristics of the social covenant (which will be discussed below), later became the symbol of the spirit that inspired the creation of the United States and its political model.

Nevertheless the adventure of the Pilgrim Fathers did not, nor could it have had, the importance which history later attributed to it. After landing at Plymouth in New England, they immediately put into practice all the institutions of federal theology and separatist congregationalism. Yet, as important as their experience was on a symbolic level, it was nevertheless restricted to a group of 150 people and the *practical* consequences of their action did not go beyond a generation.[28]

Definitely more important was the great migration of 1629-30 by non-separatist Puritans led by J. Winthrop.[29] This migration was different from all previous and future ones for a variety of reasons, of which one is particularly significant: Winthrop and his followers arrived in New England convinced that they had been guided to the new promised land by God, to whom each was linked by the theological covenant.

They left for such a remote land not because they were oppressed by their home country, but because they were convinced that they would be able to create there an authentic Christian community, populated by true Christians and organised on the model of free churches that were founded on the equally free ecclesiastical covenant. In other words, they (the new Israel) landed in America just as the old Israel, under the guidance of the Lord, had reached the Promised Land in Palestine.

A significant part of American historiography,[30] referring back also to de Tocqueville's teaching,[31] agrees on identifying precisely in the Puritans of New England the first authentic seed of national identity, democracy and federalism.

From Ecclesiastical Covenant to Social Covenant.

The ecclesiastical covenant of the Congregationalist Puritans succeeded in shaping an entire society, even as far as the most insignificant details, and provided the parameters, forms and model for the social covenant.

A large number of churches was rapidly established in Massachusetts, each of them free, autonomous, and independent, founded on the will and consensus of more or less small groups of Puritans. This system of organisation, being highly decentralised, encouraged the grouping together of settlers in isolated communities, and hence prevented the emergence of a strong central control.

Given that not only the religious but also the social point of reference was provided by the various churches, the need existed from the outset to provide a more specifically political organisation, so that the New Israel could survive and flourish in those so apparently inhospitable lands.

Once again, the vivid and practical answer the Puritans gave to this emergency situation derived from an elaborate theological and biblical construction: the social covenant.

Unlike the ecclesiastical covenant, the social covenant was much less selective. The non-elect could also take part. In this way, the colony was able to enlarge itself while maintaining power and religious and political

management firmly in the hands of the visible saints alone.

It may be interesting at this stage to recall briefly the principles on which the transformation of the theological covenant into social covenant took place.

The Puritans used to state: just as all Christians had signed a theological covenant with God and just as they had combined together in order to build the Church, likewise all other social and political communities must be founded on the same premises, namely on a public, free and voluntary contract between men and an earthly authority. The parties to such an agreement must have equal dignity and one party could not trample on the rights of another.

The Old Testament is rich with examples of this kind:[32] the contract between God and Abraham later becomes the contract which binds Israel in its entirety. And if God himself wished to found his authority on a contract stipulated on a free and equal basis, subjecting himself in some sense to its conditions, then all the more reason why every earthly king or political power should do the same.

These ideas seem to anticipate by a century the thinking of Locke and Montesquieu; indeed, the Puritans succeeded, perhaps unconsciously, in elaborating something which recalls the social contract of the Enlightenment.

Needless to say, widespread ideas on contractualism also from a political viewpoint had existed for some time in England and Europe, but the New England Puritans were the first to *put into practice* these new principles; new, if considered in the context of the 17th century, but in reality ancient in as much as they appeared to the eyes and minds of those settlers as a return to the thousand-year old roots of the bible.

At this stage, it is possible to identify two basic guiding principles that emerged out of the social covenant: the government had to derive its strength from popular consent; the people, should the government betray its contractual obligations, had the right/duty to rebel.

These guiding principles re-emerge in the Declaration of Independence of 1776. From this point of view, Jefferson and the other congress delegates did not create anything new.[33]

Of course, we do not seek to argue that the American revolution was the mere implementation of the ideas of 17th century Puritan contractualism. Yet in our opinion (which is along the lines of de Tocqueville's teachings), what really gave the revolutionary process its original nature was the covenant, its history, premises and influence on the "thoughts" and "actions" of the peoples of North America.

The Implementation of the Social Covenant and the Township System.

Convinced that they were following biblical laws and the design of Divine Providence, the non-separatist Puritans of Massachusetts spread their covenant ideas to an extremely large number of areas of colonial life. Of these, we want to mention the particular social covenant through which new towns were founded.[34]

It is worth describing how cities in Massachusetts were founded and organised. Immediately after 1630, nearly 1,500 settlers distributed across at least 10 towns, lived in what is now the state of Massachusetts. Each town was created on the model of the township system. A group of colonists decided to unite freely by stipulating a covenant and thereby to found a new, stable community.

These communities were border communities: the constant dangers, due to the presence of Indians and the inhospitable environment, forced the settlers to remain united and organised. Towns were established also in extremely remote places, so long as the soil was suitable for agriculture. Indeed, agriculture, apart from being a necessity for survival, in the colonists' mind re-created in the New World that atmosphere of the rural English village from which the vast majority of them had come. All the settlers involved, and not only the elect, took part in this covenant, whose outward form followed that of the ecclesiastical covenant.

A group of settlers that wished to join together in a town had to receive the approval of the General Court of Massachusetts, the equivalent of a central government. Once approval was gained, the new town sent a representative to the General Court. A part of the town's territory remained public property (on the model of the English village), while the remainder (the township) was shared out among all the heads of families.

The central government nominated the public officers,[35] while important sectors such as education, the school system, roads, public charity, the training of the colonial militias, tax collection and so on, remained the responsibility of the local authority.

Civil and political life was developed in the town's outskirts and arose on the basis of solid contractualistic and federalist principles; the town itself did not possess a uniform nature, but rather drew its own political and social strength from a series of pacts (covenants) that were stipulated between the various settlements spread throughout the territory. The General Court intervened only at a later stage to give its approval to the new community order and recognise that a given town was in accordance with the religious orthodoxy.

In 1636 the Court conferred self-government on the various towns, by granting them the right to elect their public officials and to decree laws and regulations on varying subjects. Every member of the town could be called to take on government functions and the management of the public administration.

Since Massachusetts was a colony whose government had been established previously in England,[36] every town of the region was obliged, despite enjoying a large degree of self-government modelled on the principle of subsidiarity, to take account of the decisions of the superior political organ, that is, the General Court, in matters of public order and relations with neighbouring colonies.

However, other Puritan settlements in New England were founded in a significantly different way: Connecticut, New Haven and Rhode Island assumed from the outset what could be defined as a form of federation (to the extent that this was possible in the 17th century).

Connecticut was created following a solemn covenant stipulated in 1638 by the towns of Windsor, Hartford and Wethersfield;[37] this covenant, which called God as a witness, provided for the creation of a new political entity, Connecticut, which was to be endowed with a government organ, the General Court, the product of the three towns. The three towns agreed to give up part of their prerogatives in favour of the central organ, yet always within a relationship based on subsidiarity, such that the functions of the central government could not interfere with those of the towns for all matters which concerned the towns alone. In the preamble of Connecticut's Fundamental Orders (the equivalent of a constitution), there is an explicit reference to the intention to unite within a confederation.[38]

New Haven was founded in 1643 through a similar procedure to that used five years earlier by the towns of the Connecticut valley. Through the stipulation of a covenant, the towns of New Haven, Stamforde, Guilforde and Milford took the decision to join together in a federal-type union and to create a General Court comprised of representatives from the various towns.[39] The General Court, despite wielding the same powers as a central and superior organ, was obliged to respect precisely the functions of the towns, on the basis of a social covenant stipulated between the General Court itself and the towns, which established the respective spheres of competence.

Finally, Rhode Island (the most turbulent and heterodox Puritan settlement in the whole of New England) arose as the product of a series of covenants signed in 1643 by the towns of Providence, Warwich, Portsmouth and Newport, each of which was the result of the stipulation of a specific settlement covenant.[40]

In each of these colonies, as in Massachusetts, the town represented the initial core of association and elaborated a system of contractual relationships (covenantal relationships) similar to those of the Congregationalist Churches. The towns gave up their own absolute sovereignty and delegated the task of extra-regional representation to the General Court. Therefore, every General Court acted as a federal government could act, by taking foreign policy decisions that were binding for all the member towns.

As can be deduced from the observations made so far, the township system was the result of the complex Puritan ideology of the covenant and, at the same time, the legacy of the English tradition, which the settlers inevitably brought with them. The primitive weakness of the central government is not enough to justify the deep sense of self-government in Puritan culture. Even when the central power began to be strengthened, the autonomy and self-government of the towns were intentionally not called into question. The towns were supported by an Assembly of free colonists, who were not necessarily members of the elect. The similarities with the ecclesiastical Pact can not but confirm the strong influence that this exercised on local self-government. The Puritan mentality did not take kindly to an overly strong central government (perhaps also due to the Puritan experience in England) nor was it willing to renounce that strong sense of community that derived from belonging to the various Congregationalist Churches.

In 1643 the colonies of Massachusetts, Connecticut, Plymouth and New Haven stipulated, through their respective General Courts, a solemn covenant, to which God was called as a witness, through which they committed themselves to join together by establishing the United Colonies of New England. This association, which went down in history as the Confederation of New England, operated for four decades until 1686, and represented the first attempt on American soil to gather together a number of complex political realities through a federal method.

This model exercised a considerable influence on the constitutional evolution of American history, at least until 1787.

Also in the colonies of central and southern North America, towns were created and developed on the free and voluntary impulse of the colonists. Yet here, unlike New England, the Congregationalist system of Churches was not so widespread, and as a result the covenant ideas did not influence the foundation and development model of the towns.

In his description of the local situation in the United States between 1830-1840.[41] A. de Tocqueville repeatedly stressed a certain culture of self-government (from the town to the central government) that was deep-rooted in New England and, on the contrary, decidedly weaker elsewhere (even in states which were very close to New England, such as New York). He wrote: "In this part of the Union political life had its origin in the towships; and it may almost be said that each of them originally formed an independent nation." And again: "When the kings of England afterwards asserted their supremacy, they were content to assume the central power of the state. (...) They are independent in all that concerns themselves alone; and among the inhabitants of New England. I believe that not a man is to be found who would acknowledge that the state has any right to interfere in their town affairs."[42]

More than a century before the American Constitution, then, de Tocqueville identified in the events of New England attitudes which nowadays we would define as *federalist attitudes*.[43]

NOTES

[1] M. Albertini, *Il federalismo*, Bologna, Il Mulino, 1979, p 57.

[2] M. Albertini, *op. cit.*

[3] P. Miller, "From the covenant to the revival", in J.W. Smith & L.A. Jamison, *The Shaping of American Religion*, Princeton, Princeton University Press, 1961, pp. 324-34.

[4] New England is the region to the east of the river Hudson, comprising the current states of Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont and Maine.

[5] Puritan contractualism (an integral part of the Puritan doctrine) was modelled on the forms of the more ancient "covenant" (typical legal expression of the English tradition) until it obscured the non-metaphysical meanings of the latter to become almost totally synonymous with it.

[6] See the entry "Covenant" in the *Lessico Universale Treccani*.

[7] D.S. Lutz, *Popular Consent and Popular Control: Whig Theory in the Early State Constitutions*, Baton Rouge La, Louisiana State University Press, 1980; G. Tarello, *Storia della cultura giuridica moderna*, Bologna, Il Mulino, 1976; E.S. Morgan, *Visible Saints. The History of a Puritan Idea*, Ithaca and London, Cornell University Press, 1963; T. Bonazzi, *Il sacro esperimento. Teologia e politica dell'America puritana*, Bologna, Il Mulino, 1970; P. Miller, *The New England Mind. The XVIIth Century*, Cambridge, Massachusetts, Harvard University Press, 1939; J.W. Gough, *The Social Contract. A Critical Study of its Development*, London, Oxford University Press, 1936; F. Sabetti, "Teoria e pratica del federalismo nordamericano", in *Federalismo, regionalismo, autonomismo: esperienze e proposte a confronto*, Milan, Eured, 1992, pp. 11-41.

[8] "The Mayflower Compact November 11, 1620"; "The Cambridge agreement August 26, 1629"; "Fundamental Orders of Connecticut January 14, 1639"; "The New England Confederation May 19, 1643"; "The Cambridge Platform 1648" (all published in *Documents of American History*, edited by H.S. Commager, New York, Appleton-Century Crofts, 1962); Portsmouth Covenant January 7, 1638 in J.W. Gough, *op. cit.* Other definitions can be found in G. L. Haskins, *Law and Authority in Early Massachusetts*, New York, MacMillian, 1960.

[9] Cf. D.S. Lutz, *op. cit.*, p. 226.

[10] Cf. D.S. Lutz, *op. cit.*, p. 226.

[11] G. Tarello, *op. cit.*, p. 580.

[12] P. Miller, *op. cit.*, pp. 540 ff.

[13] T. Bonazzi, *op. cit.*, pp. 195 ff; E.S. Morgan, *op. cit.*

[14] T. Bonazzi, *op. cit.*; E.S. Morgan, *op. cit.*

[15] F. Sabetti, *op. cit.*, p. 14.

[16] Cf. D.S. Lutz, *op. cit.*, p. 225.

[17] Cf. D.S. Lutz, *op. cit.*, p. 225.

[18] Aspects of federal theology are mentioned in T. Bonazzi, *Il sacro esperimento*, *op. cit.* For a fuller treatment, see P. Miller, *The New England Mind. The XVIIIth Century*, *op. cit.*

[19] Johannes Ecolampadio, Swiss reformer (1482-1531) is mentioned in H.C. Puech (ed.), *Histoire des religions: le Christianisme*, Paris, Librairie Gallimard, 1970-76.

[20] Martin Bucer, German theologian (1491-1551) is mentioned in H.C. Puech, *op. cit.*, and in L.J. Trinterud, "The Origins of the Puritanism", in *Church History*, XX, 1951, pp. 37-57.

[21] For an exhaustive analysis of the history of federal theology, see D. A. Weir, *The Origins of the Federal Theology*, Oxford, Clarendon Press, 1990.

[22] F.M. Powicke, *The English Reformation*, London, Oxford University Press, 1961. For a general picture of English history in the Reformation period, see G.M. Trevelyan, *History of England*, London, Longman, 1960.

[23] On the relationships between mediaeval *foedera* and Protestantism, see Hugh Trevor-Roper, *Religion, the Reformation and Social Change*, London, Macmillan, 1967. On the most famous *foedera* of the Middle Ages see also the celebrated, *The Cambridge Medieval History*, vol. VII, Cambridge, England, Cambridge University Press, 1926.

[24] Federal theology interpreted in the relationship between Adam and God the existence of an original contract, on the basis of which Adam should have obeyed the moral law that had been impressed on him by God. Yet Adam did not respect this obligation, broke the contractual terms and was damned. Along with him, also his offspring bore the marks of this damnation, which, in contrast to what Catholic orthodoxy taught, was no longer a natural and unavoidable fact, but was rather held to be in the categories of sins and failings, which allowed man to be considered as simply contractually responsible. The federal theologians recognised in man a dominant strain of voluntarism. In this vein, God (as is told in the bible), moved to pity, decided to allow man to make a transaction: He committed Himself to forgetting part of Adam's responsibilities and man committed himself equally to serve Him. This was the "Alliance of the Old Testament": a people, Israel, rose to become the race chosen by God and linked to Him through what the federal theologians called the theological covenant. Through Christ's descent to earth and sacrifice, the theological covenant was offered to all mankind, but man remained free not to obligate himself contractually, or, having committed himself, not to fulfil his obligation. The essence of this theological covenant is a sort of proto-individualism, in as much as it involves man in his most intimate individuality and ultimately rests on his free consent.

[25] The references to the theological covenant abound in all the 17th-century political literature of the Puritans. Oliver Cromwell cites this covenant on many occasions, especially when he seeks to render his own political beliefs clearer and more explicit. See, for example, the letter to Lord Fleetwood, 22nd June 1655, which is transcribed in full in *Oliver Cromwell's letters and speeches* (edited by Thomas Carlyle), Leipzig, Tauchnitz, 1861, vol. III, letter CXCIX, pp. 329-31.

[26] The common expression is "Mayflower Compact". Nevertheless, Lutz (*op. cit.*, p. 227) rightly argues that the term "compact" is improperly used as a synonym of the more appropriate term "covenant."

[27] This and other important documents are included in H.S. Commager, *Documents of American History*, *op. cit.*, p. 14.

[28] B. Baylin, G.S. Wood, *The Great Republic: a History of the American People*, Lexington, Massachusetts, D.C. Heath and Company, 1985.

[29] On the figure of J. Winthrop (1588-1649), see E.S. Morgan, *The Puritan Dilemma. The Story of John Winthrop*, Boston-Toronto, Little Brown Company, 1958.

[30] See for example J.T. Adams, *The Founding of New England*, Boston-Toronto, Little Brown Company, 1949.

[31] A. de Tocqueville, *Democracy in America,* New York, Alfred A. Knoff, 1956. Book 1, chapter II is of fundamental importance for a precise understanding of the enormous influence of Puritan contractualism.

[32] Genesis: 17, 1-14; Exodus: 24, 1-11; Exodus: 32, 11-14; others are spread throughout the Old Testament or can be reconstructed from an interpretation of the New Testament.

[33] Not all authors interpret Puritan culture and contractualism as an anticipation of freedom. Tarello, for example (*Storia della cultura puritana giuridica moderna*, *op. cit.*, p. 579) holds the covenant to be "terrible and illiberal" and gives it a role only in as much as it provided the form (but not the substance) for subsequent American constitutional development. Calamandrei ("Le origini costituzionalistiche delle colonie nordamericane", in *La nascita degli Stati Uniti d'America*, edited by L. Bolis, Rome, Ed. Comunità, 1957, pp. 119-136) perceives in Puritanism a latent form (sometimes explicit) of totalitarianism and believes that the more strictly liberal aspects of the experience in New England derive directly from English traditions and Common Law.

[34] T. Bonazzi, *op. cit.*, pp. 301-8.

[35] The public officials ("constables"), who were responsible for matters of public order, were initially nominated at the discretion of the General Court and had the task of representing the central government in the local communities. Nevertheless, already from 1635 onwards, the towns themselves were given the right to choose their own constables, who continued to fulfil tasks of public order, but could no longer be considered representatives of the central power. Cf. *Records of the Governor and Company of the Massachusetts Bay in New England*, edited by N.B. Shurtleff, Boston, W. White, 1853-54, vol. 1, p. 172.

[36] "The first Charter of Massachusetts, March 4, 1626"; "The Cambridge Agreement, August 26, 1629", re-published in the collection of primary documents, *Documents of American History*, edited by H.S. Commager, *op. cit.*

[37] *The Three Constitutions of Connecticut, 1636, 1662, 1818*, edited by C. Hoadly, Hartford, Connecticut, Lockwood & Brainard Company, 1901, pp. 10-12.

[38] In the original documents of the time, the English term "confederacy" is frequently to be found, and, more rarely, the Latin equivalent *confoederatio*. The etymological root of both is *foedus*, which is used to describe the theological alliance between God and men, namely the covenant. During the 17th century, the diffusion of theological and religious terms to the spheres of politics and public law encouraged the progressive affirmation of an idea of "federation", which was in some ways similar to the modern one. In spite of this, the 17th century "confederacy" can not be considered the equivalent of the modern "federacy" or "federation". In fact, the concept of "absolute state sovereignty" was sufficiently clear to the founding fathers of 1787 (and it was to become even clearer during the 19th century), but in the Anglo-Saxon political culture of the 17th century (and particularly in New England) it was inconceivable to ascribe absolute sovereignty to anything other than God, such that the various confederations developed above all the concept of "contractual union" without touching on the complex problem of "state sovereignty."

[39] *Records of the Colony and Plantation of New Haven from 1636 to 1649*, edited by C. Hoadly, Hartford, Connecticut, Tiffany & Company, 1857, pp. 110-113.

[40] For example, Portsmouth's foundation Covenant (7th January 1638) has been re-published in: *Records of the Colony of Rhode Island and Providence Plantation in New England*, edited by J.R. Bartlett, Providence, Rhode Island, A.C. Green & Brothers, State Printers, 1856-65, p. 52.

[41] A. de Tocqueville, *op. cit.*, Book I, Chapter V.

[42] A. de Tocqueville, *op. cit.*, p. 65.

[43] M. Albertini, *op. cit.*

Notes

TOLERANCE AND THE MULTICULTURAL SOCIETY

The idea of tolerance, which is nowadays the subject of an untold number of debates and publications and which seems to have become one of the key ideas with which to read, interpret and direct the moral and political choices of a society which tends increasingly to be multicultural, has in fact in the past often been in the forefront of the considerations of men of letters, although the term "tolerance" has sometimes been replaced by other expressions and the sphere of its practical application has altered, spreading into ever more varied and complex contexts.

Tolerance has been, and is from time to time, held to be the answer, on the one hand to the need to defend one's identity and, on the other to the need to guarantee the living together of the members of a community through the mutual recognition of equal dignity for all. Tolerance in this sense is the antidote to what Rousseau calls, referring to individuals, "self-love", that is, the vainglory or self-pride of the individual who does not tolerate being overshadowed by other people's ideas and actions. As Gadamer argues, the task which every person continually faces is gigantic: to keep under control one's personal prejudices, the egocentric sphere of private desires and interests, so that "the other" does not become or remain invisible.[1]

Yet which of these two opposites, the individual and the community, should take priority? In the world we live in, which need is more pressing: to defend diversity or to safeguard civil co-habitation based on the presupposition of solidarity? Gadamer defines solidarity as that immediate and spontaneous agreement on the basis of which it is possible to take common and universally valid decisions in the moral, social and political spheres,[2] which forces the search in the Other and the Different of that which is common to all. Will perhaps an approach that puts the two needs on an equal footing, enable us to reconcile them?

Tolerance and Prejudices.

Intolerance can be linked both to prejudices and to value judgements. Certainly, the line which separates one from the other may be subtle, yet the realm of prejudice tends however to leave to one side the confrontation between values which may conflict with each other in social life. It concerns the attitude of those who despise any cultural context that is different from their own and any superficial difference (skin colour, way of dressing, talking, etc.), regardless of considerations of their merit, justice, suitability or otherwise relative to living together in the context of a community.

Naturally, prejudices often turn into conflicts of values in cases where contempt translates into real social marginalisation, yet there exists no rational basis for the prejudices (I hold this to be right or wrong), but rather an act of will on a "to suit me basis" (I grant or refuse approval).

Are there any weapons against prejudice? It would seem a difficult attitude to uproot if it has influenced the thoughts of great men who evidently can not be accused of simple ignorance. Voltaire — despite making an important contribution to the analysis of the idea of tolerance[3] — nevertheless maintained that "if the intelligence of Negroes is not that of a different species with respect to our intellect, it is nevertheless much inferior."[4] Similarly, David Hume wrote: "I am inclined to think that Negroes, and in general all the other species of men... are naturally inferior to white people."[5] And again, Thomas Jefferson held that "Negroes — whether they be a species that was initially different or whether they have grown different with time and circumstances — are inferior to white people as regards their physical constitution and likewise their spirit."[6]

Certainly, they could not count on the information that the employment of ever more sophisticated research tools (particularly, in the field of so-called racial differences, genetics) place at the disposal of our contemporaries,[7] yet in reality there does not exist a required and almost automatic relationship between the progress of learning and the elimination of prejudices. With the passage of time, they become an innermost feeling and pervade our relationships, they become a form of refuge, a walled stronghold that defends our own individual interests. In the conflict between learning and interests, the tendency to favour the latter often prevails.

Therefore, this relationship between learning and tolerance requires mediators who carry out their role through time: on one side, coercion as

regards the negative social consequences of prejudice and, on the other, education which conditions the intimate convictions of each one of us.

Yet the education of tolerance implies living together, that is, proximity which allows mutual understanding. For this reason the trend towards the exaltation of differences through "separation", which is gaining ground in some multicultural and multiracial societies, is totally wrong. This is what is happening, for example, in the most variegated society of the modern world, America, where the *melting pot* concept is being countered by a fragmentation which favours identity and the rights of ethnic groups, in which multi-ethnic beliefs are abandoned and separatism is taking over from integration.[8] Yet separation and competition among groups can not but create persecution manias and mutual suspicion, whereas the so-called "political correctness" becomes a totally ambiguous symbol of tolerance and respect.

Tolerance and Different value Judgements.

The issue is more complex as regards the relationship between value judgements and tolerance. In this case, the concept of tolerance is linked to the disapproval of and aversion to something which is considered wrong, since it makes no sense to talk about tolerance of matters which we approve of.[9] In a certain sense, it is a kind of indulgence. As Kant argued, a person is indulgent when he does not hate others for their mistakes. He who is indulgent is tolerant.[10] Yet tolerance of something which we consider to be wrong presents ambiguities, or at least creates problems.

What relationship is established between a tolerant person and a tolerated one? Is tolerance inevitably connected to relativism or at the extreme to scepticism (truth does not exist: there exist many truths), or can it become a premise for making progress towards the definition of shared truths? Is it right that a person who believes in a certain idea or in certain values passively accepts and tolerates the practical consequences of actions that are motivated by ideas and morals that he does not share? Is tolerance a "principled" or a "functional" choice, that is, is it a good in itself or is it linked to considerations of public order and social peace (the cohesion of the state)?

It is possible to begin to answer such questions by linking the concept of tolerance to that of the *equal dignity* of people and ideas. One of the fundamental premises of tolerance is precisely the equal dignity of all human beings, who therefore deserve *respect* for being such, that is, in as much as they can be defined in Kantian terms as rational agents, who are potentially free and able to create and define their own identity.

Yet the definition of one's own identity is not a private matter: it occurs through continuous dialogue with others and for this reason implies *recognition*. While respect is a form of "abstention" from judgement and is premised on *equality*, recognition is an active attitude, which leads toward the exaltation of *difference*. It is precisely this latter phenomenon that has become the battle-cry of those movements against discrimination which characterise the pluralist and multicultural societies of our age. The answers which liberal democratic culture and politics have given to the problem of freedom and equality have been called into question on the basis of the consideration that not only the fundamental freedoms (of thought, speech, print, etc.) and the fulfilment of fundamental needs (education, income, health, etc.) should be guaranteed, but also that the cultural differences of individuals and groups who do not identify with the prevailing culture should be safeguarded. Hence, the virtue of tolerance should not consist only of a "laissez faire" attitude or in abstaining from exercising one's power over somebody else's opinions and actions, even if they are significantly different from ours and even if we disapprove of them from a moral viewpoint,[11] but also in creating opportunities for other people and in doing everything we can to help them to uphold and develop their differences.[12]

The stress placed on diversity and its defence is, as has already been mentioned, what is bringing about a crisis in American society. The policy of recognition has been linked to the need for ethnic self-assertion against cultural nationalisation, to the celebration of ethnicity through the development of a literature or a compensatory history which is inspired by group resentment and pride and often based on falsifications,[13] to the organisation of forms of support for the ethnic community (dedicated schools, exclusive meeting centres, etc.) and to demands for an active state role in defence of the rights of minorities in addition to those of individuals, through the granting of opportunities to which the majority should be excluded from.[14]

Yet is this the right approach? In reality, both in American and European history, it has been precisely the emphasis on and sharpening of differences which has led to intolerance. If pluralism is combined with the creation of forms of segregation, its positive aspect is turned into a negative one, and that which is considered a fundamental form of civilisation turns into an instrument of barbarity. The various kinds of tribalism that are currently arising in the world (at the ethnic, religious or

political level), which are based on the need to share common, exclusive emotions, risk enveloping us in an atmosphere of fanaticism.[15]

The concept of tolerance, when taken to this extreme, has as its premise a sort of scepticism, or *relativism*, according to which what is important for each person and each group is "his or their own truth" (his or their ideas, culture, moral and life choices), which can not and must not be influenced or conditioned by the "truth of others." In turn, this premise is founded on the fear of uniformity, of homogenisation, which are perceived, particularly nowadays, as real dangers linked to the "global communication" society. The fear is that if tolerance of diversity were to have the function of promoting the discovery of truth, that would ultimately lead to the disappearance of diversity, that is, to unanimity.[16]

Hannah Arendt, for example, has argued against the necessity to achieve fixed points that are unanimously agreed on. She defends diversity in itself and subordinates truth to pluralism, which allows an endless dialogue between people: the traditional idea of truth, she maintains, threatens the plurality of perspectives that are continuously changing and the free choice of opinions to adhere to, and it replaces the endless talk of politics with the single voice of all rational men.[17] For this reason tolerance must be defended since it lies at the basis of the possibility for discussion and debate, and this represents a value which is superior to truth.

Placing the emphasis on diversity can therefore lead to two results: *fanaticism* or *pluralism as an essential value* and therefore an end in itself; both of them, although in different ways, have a relativistic basis.

But there exists a third outcome which, by not making of diversity an absolute value, recuperates it as an element in a process, a *process without end, but not without fixed points* — and these are those values whose presence or absence conditions the possibility of infinite dialogue between the diversities. Tolerance, in this case, is based on the concept of fallibility. As Popper argues, the fact that human beings are fallible means that we are all capable of erring. Yet to state this is equivalent to saying that the truth exists and that there are actions that are morally right, or almost right. Fallibility certainly implies that truth and good are not within hand's reach and that we should always be ready to discover that we were wrong. In the confrontation of different opinions, it is necessary to start from this premise: "I may be wrong and you may be right." If those who discuss subscribe to this assertion, this is sufficient to guarantee mutual tolerance. Nevertheless, in order to avoid relativism, it is necessary to go further. They should say: "I may be wrong and you may be right; and if we discuss the problem rationally, we may be able to correct our mistakes and both of us may be able to get closer to the truth."[18]

It is on the same premises that John Stuart Mill bases his assertions on tolerance, which he considers to be a means to an end: the truth. "As mankind improves, the number of doctrines which are no longer disputed or doubted will be constantly on the increase: and the well-being of mankind may almost be measured by the number and gravity of the truths which have reached the point of being uncontested."[19] In Mill's opinion, tolerance of different opinions is therefore functional and relates to a specific objective, which, once achieved, in a certain sense deprives tolerance of any further role: if the aim of tolerance is the creation of widely-accepted opinions, once these have been formed they must have the same value for everybody.

That it is impossible to avoid fixed points emerges also from the observation that all those who have been involved with the issue of tolerance agree on the fact that its practical application imposes some limitations. It is not possible, for example, to tolerate intolerance, to be tolerant of the manipulation of facts or the denial of the equality of rights, and so on.

Tolerance, therefore, is the premise for discussion and dialogue, yet at the same time it is subordinated to those values whose negation would result in the negation of tolerance itself, values which have progressively emerged through the course of history and which, although not fully and universally realised, tend to become the basis of life in common.

The different ethnic and religious groups present in multicultural societies, which cloak themselves in the flag of their own diversity, and which demand recognition in the high-powered sense which implies the concession of special rights by the state, create instead a contrast between particular rights and common values, to which nevertheless they appeal. The demands for special treatment by the French-Canadians of Québec are a good example. This region has passed various laws regarding the defence of the French language: one states that neither French-speakers nor immigrants can send their children to English-language schools, another imposes the use of French at work in companies with more than fifty employees. In the name of the collective survival of a group, the government of Québec has therefore imposed on its citizens restrictions which on the one hand are in conflict with the contents of the Canadian Charter of Rights adopted in 1982, and on the other damage the right of all citizens to make free and autonomous choices with regard to certain aspects of their life.[20]

Citizenship and Belonging.

As Giacomo Marramao writes, the logic of the multicultural society seems to produce a sort of "detachment... between *citizenship* and *belonging*.... the modern democratic idea of a belonging that is entirely encompassed by citizenship is no longer able to face the challenges of contemporary society. We now know that there exist needs of *symbolic identification* which can never be fully realised within the sphere of citizenship... Responding to the social demands by broadening the horizons... of citizenship is feasible for as long as we are dealing with political conflicts (regarding rights of equality), or with economic and social conflicts (claims of interest or status). Yet it becomes no longer a feasible response when moral conflicts, conflicts between values come into play."[21]

Now, if it is true that we are witnessing nearly everywhere in the world the emergence of this phenomenon of fragmentation based on the proliferation of "super-exclusive" identities, what we need to ask ourselves is whether tolerance towards the "artificial proliferation of the logic of identity" can lead as far as to the passive acceptance of disintegration, which inevitably results in conflict, or whether it is possible to find an equilibrium that resolves the opposition between citizenship and belonging and will render multicultural citizenship practicable.

The potential conflict between citizenship and belonging, intended as symbolic identification, was resolved by national ideology through the imposition of a single culture and through mythical symbols which led to the identity of citizenship and belonging to a national community that was made and considered to be homogenous in an artificial way.

Yet it is precisely the crisis of the national states with regard to the new, emerging situation, to the progressive increase of interdependence, that contains the seed of a new and more libertarian solution of this conflict. The crisis contains the seed of a solution in a dialectic sense, since it is precisely this crisis and interdependence which are among the factors that trigger the process of disintegration in the name of tolerance and the recognition of diversities, and this represents the denial of the synthesis between citizenship and belonging. Yet at the same time, these two factors pose a question which we can not avoid finding an answer to: the issue of which alternative institutions should be established specifically in order to dominate the crisis and face interdependence without provoking moves to disintegration.

What is taking place in Europe, if Europe proves able to complete its

federal unification, is the practical response that the European states are giving to that question, and an indication of the way forward that the entire world will have to follow, if we do not want to resign ourselves to undergoing the consequences of the ungovernability of global problems. Yet at the same time, this answer will contain a politically and symbolically new element: the overcoming of exclusive citizenship.

Paradoxically, the reaction to the dangers of disintegration in the most advanced multicultural society, America, may lead toward nationalism. This is how Arthur Schlesinger responds to the crisis of the *melting pot*: "History can give a sense of national identity. We don't have to believe that our values are absolutely better than the next fellow's or the next country's... They are anchored in our national experience, in our great national documents, in our national heroes... in our traditions. People with a different history will have differing values. But we believe that our own are better for us." The antidote to threats to the cohesion of the state is, albeit with due consideration for diversity, the championing of "American nationality."[22]

On the contrary, in Europe the answer to the dangers of disintegration will be the creation of a multinational federal state, whose citizens will be able to become the subjects of a real "cultural revolution." If (as is conceivable, given the varied structure of European society) the creation of the European federation will give rise to a new model of the federal state, more articulated than the American model and structured across various levels of government that give voice and power to the various territorial communities (local, regional, state and federal), this will represent the end of exclusive citizenship and the birth of a new concept of identity.

The search for "super-exclusive" identities is linked to the fact that the sense of belonging is connected to the need of symbolic identification, which is not considered to be satisfied within the realm of citizenship precisely because up until now citizenship has possessed the characteristic of exclusivity. This characteristic has brought about the pervasive role of the state above and beyond the public sphere (the sphere of the fundamental rights and obligations of citizens set down in democratic constitutions), invading the private sphere of ethical and cultural choices. The overcoming of exclusive citizenship leads to the separation of the two spheres, and tends toward the abolition of state-decreed interference in the private one, control over which is strictly linked to the need of inculcating the national ideology in the citizenry. This will enable the reversal of the trend toward the excessive and often intolerant demands

for the recognition of differences, which represents one of the causes behind the birth of the new tribal nationalism which is developing momentum in our societies.

At the same time, the model of federal democracy based on different government levels can set off a positive process of revitalising democracy on a substantial basis, creating the conditions for a more open and tolerant society.

Value conflicts in the public sphere, just as conflicts of interest, can be resolved without definitive splits and destructive clashes if suitable institutions not only guarantee everybody, through liberty and equality, the satisfaction of their "primary needs", but also encourage continuous dialogue as a tool for solving conflicts. Tolerance, within a suitable institutional framework, no longer appears as the "kind concession" of those who believe themselves to be right *a priori* with regard to those who express different opinions, but as the natural condition of a society which admits and gives voice to "respectable moral dissent."[23] This is possible if every person, independently of the cultural context to which he feels bound and of his life choices, can participate effectively, together with other people, in the decisions which concern the world he shares with these other people. In essence, tolerance can progressively become a spontaneous practice (and thereby avoid the danger of turning on itself through the so-called "politics of difference") only if the individual-citizen feels himself to be fully involved in common projects. If one of the core elements of the demands of the neo-communitarians is the "compensatory search for community warmth against the 'big chill' of the purely functional institutions of our democracies,"[24] then this is a matter of opposing the current trend to define the community as the "place" of ethnic, religious, cultural identity, and instead to define it in territorial terms, that is, as the place where individuals, with their differences, live together and plan their future together through "discussion and action."[25]

The emergence and spread of the multicultural society is in a certain sense a "necessary" phenomenon, in as much as being connected to the evolution of the mode of production one can not set oneself in opposition to it: what we can do is, on the one hand, ascertain the problems which it poses and, on the other, try to master them.

We have seen how, faced with the new problems posed by multiculturalism, among which is that of tolerance, what often emerges are distorted reactions that are more related to fear and uncontrolled sentiments than to the search for new criteria with which to judge situations and thereby find new solutions. The assertion of a new concept

of "citizenship", tied to the creation of federal institutions articulated across various territorial and government levels, can provide the solution that will avoid the exaltation of the need of symbolic identification which can lead to an intolerant fanaticism, and assist the search for a synthesis between citizenship and belonging and thereby the affirmation of *multicultural citizenship*.

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NOTES

[1] Hans Georg Gadamer, *Das Erbe Europas*, Frankfurt am Main, Suhrkamp Verlag, 1989.

[2] *Ibidem*, p. 97.

[3] Voltaire, *Traité sur la tolérance* (1763).

[4] Paolo Rossi, *Naufragi senza spettatore*, Bologna, Il Mulino, 1995, p. 114.

[5] *Ibidem*, p. 114.

[6] *Ibidem*, p. 115.

[7] Luca e Francesco Cavalli-Sforza, *Chi siamo. La storia della diversità umana*, Milano, Mondadori, 1995.

[8] Arthur M. Schlesinger, *The Disuniting of America*, New York-London, W. W. Norton & Company, p. 17.

[9] Susan Mendus (ed.), *Justifying Toleration*, Cambridge, Cambridge University Press, 1988, pp. 3 ff.

[10] Immanuel Kant, "Von den ethischen Pflichten gegen andere und zwar von der Wahrhaftigkeit", in P. Menzer (ed.), *Eine Vorlesung Kants über Ethik*, Berlin, Pan Verlag Rolf Heise, 1924.

[11] Susan Mendus and David Edwards (ed. by), *On Toleration*, Oxford, Clarendon Press, 1987.

[12] *Ibidem*.

[13] Arthur M. Schlesinger, *op. cit.*, p. 55.

[14] Michael Walzer, *What It Means to be an American. Essays on the American Experience*, New York, Marsilio, 1992.

[15] Michel Maffesoli, *Le culture comunitarie*, Roma, Il Mondo 3 Edizioni, 1996.

[16] Susan Mendus,*Justifying Toleration*, *cit.*, p. 177.

[17] Susan Mendus, *ibidem*, pp. 183-4.

[18] Susan Mendus e David Edwards, *op. cit.*

[19] John Stuart Mill, *On Liberty*, in Susan Mendus, *Justifying Toleration*, *cit.*, p. 92.

[20] Charles Taylor, *Multiculturalism and the Politics of Recognition*, Princeton, Princeton University Press, 1992.

[21] Giacomo Marramao, *Zone di confine*, Roma, Il Mondo 3 Edizioni, 1996, p.46.

[22] Arthur M. Schlesinger, *op. cit.*, pp. 137-38.

[23] Charles Taylor, *op. cit.*

[24] Giacomo Marramao, *op. cit.*, p. 40.

[25] Hannah Arendt, *The Human Condition*, Chicago-London, University of Chicago Press, 1958.

FRANCE AND GERMANY AT THE CROSSROADS

The Balance of Expectations Between Union and Division.

The end of the Cold War and the first attempts to create a system of universal security which includes the ecological and economic as well as the military dimension, have ensured that mankind has become aware of the beginning of a new phase in relations between states. But first the Gulf War and then the fall of Gorbachev with the consequent disintegration of the USSR and of Yugoslavia have shown how dramatic the transition can be from a world system in which the stability and security of vast areas were in any case guaranteed by the deterrence policy exercised by the two superpowers, to one in which political, military and economic instability threaten to spread beyond all control. The most obvious case is precisely that of Europe, formerly divided into two areas of influence which appeared definitively pacified internally, today divided into a still stable western zone and a central-eastern zone which risks precipitating the continent into a situation of chronic instability.

With the fall of Gorbachev, and hence with the end of the prospect of reforming the UN on the basis of Soviet-American cooperation in the field of security, the expectation of building a more peaceful world order in a short time has weakened. In some states pride has flowered again - as in the USA, but also in France; in others anxiety — as in Germany and Japan — over having to assume world responsibilities. Both the former and the latter groups continue to pay homage to the reform of the UN, but in concrete they are more concerned with not losing privileges or with acquiring new ones rather than making the United Nations more effective and democratic.

While on the one hand globalisation produces growing expectations for the extension of the powers of international bodies, on the other hand it feeds the illusion that the territorial principle of power has been overcome.

Local conflicts and the risks of nuclear and mass extermination weapons proliferation bear witness to the close connection which still exists between foreign policy and the military factor.

These contradictory and disconnected phenomena are the symptom of the crisis of power which has assailed the world order and recall the agony of the European system of states described by Dehio[1]: an agony however which is no longer caused by the ascent of new powers, but

rather by the fact that no balance of power seems now possible without the progressive transformation of the UN into a structure of world government. In this situation what are the possibilities of political action to advance federalism?

Such a question cannot be answered without overcoming the merely internationalist vision of liberalism, democracy and socialism, which has already twice this century proved insufficient to comprehend the profound causes of the crisis in the nation state and international anarchy. This vision, as Albertini showed, by ignoring the fundamental law of how states behave, the reason of state, becomes its prisoner *de facto*. It is only with federalism that the comprehension of the reason of state can be analysed both in its theoretical aspects — relating precisely to the policies which states conduct to guarantee their own survival — and in its ideological aspect — relating to the cult of the nation. The analysis of the theoretical and ideological aspects of the reason of state highlights a structural element in the life of several independent states which enter into a relationship amongst themselves. This can help to understand how globalization and the fact that these days the reason of state does not manifest itself with the demoniacal face of power politics, do not yet imply that it has ceased to be "the rule of political action, the motive law of the state[2]." Certainly the choice of the way which inclines to the pursuit of reason of state, as Meinecke notes, can be "*limited* by the individual nature of the state and environment," but as long as independent and sovereign states exist, these, at every moment, will be governed by the law of their respective reason of state. Meinecke warned after all that, "under the coincident pressure of ideal and utilitarian motives," the statesman can even temporarily respect the boundaries of law and morality. But what happens at the moment when, with the diminution of these motives, the power to wage war remains in the hands of independent, sovereign and armed states?

Certainly reason of state, understood in its theoretical aspect, is today constrained by the evolution of the mode of production to operate while also taking account of the need for the unity of the human race.

Yet the growing economic and political interdependence among the states, *though limiting* the degree of freedom of choice of the reason of state, *does not annul it*. The policies of regional and world integration have become part of the calculation of reason of state: in various regions of the world, and in the first place in western Europe, precisely in the name of *Salus populi, suprema lex*, the states have already had to accept the transfer of part of their national sovereignty to a higher level (as has

happened with monetary sovereignty in the European Union).

All this is not yet sufficient however to shift the balance of expectations of the national foreign and security policies towards the construction of peace. Certainly there are signs of a growing demand throughout the world for greater justice and police capacity at international level. But this demand clashes then in the final instance with the fact that, despite increased reciprocal trust, the states cannot exclude war from the possible options they could take. This explains why they are reforming and restructuring their respective defence systems and armies, but not abolishing them. In a transitional phase such as we are now living in, this policy can be reconciled with the need to reinforce the international policing function of national armies. Moreover, as shown by the crises of the Gulf, the former Yugoslavia, the Middle East, Somalia and Rwanda, it is not possible to promote any peace-keeping policy without having intervention forces equipped with the best technology and without an effective military apparatus capable of transporting, moving and protecting substantial military contingents. Precisely for this reason the expectation which is tending to take root today is that which puts its trust in the only powers still able to undertake these global tasks: the USA and coalitions of national armies. This however is a short term expectation, which clashes with the impossibility for the USA of continuing to fulfil this role of leadership for long, and which in short offers no alternative to the return to international anarchy, i.e. to a system in which, as Lord Lothian warned, the military time-table would inevitably dominate the states' decisions.

The only alternative to this prospect would lie in the immediate reinforcement — primarily in Europe — of the processes of regional unification in the ambit of a process of reform of the UN. Only thus in fact could the political time-table, that of international pacification, dominate the decisions of the reasons of state and create a different balance of expectations.

The uncertainty and contradictions of the foreign and security policies of the states therefore reflect doubts as to the outcome of the race against time to consolidate the cornerstones of the process of unification of the human race before it is replaced by resignation to chaos.

The most irresponsible heads of state and government and national public opinion confound these moments of transition with the opening of an era of greater freedom of choice in foreign policy, thus contributing to anticipate and augment the risks of anarchy. Those most astute, but anxious to preserve national power, seek pragmatically to keep all roads

open.[3] In this context both on the cultural and on the political level federalism remains the only instrument to comprehend the risks we run, and to fight for the realisation of peace.

On the basis of these general considerations one can analyse the future of European foreign policy and the role of France and Germany, setting out from the consequences of the scientific and technological revolution as regards questions of security.

Technological Innovation and Crises of World Leaderships.

Innovation contributed to the crisis in the strategy of bipolar confrontation based on the arms race, but cannot abolish the risk of war on its own.

For decades after the end of the Second World War, scientific and technological development was fed, in both the USA and the USSR, by research and applications in the military field. The revolution of high technology, from 1945 on, would have been unthinkable without the influence of military policy. But since the eighties this has no longer been the case.[4] At that time countries which had remained on the margins of military confrontation, like Germany, but above all Japan, began to acquire considerable advantages on the level of technological innovation in sectors until then considered strategic for the pursuit of world leadership, like electronics and communications. The American capacity for technological innovation, which however maintained an ample margin of advantage over the Soviets, was by now second to the Japanese. Awareness of this was manifested very clearly both in the USA and in the USSR.

In the USA the Reagan administration tried, with the star wars project, to put back in motion the positive cycle by which development of innovations financed ambitious and costly research in the military field. But the Reagan project did not have the hoped-for effects on civil industry: some of the major American companies actually turned down the Pentagon's orders because to accept them would have meant, for reasons of secrecy, setting up inconvenient production lines parallel to the civil ones.

Meanwhile in the USSR Gorbachev was trying to dismantle a bureaucratic and centralised system which until then had impeded the creation of any collaboration between military and civil industry. In 1987, while in the USA millions of computers were already active, in the USSR plans were still being made to produce only a few tens of thousands per year. At the moment of Gorbachev's inauguration, the computer-gap accumulated by the USSR was by then estimated at 10-15 years. It was

therefore not by chance that in his speech to the 23rd Congress of the CPSU Gorbachev indicated the ambitious objective of reducing this gap by 1990.[5] In the USSR, more dramatically than in the USA, it was becoming evident how the diffusion of technological innovation in civil production in the field of leading technologies (semiconductors, computers, the aeronautical industry) had progressively reduced the role of military spending as a driving force in innovation. As we know, the USSR has not stood up to this challenge.

But for the USA too the problem arose of reviewing their own military industrial policy. The Clinton administration has in fact had to admit the impossibility of maintaining world leadership as a superpower without pursuing technological leadership in the civil field. In this context, what was discussed for decades only on the theoretical plane, was translated into a strategy, that of dual-use, which admitted the growing dependence of the defence sector on technologies developed for civil uses.[6] Due to this acceptance of the facts, in 1994 a decisive turn was taken in the US system of defence supplies, when the Ministry of Defence no longer recognised the supremacy of military specifications and standards over those of civil industry. The objective of the American federal government is therefore no longer that of promoting innovation through military projects, but rather that of "facilitating the introduction of commercial technologies into military systems."[7] But such a choice implies the encouragement of research and development of all applications and productions of new technologies by civil industry, with the consequent abandonment of costly and useless military prototypes.[8] For the USA military power is thus once more becoming subordinate, as on the eve of their entry into the First World War, to the civil productive system.[9]

But the promotion of productive capacities in high technology for civil use has international military implications today which the individual states are not able to govern. On the one hand every advancement on the road of the scientific and technological mode of production implies an ever greater circulation of information on technical and scientific progress throughout the world. On the other hand the disappearance of the barriers which for decades have hindered the free circulation of the fruits of technological innovation risks accentuating the problem of the proliferation of the most advanced military technologies in those countries which, aspiring to a policy of power, constitute the principle breeding-grounds of instability.

In this context Europe is called on to fulfil a crucial role. It must choose between two alternatives: to become a colony both on the technological and on the political and military plane, or to provide itself with adequate institutions to become an active and positive player in international politics.

The Future of European Foreign Policy and the French and German Reason of State.

In a world where security threats are multiplying and the power of a state is not measured simply in terms of military capacity, but also economic capacity and innovative potential, the European states taken individually have no future. The Europe of the nation states has long lost military leadership, and is worryingly behind in technological innovation. Whereas at the end of the eighteenth century the industrial revolution had radiated out into the world starting from Europe, the revolution in high technology migrated first to America and then to Asia starting in 1945.

France and Germany, which alone in Europe have attempted in the post-war period to defend first their own military sovereignty and second their scientific and technological leadership, are today faced with a choice: to contribute towards the effectiveness of the European Union's foreign and security policy, thus definitively putting national aspirations in second place, or to resign themselves to an inevitable decline.

Within ten years France will no longer be among the first ten world economic powers and perhaps not even among the major nuclear powers, while the future of Germany is linked to the development of the situation on its eastern borders.

Faced with this prospect, Chirac's conclusion has been that only by playing a role of initiative in the military field at European level, can France guarantee herself a future of peace and prosperity.[10] It is in this perspective that the French decision was developed to reform national service and concentrate resources on adapting the policy of nuclear dissuasion to a still-changing world context. A dissuasion which clearly cannot fail to take account of the needs of neighbours, and primarily of Germany[11]: "The European dimension is inevitable primarily for our traditional armed forces, which must be able to intervene whenever necessary in a European and inter-allied context. The professional army of tomorrow, in terms of mobility and availability, will allow us to respond better to our security needs, but also to those of Europe and the Atlantic Alliance. But the European dimension also appears in the field of nuclear dissuasion... It is not a question of replacing American

dissuasion with a French or Franco-British guarantee. We want reinforcement of global dissuasion. This cooperation belongs to the perspective of global dissuasion. It is a question neither of unilaterally enlarging our dissuasion nor of imposing a new treaty on our partners. It is a question of drawing all the consequences of a community of destiny, of a growing interaction of our vital interests. Taking account of the difficulties which exist on this terrain in Europe, we do not propose a ready-made formula, but a gradual progress, open to partners who wish to commit themselves with us... It is necessary to put an end to what is perceived by the rest of the world as European impotence."

This admission of the growing complementarity between French, European and world interests would seem to prelude a definitive admission of the need to overcome absolute national sovereignty. But this step is hard to take for one of the custodians of the vestiges of national sovereignty, as is the President of the French Republic. Chirac's objective, as it comes through in his speech, is to take all those decisions which also leave his successors, even in a changing context, a sufficient and autonomous margin of manoeuvre in the international field.

In Chirac's analysis the European vision continues to include the prospect of France as "a power with a world vocation," capable of contributing to the good organisation of "a truly multipolar world," in which it is not clear if one of the poles is to be France or Europe.

President Chirac's proposal to reform national service is emblematic of the contradictions and weakness in which the nation state is caught even as regards the abolition of conscription. In fact, while on the one hand Chirac recognises the inadequacy of conscription, on the other hand he fails to respond fully to the need to replace it with an institution which educates the citizen to the new dimension of collective security. This ambiguity is evident in this passage from the speech in which, on the 28th May 1996, President Chirac announced to the French that "traditional conscription no longer responds to the needs of a modern army in a great modern country." Chirac went on as follows: "In the past century conscription has mixed young people from all conditions and all regions in the brotherhood of the barracks. If national service has progressively become inadequate, it is my duty to defend the republican ideal it pursues, which is an ideal of equality, solidarity and patriotism. It is for this reason that I hope that every young person without exception, on coming of age, experiences an encounter with the nation. This encounter will allow a general balance to be drawn of the level of education reached by French youth. Its aim will be to open up new ways to favour the inclusion of

young people in difficulty. It will be an occasion for civic information on how our democracy and institutions function, on respect for the rights of man, on the imperative of our security. During these days the young people can be offered different forms of service which they can voluntarily undertake. The duration of this voluntary service will be variable: nine months or perhaps less, depending on their chosen area of service." Voluntary service can be in the following fields: reinforcement of security (army, *gendarmerie*, police, environmental protection and fire brigade), strengthening of national solidarity relative to public health (local social provision, hospitals, schools, various associations), and international cooperation.

Thus, by proposing a national civilian/military service that is voluntary and no longer obligatory, Chirac implicitly admits the weakness of the French state. For some time France has no longer been the appropriate state context to promote the universal ideals of the French revolution or to forge, through the army and school, the soldier-citizen necessary to the nation-states to pursue their respective reasons of state. France, like other European countries, no longer has the moral and political authority to oblige and convince its own citizens to serve their own country in a disinterested way.

Concerns about how the world order is evolving following the end of the Cold War also underpin the reflections of members of the German government. The end of the confrontation between military blocs, after an initial hope of greater security for all peoples, has opened the way to a series of dramatic local conflicts and to the risk of a new phase in the proliferation of weapons of total destruction. Germany is the country most interested in stabilisation of the world context. As Minister Rühe recognised, "The era of power politics is finished in Europe. The name of the enemy today is instability and the strategies to defend oneself from it must not be designed for military confrontation, but to promote integration... The eastern border of Germany is also the border between stability and instability. This border cannot last for long. Either we export stability or we will import instability."[12] But while waiting for the reform of NATO and the completion of the political unification of Europe, Germany aspires to fulfil a military role on a level with its economic power. For this reason Minister Rühe declares it impossible to dismantle the system of conscription, which gives the Bundeswehr the possibility of mobilising 340,000 men in peacetime and 700,000 in case of war. This view is however in blatant contrast with the current tendency of German youth to prefer civilian to military service: the number of conscientious

objectors is now greater than the number enlisted.

It is in this complex context that France and Germany have expressed the intention of putting the common foreign and security policy at the centre of the revision of the Treaty of Maastricht. But while Germany aims for the objective of the federal political union of Europe, France puts the emphasis on the reinforcement of the role of the European Council in the area of defence, therefore keeping to the ambit of intergovernmental politics. France on the one hand does not want to renounce its own sovereignty in the nuclear field, but on the other knows it cannot do without Europe to lend credibility to its own limited force of dissuasion. Germany declares it does not want to assume nuclear responsibilities, by means for example of a form of concerted nuclear policy with France, but at the same time knows it cannot renounce the French nuclear umbrella, it cannot abolish conscription without having the European guarantee, and it is tempted to reinforce its status as a medium power by becoming part of the UN Security Council.

At the moment the USA is manifesting the intention of diminishing their military — and nuclear — presence in Europe, the destiny of European security seems to be temporarily returning into the hands of the former European powers, which however show themselves inadequate to absolve this task and oscillate therefore between the temptation to pursue over-ambitious independent national policies and resignation to a role subordinate to American policy. But the risks linked to nuclear proliferation and local conflicts, with increasingly disruptive consequences on the level of balances and security, even in regions bordering on the Union, now make both the national way and that of subordinate to America very risky. Thus the French and German calculation of reason of state must keep open a third way, the European way, to guarantee the French and Germans more chance of having a role in defining the new context of world security. The problem therefore becomes that of establishing if at this moment it is enough to simply keep this way open, or if instead it is not necessary to accelerate the creation of a real federal state provided with all the powers relating to foreign and security policy.[13]

Franco Spoltore

NOTES

[1] Ludwig Dehio, "Der Untergang des Staatensystems" (1953), in *Deutschland und die Weltpolitik in 20. Jahrhundert.*

[2] Friedrich Meinecke, *Die Idee der Staatsräson in der neueren Geschichte*, Oldenbourg, München-Berlin, 1924.

[3] As the American President Nixon observed, "In the field of national security, each Presidency is a link in a chain. Each Administration inherits the force in being. The long-range investments made by earlier Administrations define the ability to change that force in the near term... I am deeply conscious that my decisions with respect to defense policy will profoundly affect the ability of my successors to ensure the nation's safety. I recognize that I cannot know, and can only imperfectly conceive, the crises which my successors may have to face. I, therefore, intend to forge a strong link in the chain." See *A Report to the Congress*, February 25, 1971.

[4] See Konrad Seitz, *Die japanisch-amerikanische Herausforderung.*

[5] David A.Wellman, *A Chip in the Curtain*, Washington, National Defense University Press, 1989.

[6] Report by US President Bill Clinton, *Technology for America's Economic Growth, A new Direction to Build Economic Strength*, Washington, February 1993.

[7] "The nation is to be equipped to gear up its industrial capabilities quickly to meet the military demands of a crisis." US Ministry of Defense, *Acquisition Reform: A Mandate for Change*, Washington, February 1994.

[8] Ugo Farinelli, *Scorie di guerra fredda*, Rome, EDIESSE, 1996.

[9] It is in fact only after the USA entered the First World War that the American economy was strongly conditioned by the economy of war. At the beginning of this century, the major civil mechanical industrial productive capacity in North America had *ipso facto* put an enormous potential at the disposal of the USA's meagre military arsenal, which in the space of a few months made it possible to send two million men equipped for war to the other side of the Atlantic, three quarters of them in only five months.

[10] See the speech delivered by the President of the Republic Jacques Chirac to the *Institut de Hautes Etudes de Défense Nationale*, Paris, 8th June 1996.

[11] The Franco-German summit at Dijon of 5th June 1996 sanctioned the intention of France and Germany to increasingly deepen their cooperation in the field of defence. In the course of President Chirac and Chancellor Kohl's joint press conference, the latter said: "President Chirac has informed me in good time of his intention to reform the army... It has been very reassuring up till now to be able to count on the French nuclear weapons to protect German sovereignty. This has not been in contradiction with what has been done and what is being done in the context of NATO. We shall be discussing this. For the moment Germany does not want to exercise any direct right of control over French atomic weapons. This is not our objective."

[12] See the speeches by the Foreign Minister Klaus Kinkel in *NATO Review*, 26th April 1996, and by Minister of Defence Volker Rühe at the John Hopkins School for Advanced International Studies, 30th April 1996.

[13] The French Foreign Minister, Hervé de Charette, said of the role of the European Parliament and national Parliaments, that it was a question of "establishing how to ensure popular representation in a system in evolution" in which "the European Union is not yet the United States of Europe" (*Séminaire Franco-Allemand, joint press conference*, Paris, 2nd October 1996). The probem, for foreign and security policy too, consists precisely in these terms: are France and Germany working for a transition towards the United States of Europe or to maintain this dangerously ambiguous situation? This ambiguity is not resolved by the declarations and positions assumed by France. Minister Hervé de Charette does not for example see the contradiction between considering it normal that the process of European unification should lead to the drawing up of a European Constitution with the contribution of both national Parliaments and the European Parliament, and excluding a

European state outcome when he calls the United States of Europe a dangerous utopia. (Speech by the Minister for Foreign Affairs, M. Herve de Charette, on *The Franco-German Relationship*, Berlin, 7th October 1996).

Federalist Action

FOR A EUROPEAN CONSTITUENT ASSEMBLY *

1. It is well-known that the degree of Euro-enthusiasm among the governments of the Union is very unequal. While the consensus to carry out EMU by the fixed date seems established, the same is far from being true for the reform of the Union's institutions. Some governments sincerely believe, on the basis of experience, that it is necessary to go beyond the intergovernmental decision-making mechanism, extend the scope of majority voting and democratize the Union. Others are squarely against. This is why the IGC is utterly incapable of finding an agreement on any important institutional issue. The foresight of such incapacity prompted the idea of the *core*, to be formed by the countries whose governments are ready to proceed, thus pushing the others — or part of them — to follow suit.

2. The idea of a core makes sense only if it falls in one with that of the foundation of an embryo of a *European Federal Union*, involving a real transfer of sovereignty from the member-states to Europe — albeit, in a first phase, limited to the economic sector. Yet few, if any, of the governments involved are ready to acknowledge this truth. Many of them hide behind the meaningless formula of "reinforced co-operation," as if the recent European events were not proof of the outright failure of the method of intergovernmental co-operation as such. As a matter of fact, if the goal of a real transfer of sovereignty from the member-states to Europe (the foundation of a *European Federation*) is lost sight of, and thus any clear perception of where the breaking-point in the negotiations should lie vanishes, everybody comes unwittingly to accept the logic of compromise, of a kind which means surrendering to the tactics of the anti-

* Reflection document presented by Francesco Rossolillo, President of the European Union of Federalists, to the Federal Committee of the UEF, in session at Luxembourg, 30th November-1st December 1996.

Europeans. As long as things stay as they are now the building of a core is highly improbable.

3. However, a democratic and federal reform of the institutions of the Union is urgent. EMU is set to be established by 1999, and it is unthinkable that it can function for long without a real economic government of Europe and a strong degree of popular legitimacy. The enlargement of the Union cannot wait. The stalemate in the IGC cannot be indefinitely accepted by a part of the governments involved, even if almost all of them (with the exception of Chancellor Kohl) do not see how they can exit the crisis. Tensions between the European governments are set to grow stronger and stronger. A major crisis is impending which, if it not adequately met, will give rise to disastrous consequences.

4. The truth is that a European Federation, either as a core or in a larger context, will not come about without the support of the people. Europe cannot be created by conquest, nor imposed by an external power. *It can only be the result of the exercise of the constituent power of the people of the European nations.* This does not mean that governments have no decisive role to play. Some of them are decidedly Europe-friendly. But alone they are not strong nor determined enough to consent the necessary abandonment of sovereignty. In the face of a crisis, the only way out for the most conscious of them would be to appeal to the people by calling a *European Constituent Assembly.* Such a body could be the same as the new European Parliament to be elected in 1999 (provided the election ensues after an electoral campaign focused on the task of founding a European federal State and giving it a constitution), or a part of it, or an assembly made up of members of the European Parliament and members of the national Parliaments, or an assembly elected by the people expressly to perform this task.

5. It has to be added that the political nature of the Union that will emerge from the events of the coming years will not depend exclusively on the kind of institutional settlement agreed, important as it will be. A real transfer of sovereignty is mainly a question of consensus, of whether the main theatre of political confrontation is shifted from the nations to the Union. Hence the nature of the European Union of the future will be strictly linked with the way in which it has come about. An act of foundation consisting in the expression of a strong popular will can breathe life even into partially flawed institutions, while good institutions

not supported by popular consensus would risk to remain empty shells. We will have no European federation provided with a real legitimacy without a constituent act accomplished ultimately by the European people.

6. It is objected that public opinion is not yet ripe, that euro-sceptical attitudes are common among the citizens in all European states. Public opinion reflects, at least in part, the short-sightedness and timidity of governments and national political parties, who focus their attention on petty national issues and shrink from posing the European problem in its real terms. This attitude is strongly amplified by the media. All of them have actively contributed to spread an image of Europe as a bureaucratic monster, from which the citizens must only defend themselves, and not as a great task they are called upon to realize. Public opinion is largely nationalized. Thus we seem to be in a vicious circle. The timidity of the governments feeds inertia in public opinion and viceversa.

7. Were this the whole story, Europe should be doomed to an inevitable failure. In fact history has witnessed innumerable radical changes, in which ideas — which as such have no power — have defeated the powers that be: and each of these changes has come about by breaking a vicious circle. As a matter of fact, the necessity of a political unity of Europe looms in the consciouness of citizens, if indistinctly, in spite of the smoke-screen put up by national politics and the media. The people of the European nations is maturing. In normal times it is dormant, but in the face of a major crisis it could become aware of its own *identity*, be mobilized by an active minority and become a decisive actor in the play.

8. For this to happen, someone has to take the initiative before the crisis comes, and begin to spread the appropriate watchwords. The federalists are those who are called upon to play this role. They must undertake a campaign in favour of a *European Constituent Assembly.* Their endeavour will be unpopular at first, or at least meet indifference. Their goal will hardly be understood. Their work will go unnoticed as usual, like that of the Hegelian mole, digging underground tunnels beneath the castles of power, thus undermining their foundations. But the federalists incur the destiny of all innovators, who must not take stock of the state of public opinion as it is, but try patiently to change it. If their cause is right, they will gradually be understood and supported, find powerful allies and finally succeed in their undertaking.

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