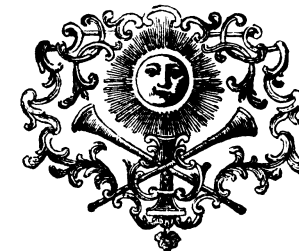


THE FEDERALIST

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.

Hamilton, The Federalist



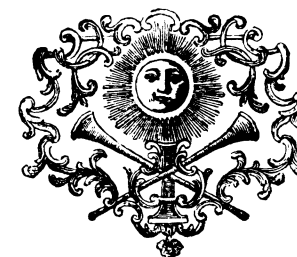
YEAR XXXIX, 1997, NUMBER 2

THE FEDERALIST

a political review

Editor: Francesco Rossolillo

The Federalist was founded in 1959 by Mario Albertini together with 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.



The Federalist is published under the auspices of the FONDAZIONE EUROPEA LUCIANO BOLIS by EDIF, via Porta Pertusi 6, 27100 Pavia, Italy. English language editing: David Riggs. Three issues a year. Subscription rates: Europe 55000 lire or 35 \$; other countries (by air mail) 70000 Lire or 50 \$. A three-year subscription (150000 lire, 100 \$ or 200000 lire, 120 \$ respectively) is also possible. All payments should be made by cheque or Eurocheque directly to EDIF.

YEAR XXXIX, 1997, NUMBER 2

CONTENTS

<i>The European Council in Amsterdam</i>	p.	53
DOMINIQUE ROUSSEAU, <i>European Constitutional Heritage: A Condition for European Constitutional Law</i>	»	57
NOTES		
<i>Peace through Law</i> (Luisa Trumellini)	»	69
<i>Federalism, Deficit and the New World Order</i> (Franco Spoltore)	»	77
INTERVENTIONS		
<i>Rethinking Euro-Atlantic Federalism</i> (Oleg Abolin)	»	85
FEDERALIST ACTION		
<i>Political Report at 17th Congress of UEF</i> (Francesco Rossolillo)	»	91
FEDERALISM IN THE HISTORY OF THOUGHT		
<i>Thomas Paine</i> (Franco Spoltore)	»	101

The European Council in Amsterdam

In what was a fully predictable outcome, no substantial results, from an institutional point of view, were produced by the European Council in Amsterdam, whose main task was to conclude the work of the Intergovernmental conference on revising the Maastricht Treaty.

Now it is time for the fifteen members of the EU to tackle the question of enlargement. Although they are unwilling to relinquish their sovereignty definitively, many of the governments of member countries are well aware that the health of their economies, and indeed peace in Europe, depend on the degree of cohesion, irrespective of its shortcomings, which is guaranteed by the current institutional order, and that this order could not withstand the impact of enlargement. It is to be expected, therefore, that the outcome of negotiations between member countries and those applying to join the Union will be uncertain and that the process itself will, indeed, be fraught with difficulties. What we will see will be yet another example of the impotence and lack of generosity of the Union whose attitude is bound to disappoint and anger many citizens of Eastern European countries who associated their liberation from Soviet dominion with the prospect of a rapid entry into a great democratic community embracing all the countries of Europe.

What emerged clearly in Amsterdam was that the question of the reform of the Union, which was meant to be the main issue tackled by the Council, was in actual fact dealt with only superficially and almost incidentally. What was really at stake in Amsterdam was something different altogether.

The real issue at stake in Amsterdam was that of monetary union. Evidently the obstacles in the way of achieving this aim were bound to multiply the closer we drew to the all-important date: January 1st, 1999. This fact has been confirmed clearly by two events that have added a dramatic quality to the work of the European Council: the victory of the

left in the French elections and, in Germany, the conflict between the government and the *Bundesbank* (the latter supported by the Bavarian CSU and by a part of the SPD). In the light of these developments, the results of the European Council merit a more detailed and specific analysis.

The first thing to emerge in Amsterdam was that the process towards the creation of the European currency is now moving at such a rate that it will be difficult to “stop the ball rolling.” Lionel Jospin, forced to adopt a rather hurried stance, having been thrust into government by the unexpected results of an election his party had not even wanted, was ultimately obliged to tow the German line, just as Chirac had previously done. The agreements reached were reiterated and the deadline for the introduction of the single currency was confirmed. A crisis had been averted.

Secondly, it is important to realise that never before has the future of the single currency been so seriously threatened; indeed, as a result of the air of uncertainty that still surrounds it, there is some doubt as to whether it can be launched by the target deadline. The new French government has issued declarations and made undertakings which have given rise to expectations of a relaxing of the budgetary policy in that country, and this development is straining the Franco-German entente which represents the backbone of the Union in both the economic and monetary spheres. The prospect of a policy of budgetary relaxation in France has led to a strengthening in Germany of the hard-line positions of the *Bundesbank*, of Gerhard Schröder and of Edmund Stoiber, which mask a substantial rejection of the single currency. Indeed, the battle over monetary union is far from over.

The question of European political unity cannot be divorced from that of European monetary union. Like it or not, it is clear, from events which have taken place within the process of European unification over the last ten years, that monetary union must *precede* political union and that, furthermore, the failure (or postponement) of the first would, in today’s climate, mean failure of the second.

Certainly, if the governments of Europe, or some of them, could be made aware of the urgent need to achieve a democratic and federal organisation of the institutions of the Union, the whole process of creating the European currency would be facilitated enormously. It is to

be admitted, however, that no such awareness currently exists. While everyone appreciates that a single currency, on its own, is not enough and that it needs some form of political support, no one is willing to overcome that one great obstacle that is the *renunciation of sovereignty*. France and Germany have each proposed equally inadequate solutions to this problem: the French suggestion is the so-called *economic government* of the Union which, according to the French government, would involve closer coordination of economic policies to be carried out within an intergovernmental framework, whereas the suggestion put forward by the German government, and accepted by all the governments represented at Amsterdam, concerned a *pact for stability (and development)*; according to this proposal, governments of the Union would be bound to respect the budget discipline imposed upon them, faced as they would be with the threat of automatic or semi-automatic sanctions imposable on those who without sufficient justification should stray too far outside it.

The truth is that the rigidity resulting from the creation of a single currency in a zone which is completely liberalised (thus taking away from governments several possible means of intervention: on interest rates, exchange rates and money supply) will inevitably lead, sooner or later, to a serious imbalance between the different regions of Europe and will inescapably raise the problems of a European budgetary policy and of a European organisation of consensus. If these problems are not tackled in a radical manner, the contradiction which currently exists between decision-making power (which remains in the hands of national governments) and the attribution of the relative responsibility (to the European institutions) will become untenable. In this situation, two alternatives will emerge: the *foundation of a European federation*, or the dissolution of EMU.

Currently only federalists (and some declared Eurosceptics) have a real awareness of the *de facto* link which exists between monetary union and federal union, and it is up to federalists to work towards spreading this awareness among the political forces and the citizens of Europe. On the other hand, current realities explain why monetary union will precede federal union in time and the assertion made by some that the foundation of a European federation is a necessary condition for the creation of a single currency represents nothing other than a smoke screen for those politicians who do not want to see the introduction of either. We must

therefore be on our guard against certain high bids for political unity which, implying no political cost, are as rhetorical as they are vague and mask a desire to shirk the frequently difficult decisions involved in the creation of monetary union.

The fact that the governments of Europe now find themselves faced with the problem of the renunciation of national sovereignty (one which they cannot resolve without appealing to the European people), means that the process of European unification is on the brink of a decisive crisis. Everything depends on whether the breaking point is reached before or after the birth of the single currency. If the single currency has already been established and the crisis breaks out over the contradictions resulting from the presence of a single currency in the absence of a European government, the outcome will probably be *the creation of the European federation*. If, on the other hand, the crisis is due to the inability of governments to achieve monetary union, then the only outcome that can reasonably be expected is the dissolution of the single market and the definitive failure of the process of unification. For this reason, federalists, in their battle to achieve recognition of the constituent power of the European people, should beware of the risk of bringing about a premature explosion of the contradictions inherent in the process, forgetting the importance of mid-term aims. The aim of the battle is to seek to unite a short- and a mid-term perspective and to encourage a maturation of political forces and public opinion so that, when the final battle comes, the pro-European side has sufficient strength and awareness of its position to be able to overcome its opponents.

The Federalist

European Constitutional Heritage: a Condition for European Constitutional Law

DOMINIQUE ROUSSEAU

The constitutional heritage of Europe, given that it does not fall directly within any pre-established category of law, gives rise to the same questions as those raised by the Declaration of the Rights of Man of 1789. Is it to be considered a moral guide to govern the political conduct of states, a philosophical treatise on what constitutes a good political system, a text laying down legal obligations with penalties imposable upon those who fail to fulfil them, or a constitutional (or better still, supra-constitutional) charter? Too often, legal experts tend to think in terms of absolutes, with the choice of one answer necessarily ruling out the possibility of considering the others to be equally valid. We need, perhaps, to learn to appreciate the complexity of questions, including those of a legal nature, and to view their inherent contradictions as evidence not of a structural fault, but of their essential nature. This is true of the constitutional heritage of Europe which can be viewed from both a philosophical and a legal standpoint, in the first instance because it defines a democratic culture within which a sense of European identity is constructed, and in the second because it favours the emergence of a European system of constitutional law, two aspects which are jointly present and interdependent.

*The Constitutional Heritage of Europe,
the Melting-pot of European Identity*

Societies, peoples and individuals need a form of self-representation, an identity. But identity is not naturally conferred; rather, it is built up from the play of social interaction in which individuals or groups find themselves involved. While the need for identity is ever-present, the form of self-representation adopted by individuals or groups is bound to vary as times and circumstances change. This is what we see happening now

as national identities are undermined by the process of globalisation. But the wheels of history roll on, and the constitutional heritage of Europe, “functioning” as a political culture which is shared by the peoples of Europe, is playing its part in redefining their identity.

1. *The Disintegration of National Identity.*

It would of course be foolhardy, here and now, to declare that the nation-state is dead and buried. While it is not to be considered the political organisation of society in its natural form, or in a Hegelian sense to mark the end of history, it must be remembered that the nation-state has a long history, starting way back in the XIII and XIV centuries, and growing and developing through the Renaissance period and the French Revolution to reach its peak at the end of the First World War, when American president Wilson put forward, as a policy of peace, the principle that all nations have the right to form a state. Thus, given that it is a product of history, the nation-state may disappear.

In the current climate, however, this looks unlikely to occur with peoples throughout Europe appearing keen to express their support for this kind of political organisation: the disintegration of the Soviet Union has generated an upsurge in national feelings and triggered, in the Caucasus as well as in the Balkans, innumerable armed conflicts as efforts are made to redraw the map of the states on the basis of nationalities. In Western Europe the popularity of nationalist parties continues to grow among the electorate while, independently of this, both the “Eurosceptics” and the anti-European factions base their arguments mainly on the need to defend the nation-state and national identity.

And yet, the nation-state is undergoing a crisis. In her most recent novel, *L'Horreur économique*¹, Viviane Forrester paints an effective picture of the emergence of a new social order — one in which real power is in the hands of “private transnational economic networks which are progressively gaining control of state powers and, outside the bounds of territory or of governmental institutions, forming a sort of nation which has an increasingly powerful influence over the institutions and policies of countries.” Thus, all the prerogatives of the nation-state disintegrate. Sovereignty (the independence of a nation, its non-submission to any external authority, a people’s capacity to shape its own destiny) is undermined when economic (and also cultural) transnational networks force their own laws and image on states which are not in a position to oppose them. Likewise, territoriality (state monopoly of a geographic

area defined by frontiers) becomes meaningless when the economy develops according to a spatial logic which surpasses or disregards the territory of the nation-state. In the same way, the legitimacy of national public powers (the people’s recognition of the need for an institutionalisation of power in order to guarantee the social contract) is weakened when the people perceive the inability of the state to enforce its own order in its own territory.

In short, the political, material and organic elements (respectively, *sovereignty*, *territoriality* and the *institutionalisation of power*) which traditionally had a role to play in defining the state, are falling apart and, as a result of this, the personal element, the *nation*, is crumbling too. Individuals, in fact, find it hard to identify with a community which, having lost its territory and political authority, lacks the elements needed to consider itself a national community. The sense of nationality, of belonging to a nation, develops gradually as, through reason or force, individuals become convinced of the need (for their own safety and well-being) for the sense of nationality to prevail over their sense of belonging to other groups — family, regional, social, religious, and so on. When individuals no longer see any sense or advantage in their membership of a national group, this is when the link with the nation starts to weaken, as we see nowadays with the re-emergence of the existential question: what does being French, Belgian, Spanish, German, Italian really mean? Moreover, the sense of national belonging depends on a spatial concept according to which the state of being inside the area is in direct opposition with the state of being outside it: being part of a nation means being inside a unit which is sealed off from other national entities. Now, with frontiers coming down, this concept is no longer valid and the crisis of the nation-state is deepened still further.

In this climate of change and uncertainty, other ideas of identity, put forward as alternatives to a sense of national identity, obviously flourish. Some maintain that a link with society can only be forged by revitalising those areas of life which can generate a sense of basic solidarity, such as the family or the city or region in which one lives while others, in order to re-establish a sense of collective and individual identity, place a higher value on membership of a religion (seeing themselves as members of the Catholic, Protestant or Orthodox community) or on membership of groups defined by language or sex. There are even those who still hold on to the belief that the nation-state may once more become operational, provided old frontiers are re-established and all ideas of an integrated or federally organised Europe are abandoned.

Thus, as is occurring throughout our planet, European states find themselves pulled between, on the one hand, a process of globalisation which is weakening their legitimacy and, on the other, a spate of particularist feelings of identity which destroy the sense of national belonging.

However, the eradication of democratic values is not necessarily to be seen as the logical or inevitable outcome of these two opposing but similarly destructive movements. In this crisis situation it may be possible, taking the constitutional heritage of Europe as a starting point, to rebuild the identity of the peoples of Europe.

2. Building a European Identity.

There are those who are quick to point out, and not without a degree of malice, that proposing the constitutional heritage of Europe as a means through which to construct a new sense of identity amounts to nothing more than adding yet another new idea of identity to those which already exist. To a certain extent, this is true. However, the real problem does not concern the substitution of one identity principle with another: while the need for identity is one shared by all individuals and all groups, the form which this need takes will vary, evolve and change over time and reflect the experiences of different social units. In other words, the citizens of Europe will not forever be obliged to identify with the national unit. Nowadays, what is the principle on which to base our concept of identity? This is the real and the most interesting question. There are three peculiar features which allow a distinction to be made between the principle of the constitutional heritage of Europe and the principles previously illustrated.

First and foremost, it is a modern principle — unlike the others which are associated with phases now surpassed. The nation itself represents, in fact, a sphere of identity which replaced, or gained sway over, the other spheres (family, regional, religious) within which the individual's way of thinking and behaving traditionally evolved. And this link with the nation was forged simply because, at a given moment in time, the nation could be seen as the space within which economic growth could be achieved. In this era of globalisation, there is no longer any point in seeking either to re-establish the social groups with which, prior to the nation, individuals could identify or to force the issue of national belonging. Precisely because it is in harmony with this process of globalisation, the principle of the constitutional heritage of Europe offers a valid framework of

reference which, as well as allowing the principle itself to develop and gain control, also renders it comprehensible. Moreover, not being based fundamentally on a set territory, the heritage principle represents a proposal for the building of a new identity which fits in with the current eradication of frontiers. In spatial terms, this principle is without doubt limited to Europe where, instead of a territory providing the basis of a sense of identity, it is identification with the heritage which establishes the European area (whose borders shift according to the degree to which the peoples of Europe support, reject or renege on the heritage principle). Finally, the sense of identity it creates is potentially universal, which does not mean that it will be without substance or divorced from the lives, traditions and histories of the peoples of Europe. Rather, the heritage is imbued with these lives, traditions and histories which, in a certain sense, it brings together to form the story of the birth of a sense of European identity. But because, while reflecting this history, the heritage is under constant construction, the sense of identity which it produces is shaped according to the critical nature of its content, thus remaining in a state of constant suspension, constantly open to others.

Thus, the feelings of identity which are rooted in blood, soil, ethnic affinities, traditions or territory are superseded by a sense of identity based on support of, and belief in a set of common principles with which the peoples of Europe feel able to identify. In short, we might say that community-based concepts of identity are replaced by a constitutional identity. The valuable and one might say superior feature of the constitutional identity is its ability both to surpass and embrace the various concepts of identity established in the past. The constitutional heritage of Europe can indeed be viewed as a “mid-way concept”, a principle which lies somewhere between concrete forms of particularism and the universal abstract. Far from representing a collection of cold rational assertions which are harmful to the sense of solidarity which develops in the very heart of a community, it is instead made up of principles which not only derive from recognised European values but also reflect them. In other words, these values are transformed, generalised and handed back to the states from which they originated. Thus, unlike national belonging, a sense of identity is built up as a result of the destruction or submission of particularist loyalisms; the constitutional identity, based on cultural principles which are, or may become universal, reflects the different ways in which the various individuals or groups see themselves, and also leaves room for the peaceful development of alternative feelings of identity.

But can this fantastic idea, doubtless some legal theorist's dream, truly be transformed into reality? In actual fact, the reasoning behind it is very simple. In a Europe made up of societies with different political, cultural, linguistic and religious backgrounds, what brings them together, their common heritage, must necessarily be based on principles — principles which are shared by these societies and at the same time, take into account the differences between them. Unlike the sense of national belonging, the feeling of identity born of this common European heritage does not produce unity or uniformity but harmony as, “working” like a common constitutional culture, it promotes a level of social interaction among citizens sufficient to allow them to continue to live together their own separate lives and to transform them, lived as they are alongside and in relation to one another. But can the common European heritage go even further than this? Can it result in the establishment of a European system of constitutional law?

***European Constitutional Heritage,
the Melting-pot of European Constitutional Law?***

Although it may seem pedantic to draw a distinction between European constitutional heritage and European constitutional law, this is not in fact the case: doing so merely provides a means of identifying different legal times and places. However, these different concepts are also to be considered interdependent as the former favours the development if not of a European system of constitutional law as such, at least of common principles of European constitutional law.

1. The Distinction between European Constitutional Heritage and European Constitutional Law.

There are at least two different ways of interpreting the expression “European constitutional law.” It may refer either to the collection of regulations, principles and institutions established by European treaties (both of the European Union and/or the Council of Europe) or to the national regulations, principles and institutions shared by the different European states. In both cases, the value of these interpretations is only metaphorical: the European treaties can in no way hope to be considered to form a “European Constitution” as they have not been submitted for public approval, they present no clear separation of legislative and executive powers, they are not gathered in a single text which is immedi-

ately recognisable to the people and, furthermore, do not provide for any means of controlling the conformity of the decisions of European public powers with fundamental rights. Certainly, some treaties contain elements which to a greater or lesser degree reflect the idea of a European constitution and there is indeed no reason to think that a proper European constitution might not one day be drawn up to replace all the texts, agreements and protocols currently in place at the European level. However, the declaration (as made by the Court of Strasbourg) that the European Convention of Human Rights represents “the constitutional instrument of European public order in the sphere of human rights”², or the assertion (as made by the Court of Luxembourg) that the European community treaties “despite being stipulated in the form of international treaties represent nothing other than the constitutional charter of a community of law”³ seem to be the expression of a political and strategic voluntarism rather than a description of the way the European institutional system is really organised.

The second interpretation of the expression “European constitutional law” appears on the other hand more difficult to refute given its strong resemblance to the definition of European constitutional heritage contained herein. The relationship between the two concepts, which is actually very simple, needs to be clarified: while the word “heritage” refers to a collection of principles, the word “law” refers to the application of these principles within the context of specific legal systems. The principle of free and periodic elections is one common to the various national constitutions and, for this reason, represents one of the elements of the European constitutional heritage; however, the application of this principle varies from state to state with some calling elections every four years, and others every five. In some countries, parliaments are elected under a system of proportional representation, in others under a majority system; in some countries only the distribution of legislative power is decided by universal suffrage, while in others the people also elect the holder of executive power.

Likewise, being universally shared, the principle of control of the constitutionality of laws also represents part of the European constitutional heritage, even though its manner of application also varies from country to country (diffuse or concentrated, *a posteriori* or only *a priori*...), and this is true of all the principles of which the heritage is comprised.

While the idea of convergence inheres in the notion of heritage, European constitutional law is characterised by divergence. Actually,

used in its singular form, the word law is inappropriate; it would be more correct to talk in terms of European constitutional laws. Since legal experts love to play games with categories, some will probably be tempted to quibble over this distinction, even though this does not alter the basic problem, in other words, what some call European constitutional heritage, others term European constitutional law. Although it would thus appear to be sufficient to agree on the meaning of the words, to do this implies that the words are in no way interchangeable and that each is used to identify a specific situation. In our case, to group all the constitutional principles shared by the different states under the heading “heritage” rather than under the heading “law” is justified by the desire to avoid confusion and misunderstandings in the complex process that is the building of Europe. The word “law” is associated with the idea of precise rules governing social organisation; as such, it cannot be used to refer to the constitutional principles shared by the different states without running the risk of inferring that these principles are organised in the same way within each of them.

In short, the notions of European constitutional heritage and European constitutional law are located in different spheres of reference — the first, in a semi-national sphere, is the expression of the constitutional culture shared by the states of Europe, while the second, located in a national sphere, is the expression of the way in which each state interprets, translates and moulds these (constitutional) principles to its own particular political background. Obviously, these two spheres are not totally divorced from one another and in order to appreciate the relationship between them, and the possible influence of the heritage on the construction of a European system of constitutional law, it is important first to identify clearly what each sphere represents.

2. The Relationship between European Constitutional Heritage and European Constitutional Law.

The relationship between European constitutional heritage and European constitutional law needs to be understood in dialectic terms. It is in fact European constitutional laws which feed the notion of heritage: following an intellectual process of comparison and synthesis which highlights the general or universal elements of common provisions, variously drafted in the different countries, the principles on which the notion of heritage is based are indeed drawn from the various national constitutions. This process is of course far more than a mere re-writing

exercise; more to the point, given the abstraction work involved in transforming various national constitutional provisions into a unified principle, the latter will necessarily develop its own relatively autonomous content. It is still true however that the principles of the heritage spring from the constitutions of the European states. Moreover, this relationship between heritage and the various European constitutional systems is sanctioned both by the European Convention of Human Rights, and by the Maastricht Treaty which, in art. F, states that “The Union respects fundamental rights *originating from the constitutional traditions shared by the member states* as general principles of community law.”

In turn, the principles of the heritage act upon European constitutional laws and can bring transformations which favour a convergence of the two, a process which reflects the movement towards the development of a constitutional culture. The heritage, indeed, operates as a common constitutional culture which favours social interaction among the citizens of Europe. As a result, European citizens are drawn progressively not only to share and assimilate common principles, but also to share and assimilate a common form of their legal application. In other words, the differences in the interpretation of these principles from country to country may become less marked as a result of the effect of the constitutional socialisation which they generate. The principles of respect for privacy, the right of asylum, the right to a fair trial, have already produced constitutional and/or legislative changes in various European states leading to convergence of their application in practice. In the same way, the principle of the supremacy of the constitution not only prompts traditionally recalcitrant countries to accept the idea of a control of the constitutionality of laws, but also, by allowing a comparison of the different systems, favours a progressive harmonisation of the ways in which constitutional justice is organised. Thus the extension to the parties of the right to appeal to the Constitutional Council is seen by its former president, Robert Badinter, as inevitable in so far as this type of recourse is the rule “in every great democracy which has a constitutional jurisdiction.”

Thus, gradually (too gradually for some and not gradually enough for those who would like to slow down, or even reverse the process) the European constitutional heritage is bringing about a convergence of the various European systems of constitutional law. This process is not uniform, however, but possesses a momentum and an intensity which vary depending on the constitutional area and themes in question. Indeed,

all the national constitutions are nowadays made up of two major areas of provisions: the first provide for the separation of powers, dividing competencies among the institutions and regulating the relations between them (that which Maurice Hauriou called the political constitution), and the second relate to fundamental rights and the defence of the same against the actions of public powers or against physical or moral attacks brought by private individuals — defined, once again by Maurice Hauriou, as the social constitution⁴. Thus, the trend towards the convergence of principles of constitutional law varies according to the type of constitution. If we are talking about the “political constitution” it is clear that, despite in some instances a certain coming together, the divergence between legal systems continues to be marked: some states are monarchies, others republics; in some, the president of the republic is elected directly by the people, in others by parliament; some states have two chambers, others just one; some have a federal structure which permits legislative authority to exist at a “regional” level, others have a unitary system in which legislative power is held exclusively by central government; some have an organically independent legal power, others simply a judicial authority with certain members, the public prosecutors, bound to the hierarchical power of the Minister of Justice and so on. As far as institutions are concerned, there thus remain considerable obstacles in the way of the formation of a European system of constitutional law, a situation which is bound to continue for a long time to come, given that it is the institutions, the structures of the state, which represent the expression of the traditions and specific histories of nations.

Looking at the “social constitution” meanwhile, it emerges equally clearly that convergence far outweighs divergence — a phenomenon which cannot be explained merely by the fact that the European constitutions contain the same fundamental laws. It is due, rather, to the fact that the judges in each of the nations, particularly the constitutional judges, interpret these laws in a convergent manner and draw similar legal conclusions. A comparison of the decisions of national constitutional courts in fact reveals a double convergence. First, the courts use the same methods to carry out their role as protectors of constitutional rights: they assess to what degree restrictions of one freedom or another are reasonable and logical, or excessive and disproportionate. Then, with reference to the main liberties, they more often than not produce similar interpretations and propose the same basic solutions.

In a ruling passed on December 21st, 1990, for example, the Belgian *Cour d'arbitrage* recognised (adopting the same terms as the French

constitutional council in its ruling of January 11th, 1990) the constitutionality of the law relating to the limitation and control of electoral spending and the public funding of political parties: “The law does not interfere with the principle of equality” ran the Belgian ruling, “as long as the funding operations are destined to ensure the correct functioning of the democratic institutions, with due respect for the plurality of opinions, and the balance between the political forces resulting from the vote is taken into account, which is to say that it must not have the effect of strengthening large parties or weakening small ones.”

Meanwhile, the constitutional court of Spain passed a ruling, similar to the one passed by the French council, on teachers in private institutions: while it was recognised that, out of respect for the specific nature of these establishments, teachers may be obliged to behave with a certain degree of reserve, they nevertheless retain their right to freedom of thought, and in response to an appeal *d'amparo* ruled against a decision to dismiss a teacher taken merely as a result of his admission that he did not practise the faith of the Catholic institute in which he taught.

The principle of equality, certainly the one most frequently evoked as the motive for appeals to constitutional courts, is treated in a similar fashion irrespective of whether the case is brought *a posteriori* or *a priori*. Constitutional judges maintain, in both these instances, that the principle of equality should be evaluated in a practical manner, by examining it in context, and that the principle is in no way violated by the fact that legislators may deal with it differently in different situations.

The doctrine of the Belgian *Cour d'arbitrage* was defined in its rulings of July 13th, September 28th and October 13th, 1989: “The constitutional laws on the equality of Belgian citizens and on non-discrimination do not exclude that there may be differences in the treatment of certain categories of people, provided the criterion according to which such categories are differentiated can reasonably and objectively be justified; the existence of a justification of this sort must be evaluated in relation to the aim and effects of the law in question; the principle of equality is considered violated when it is found that the means are out of reasonable proportion with the objective pursued.” The same line of reasoning has been followed by the Spanish constitutional court: departures from the principle of equality are permissible constitutionally only if they are supported by “an objective and reasonable justification which complies with generally accepted criteria and values” and, as in Belgium, provided the justification given is proportional to the aims and effects of the law in question and provided there exists “a reasonable and

balanced relationship between the means adopted and the objectives pursued.”

Thus, through the work of the constitutional courts, we see the empirical construction of a European system of constitutional law, this time in the sense of a “common system based on fundamental rights.” As well as being highly original, this system is fascinating from a theoretical and historical point of view as it reveals a European system of constitutional law which, unlike the various national systems of constitutional law, is created without reference to some sovereign power (the nation or the people), without the intervention of a constituent assembly and even, formally speaking, without a constitution. In this form, it is, more than anything, a system of constitutional law forged by constitutional judges. There is no doubt, therefore, that it reflects the trends currently seen in national constitutional systems of law which are, likewise, profoundly transformed by the increase in the power of constitutional jurisdiction. There is also no doubt that a system of law such as this, re-evoking the spirit of article 16 of the 1789 Declaration of the Rights of Man, represents an effective form of protection of the rights of individuals and groups in all European societies. Nevertheless, without underestimating the importance of the work of the judges, it must be assumed that a European system of constitutional law cannot exist, or take on a truly democratic significance until the peoples of Europe have expressed, by accepting a solemn text, their desire to be brought under a common political authority and to live and realise together a common social plan. This solemn text would be the European constitution. While the constitutional heritage of Europe cannot replace such a constitution, it does represent its melting-pot or, in other words, the common ground on which the members of the European family may progressively come together and live under the same roof.

NOTES

¹ Viviane Forrester, *L'horreur économique*, Fayard, 1996.

² European Human Rights Commission, March 4, 1995, R.U.D.H., 1991, p.201.

³ Advice 1/91, R.U.D.H., 1991, p.91.

⁴ Maurice Hauriou, *Précis de droit constitutionnel*, Sirey, 1929.

Notes

PEACE THROUGH LAW

A recurrent theme in the work of Hans Kelsen is the need to establish an international court with binding jurisdiction over states, as a first and indispensable step for an effective reform of international relations¹. During the Second World War in particular, impelled by the dramatic nature of events, Kelsen set himself the problem of whether war between states could be abolished, reaching the conclusion that there would have to be a Permanent League for the Maintenance of Peace, central to which would be the creation of an international court. Now that the battle for the establishment of a United Nations International Criminal Court is at an advanced stage, and there is beginning to be a strong movement mobilising support for it, it is undoubtedly worth re-examining these writings by Kelsen and discussing the contribution made by this author, who occupies a central position in the cultural panorama of our century.

The text to which we shall principally refer is *Peace through Law*, published in 1944², in which Kelsen puts together his reflections on this argument. In the preface the author notes that “war is mass murder, the greatest disgrace of our culture, and that to secure world peace is our foremost political task, a task much more important than the decision between democracy and autocracy, or capitalism and socialism; for there is no essential social progress possible as long as no international organization is established by which war between the nations of this earth is effectively prevented” (p. viii).

The tragic experience of war had made many thinkers, many politicians and many citizens conscious of the need to abolish war, but surely this formulation of Kelsen, which recalls some points of the Ventotene Manifesto by Altiero Spinelli, is particularly advanced because it makes the problem of peace the new political priority. According to Kelsen, in an organized society peace is guaranteed by the fact that the community holds the monopoly of the use of force. The modern state is the perfect model of the social order which establishes the monopoly of force on the part of the community, because it centralizes the use of force by referring

it to a central executive power. Within the state therefore, the pacification of relations between individuals, that is *national peace*, is carried out at the highest possible level

It follows from this that, when one considers the problem of assuring *international peace*, the ideal solution is certainly that of establishing a World federal state, composed of the greatest possible number of states. Kelsen agrees with Lionel Robbins when the latter maintains that the existence of independent sovereign states is the fundamental cause of war and that therefore the only remedy consists in the limitation of their absolute sovereignty (p.18 in footnote). The problem however is to identify a *realistic* strategy in this direction.

From this point of view, “only wishful thinking and ignorance of decisive facts allow us to underestimate the extraordinary difficulties we must encounter in organizing a World federal state” (p.9-10). A democratic World federal state, in fact, would have to have a parliament in which the member states are represented on the basis of population; this would mean that India and China would have about three times as many delegates as the United States and Great Britain put together. “The government of a sovereign state is by its very nature inclined to resist any restriction upon its independence; and to become a member of a federal state means giving up completely one’s independence. The resistance against a state suicide must, of course, reach the highest degree immediately after a victorious war, which inevitably increases the nationalistic feelings of people” (p. 10). This does not mean that World federation is impossible to achieve, but only that it can be realized after a long and slow process of rapprochement, particularly cultural, between the different nations of the world. The first step to take in this direction, according to Kelsen, is: “at first only an international union of states, not a federal state” (p. 12).

The solution to the problem of peace can therefore be sought only in the context of international law: the high degree of centralization characteristic of the state, he maintains, is not indispensable to guarantee a lasting peace; the monopoly of force, which is the essential element for a juristic community which wants to assure peace between its members, is possible even when the community is not a state. “Consequently, the next step on which our efforts must be concentrated is to bring about an international treaty concluded by as many states as possible, victors as well as vanquished, establishing an international court endowed with compulsory jurisdiction. This means that all the states of the League constituted by this treaty are obliged to renounce war and reprisals as means

of settling conflicts, to submit all their disputes without exception to the decision of the court, and to carry out its decision in good faith” (p. 14).

Thus Kelsen introduces the central idea of the international court. But for this to be efficacious, he adds, it is necessary that all conflicts between states can be brought back in the final instance to a legal dispute, and thus that the distinction between legal and political conflicts is abolished (a distinction based exclusively on discretionary criteria of the states themselves, which invoke one or the other principle on the basis of their own interest); in this way, any dispute between states is subject to the authority of the international court. It is further necessary that, in addition to the collective responsibilities of a state, the court can also prosecute individual responsibilities of those who, having government office, commit, order, or authorize acts of war which violate international law (which derives, in substance, from the principle of *bellum justum*).

The most delicate point, of which Kelsen is well aware, concerns the execution of the court’s decisions regarding states. It is clear that the most efficacious method to enforce the orders and judgements of the Court would be to have a centralized executive power, i.e. an international police force independent of the armies of the states and directly at the disposal of a central administrative agency charged with executing the decisions of the court. But “an international police force is effective only if based on the obligation of the member states to disarm or radically to limit their own armament, so that solely the League is permitted to maintain an armed force of considerable strength. A police force of this kind is ‘international’ only with respect to its legal basis, the international treaty. It is, however, ‘national’ with respect to the degree of its centralization, for a League with a centralized executive power is no longer an international confederacy of states, but a state itself” (p.19). An ‘international’ police force of this type is therefore a radical limitation, if not a total destruction, of the sovereignty of the state, and in the current phase it is unthinkable. The creation of a central executive power is the most difficult problem, from the point of view of world organization, and it therefore cannot be the first step.

The solution then is to be sought by resorting to the armed forces of the states which must provide them directly to the Council charged with executing the court’s decisions. According to Kelsen this solution is in any case effective, because the very fact of establishing an International Court is a decisive step towards the creation of a World federal state: “The problem of world organization is a problem of centralization; and the whole evolution of the law from its primitive beginnings to its standard

of today has been, from a technical point of view, a continuous process of centralization....The centralization of the executive power is the last step...from the decentralized pre-state community to the centralized community we call state. We have good reasons to believe that international law — that is, the law of inter-state community, completely decentralized and dominated by the principle of self-help — develops in the same way as the primitive law of the pre-state community. If it is true, we can with a certain degree of probability foresee the direction in which a relatively successful attempt may be undertaken to secure international peace, to eliminate the principle of self-help from international law by emphasizing and strengthening the given tendency toward centralization. Natural evolution tends first toward international judiciary, and not toward international government or legislation” (p.22).

These lengthy quotations from Kelsen represent one of the most coherent and best argued reflections on the relationship between the establishment of the international court and the process towards the World federation. Two striking aspects, as already observed, are the basis on which Kelsen develops his analysis, which is to say the idea of the priority of peace over other political objectives, and the relationship which he establishes between the maintenance of peace and the creation of the state; just as it is also an absolutely valid requirement to think of a strategy and of intermediate stages necessary to reach a World federation. What appears contradictory on the other hand is precisely the formulation of the possible solution, namely the priority given to the establishment of an international court.

In this connection, two categories of problems may be highlighted: first, the contradictions which emerge from the arguments in support of the effectiveness of the international court, and secondly the fundamental theoretical contradictions in Kelsen’s general thinking, which obviously have repercussions on his theory of the primacy of the judiciary power over the executive and legislative in the construction of the World state.

First of all Kelsen considers it unthinkable that states, and victors in particular, should be prepared, once war was over, to cede their own sovereignty to a world institution. Now, what is an international court with *binding jurisdiction* over States if not a drastic limitation of sovereignty over the latter? A sovereign state, by definition, is a state which does not recognize any legitimate power superior to its own, and which therefore acts towards other sovereign states on the basis of relations of force (it submits to the power of stronger states, while trying to augment its own power at the expense of weaker states). This is the

essence of international relations, which is a situation of anarchy exactly because no power is recognized as superior to the states, which therefore remain *sovereign*. From this point of view the establishment of an international court is either a pretence or it is indeed the renunciation on the part of the states of their own sovereignty. This second case would be true if a real power were to be created of substantial monopoly of armed forces at world level, a hypothesis which Kelsen rules out for the immediate future. But if this is not realized, there remains only the pretence. After all, Kelsen himself is forced to admit, quoting Robbins, that the crucial problem if one wants peace is the limitation of the sovereignty of the states. What can oblige a sovereign state to obey a court sentence which goes against its own interests? Only the reaction of the other states damaged by its behaviour can constitute a restraint, but here we are in the field of force, not of law. Is it really conceivable that states which do not have interests involved in the conflict should commit arms and men to punish those who have violated international law? From this point of view all historical experience of leagues and confederations (suffice it to recall the American experience) have shown that only states with an immediate interest contribute to the common duty, while those who are not directly involved manage to avoid making their own contribution without the other being in any position to compel them. And what then of the states which instead are favoured by the action of the transgressing state? The reality is that as long as the states in the fullness of their power are the players of international policy, each one acts, and can do no other, on the basis of its own *raison d’état*, before which a court without power can do nothing, except being exploited on the basis of the existing balances of power.

After all Kelsen bases his thesis on his general theory of law and of the state, which represents a contribution universally recognized as fundamental in the field of philosophy of law, but which presents profound ambiguities. For Kelsen the international court is efficacious because it is in any case a reinforcement of a legal order, the international one, which already exists, and to which the states are already subjected (so Kelsen, indeed, sets out from the presupposition that the states do not hold absolute sovereignty).

First, from the logical point of view, Kelsen considers that there is a primacy of international law over that of states: a state, to be such, must be recognized by the international community. Recognition comes about on the basis of the general norm of international law which is the principle of effectiveness: “an actually established authority is the legitimate

government, the coercive order enacted by such a government is the legal order, and the community constituted by this order is a state in the sense of international law, insofar as this order is, on the whole, efficacious”³ (p.121). The principle of effectiveness (in other words the principle whereby the condition of the validity of a legal order is its *efficacy*) is therefore at the same time the fundamental norm of the legal order of a concrete state and the general positive norm of international law. This implies a primacy of international law over the law of states from the point of view of juridical legitimacy, because, in Kelsen’s hypothesis “the only true basic norm, a norm which is not created by a legal procedure but presupposed by juristic thinking, is the basic norm of international law” (p.122). In this passage there already lies a profound ambiguity. What does the efficacy of a legal order in fact mean for Kelsen? It means that the actual behaviour of men conforms to it. The validity of a legal order, the fact that it constitutes a state community, does not derive therefore from the recognition of the international community but from the recognition given by the people of the state community in question through their own behaviour. This, in reality, is the source of the legitimacy of the state, and the international community confines itself to taking cognizance of this, as in many other cases of international law, which in fact, as Kelsen himself admits, sanctions existing situations (on the basis of the principle *ex injuria jus oritur*, as in the cases in which it recognizes the annexation of a territory by a state which, having settled it permanently, has replaced the old legal order with a new one, of which international law confines itself to taking cognizance).

On the other hand, Kelsen is obliged to compare international law with the primitive legal order, in which the community has the monopoly of the coercive act, but decentralizes its application to individuals, who are in fact authorized to avenge wrongs suffered. It is still a very unsatisfactory legal order, founded on the principle of self-help, and which can nevertheless already be called law, even if *in statu nascendi*. Like primitive law, international law is characterized by the juristic technique of self-help by the states. However, even compared to primitive law, international law presents a further problem: in a primitive community there is an organization of power, however crude, which ensures that the individual is not sovereign but is in some way subordinate to the laws of the community; this power therefore guarantees the enforcement of the rules of community life (in fact it realizes the monopoly of the coercive act, as Kelsen says). But in the international community this organization of power, however embryonic, does not exist and the states, contrary to

what Kelsen believes, are in fact sovereign. In case of dispute, therefore, the application of international law is in reality once more entrusted to pure relations of force. It is difficult, from this point of view, to define a situation as law, even if in its earliest form, where in reality only relations of force are valid. The establishment of an international court, to return to the initial point, would not alter the situation: an international court intended to be binding over states without however actually limiting their sovereignty in no way alters the situation of power.

There is then a final decisive point. Kelsen recognizes that “whether or not international law can be considered as true law depends upon whether it is possible to interpret international law in the sense of the theory of *bellum justum*, whether, in other words, it is possible to assume that, according to general international law, war is in principle forbidden, being permitted only as a sanction, i.e., as a reaction against a delict” (p.340). In turn this theory is based on the presupposition that there is a legal order which obliges the states to behave in a given manner and that this order is superior to the state. This theory, Kelsen then admits, is incompatible with the idea of the sovereignty of the states: “To attribute sovereignty to a state means that it is itself the highest authority, above and beyond which there can be no higher authority regulating and determining its conduct” (p.336). Now, the choice between these two alternative hypotheses is not scientific, but political. Kelsen’s preference is justified exclusively by the fact “that only this interpretation conceives of the international order as law, although admittedly primitive law, the first step in an evolution which within the national community, the state, has led to a system of norms which is generally accepted as law... Only if such an evolution could be recognized as inevitable would it be scientifically justified to declare the *bellum justum* theory the only correct interpretation of international law. Such a supposition, however, reflects political wishes rather than scientific thinking” (p.341).

Kelsen, by his own admission, therefore confines himself to expressing a need and a hope, but in fact does not indicate a solution, precisely because he does not tackle the problem of sovereignty. This does not cancel the fact that the questions he raises are fundamental: peace is still the political priority of our times and the growing interdependence of the world community has made even more urgent and certainly no less dramatic the need to find the way for the World federation. But the institution of an international court alone does not shift the balance of power from the states to the world community, especially if it is not part of a much broader strategy.

Therefore, faced with the initiatives in support of the International criminal court, it is right to take note of the current ferment in world public opinion and of the fact that there is now a demand for justice which is addressed to the international community; just as it is right to participate in this movement to seek to influence it in a federalist direction. But this does not mean one must cease to remember that the first great step towards the world federation — the only real possibility of peace and international justice — will be constituted by a more peaceful and balanced world order which sets an example of overcoming absolute national sovereignty through the creation of the European federation.

Luisa Trumellini

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¹ Cf. H. Kelsen, *The Legal Process and International Order*, The New Commonwealth Research Bureau Relations, Series A, No. 1, London 1934; *Law and Peace in International Relations*, Oliver Wendell Holmes Lectures, Harvard University Press, 1941; "Essential Conditions of International Justice", *Proceedings of the 35th Annual Meeting of the American Society of International Law*, 1941, pp. 70 and following; "International Peace by Court or Government", *The American Journal of Sociology*, 1941, Vol. 46, pp. 571 and following; "Discussion of Post War Problems", *Proceedings of the American Academy of Arts and Sciences*, 1942, Vol. 75, No. 1, pp. 11 and following; "Revision of the Covenant of the League of Nations", *World Organization, A Symposium of the Institute on World Organization*, 1942, pp. 392 and following; "Compulsory Adjudication of International Disputes", *American Journal of International Law*, 1943, Vol. 37, pp. 397 and following; "Peace through Law", *Journal of Legal and Political Sociology*, 1943, Vol. 2, pp. 52 and following; "The Strategy of Peace", *The American Journal of Sociology*, 1944, Vol. 49, pp. 381 and following.

² H. Kelsen, *Peace through Law*, Chapel Hill, The University of North Carolina Press, 1944.

³ H. Kelsen, *General Theory of Law and State*, New York, Russell & Russell, 1961. All quotations from this point on refer to this work.

FEDERALISM, DEFICIT AND THE NEW WORLD ORDER

The bipartisan agreement reached in the USA by the Democrats and Republicans to balance the federal budget by 2000 — the balanced-budget agreement — has a significance which transcends the American political horizon. On one hand, it is part of the wider debate on the balance of power in a federation whose roots go back to the Convention of Philadelphia and the subsequent battle for the ratification of the new Constitution. On the other hand, it is explicable only in the context of an analysis of the evolution of the world order following the end of the Cold War and with the prospect of the creation of the single European currency by 1999.

The agreement reflects the awareness, by now shared by both the big American parties, of the need for financial reform, and followed a heated debate as to whether the Constitution should be amended. At first sight this would seem nothing new: the subject has been raised in every legislature since 1936, and it is not the first time that a bipartisan agreement has been announced on the containment of the federal budget. But in the last three years particularly Congress and Senate have repeatedly discussed the problem. Since 1994 they have voted on three separate proposals of constitutional amendment to limit federal powers in fiscal and budgetary matters. As in the past, amendments have been blocked by the constitutional constraint that at least two-thirds of the members of Congress and Senate have to approve starting the complex procedure of revision of the Constitution. But on this occasion the agreement which followed on from it sought to unite the demands of reform with an ambitious internal "Marshall Plan."

Let us briefly see how this result was reached, starting with the majority and minority reports presented by the Committee on the Judiciary of the Senate¹, which had examined and given a first opinion favourable to the balanced budget constitutional amendment.

The senators in favour of amending the Constitution proposed fixing the majority necessary to annually approve a budgetary deficit at three-fifths only in cases of particular emergencies or of imminent war; they justified the proposal by referring to observations made by the Founding Fathers of the Federation (in particular Hamilton, Jefferson and Madison) on the powers and moral responsibility of Congress. The majority report took as its starting point the fact that federal expenditure is now out of control, and no bipartisan agreement has so far succeeded in changing the situation. Indeed, federal expenditure now represents a high percentage of

the United States GDP (23% in 1993 against 3% in 1929) and annual spending on interest payments on the national debt now equals military spending, while the percentage of foreign creditors is increasing. The senators opposing the change, also referring to the authors of *The Federalist*, retorted that such an amendment would upset the balance of the Federation, and in particular, would give excessive power to the courts, who would *de facto* have the power annually to establish the constitutional correctness of the budget proposals, and to evaluate emergency situations and proposed expenditure and investments. In this way, the minority senators objected, the very principle for which the War of Independence was fought would be lost, namely that of keeping the power of taxation anchored to the people's representatives. To approve such an amendment, the minority speakers Leahy, Kennedy and Feingold insisted, would moreover undermine the international influence of the United States, in that it would weaken the effectiveness and credibility of US foreign and security policy. It was noted that if the proposed amendment had been in force, President Jefferson could not have acquired Louisiana at the beginning of the last century to promote a peaceful enlargement of the Union and to prevent the formation of potentially adversary States on its western borders. In connection with the facility, evoked by the majority speakers for circumventing the deficit clause in case of emergency, to constitute majorities sufficient to enable the Union to respond in good time to internal and external challenges, the minority report noted that this theory is not supported by historical experience. Thus, Congress and the Senate had decided only by the narrowest majority to extend military service on the eve of the Second World War; and it was by a hard-won majority that Congress had decided on war against Great Britain in 1812, and, after the Civil War, on the imposition of a tax, opposed by the States of the North, to finance aid to the States of the South.

To complete the context of the debate, it is worth noting another contribution appended to these speeches, that of Senator Torricelli: while declaring himself in favour of the amendment, particularly to contribute towards kindling a broader debate in the country, he stressed the need to tackle the problem of defining the constitutional and legislative criteria to distinguish between long term State investments and current expense².

As we can see, the debate in America on the problem of financial reform has become a debate on federal constitutional principles and how

they stand up to the challenges of the globalization of the economy and the transition towards a new world order. These challenges were not yet present on the political and historical horizon of the Founding Fathers of the American Federation, whose primary objective was to protect the budding continental federal power from the claims of the member states and to make it sufficiently independent and strong. Concerns of this type emerge, for example, in Hamilton's observations regarding the need to give the federal level unlimited powers of taxation (*The Federalist N. 30*), so that it could respond, independently of the member states of the federation, to situations as they arose. And, on the more general question of the limits of state borrowing, one might note the passage in *The Federalist*, again by Hamilton, which explains how "any outstanding items can be covered by loans. The possibility of establishing new funds by new taxes imposed on their own authority, would allow the national government to resort to loans for any sum which it might need... Foreigners, like American citizens, could reasonably have confidence in these commitments."

Hamilton's observations and the recent debate in the USA regarding financial reform give occasion to reflect briefly on three more general problems: A) the advantages and limitations of the American Constitution; B) the opportunities and risks linked to the end of the Cold War and globalization; and C) the American response to the European challenge.

A — Federalism has allowed the United States to find the necessary resources to tackle with success, and in any case more effectively than the European nation states and the big continental states like the USSR, the challenges of the evolution of the mode of production and of the world balance of power over the last two centuries of history. But also on the internal level, as Tocqueville observed³, federalism ensured that America became "the only country where one could observe the natural and tranquil evolution of a society", by removing it from absolute power.

However, as America gradually became part of the world system of States, the federal principles of the Constitution were forced to adapt to the requirements of *raison d'état*. Thus there was a gradual erosion of the margins for autonomous internal reform of the US Constitution, just as previously there had been a gradual erosion of the margins for autonomy in domestic policy of the individual European nation states against the demands of international policy. We can therefore observe, in America as in Europe, that in both continents no state can reasonably hope individually to draft and adopt a perfect Constitution. To advance on this terrain Europeans and Americans now find themselves in the position of

having to solve the problem highlighted by Kant in the Seventh Proposition of the Idea for a Universal History with a Cosmopolitan Purpose: “The problem of establishing a perfect civil constitution is subordinate to the problem of a law-governed external relationship with other states, and cannot be solved unless the latter is also solved.” This difficulty may perhaps permit a better grasp of the contradiction, which also emerged during the debate on the constitutional amendment to limit the national debt, between the aspiration to introduce constitutional constraints to make the policies of the state more efficacious, and the need to leave open the possibility of abrogating it — by evoking the prospect of imminent war — to allow the state to guarantee its own survival in a world of sovereign and independent states. The overcoming of this contradiction therefore depends not on the good or ill will of the American legislators, but primarily on the existence of the indispensable historical conditions to start a political struggle with the objective of affirming a world order compatible with the condition indicated by Kant.

B — The end of the Cold War and the process of globalization have established the premises for tackling this problem. In fact, in an age when the globalization of the economy and the end of the military blocs oblige every state to compete on the international markets to attract investment and capital, it is no longer possible to win the confidence of investors, referred to by Hamilton, without offering in exchange guarantees of the solidity of each national economy. Moreover, without the protective network of the powers of reference in the bipolar balance, the states must demonstrate that they deserve individually the trust of the markets by pursuing virtuous economic and budgetary policies. The interest of the States in pursuing healthy budgetary policies therefore coincides increasingly with the need to pursue them to avoid marginalization from the world economy.

The Treaty of Maastricht in Europe and the debate which has developed in America are the consequences of the same situation. However Europe, finding itself still without a constitution and without a government, has so far developed this debate in the intergovernmental arena and not by the normal dialectic between political and social forces and the government. The USA for their part seek to reconcile the policy of internal financial reform with maintaining their status as the single global superpower which survived the end of the Cold War.

C — But why, despite America’s current superiority, is the USA determined on objectives which go beyond the criteria of Maastricht? And again, why, with an unemployment rate below 5% for the first time

since 1973, a ratio of 1 per cent between the public deficit and gross domestic product, well below the parameters of Maastricht, with a forecast increased fiscal revenue due to the healthy trend of the economy, is the USA going for a further effort of financial reform which should balance the budget by the year 2002? President Clinton’s answer to the American people is: “To prepare ourselves for the future.” The current American advantage is therefore not considered enough to put the USA out of all danger, and uncertainty on the future of the world order forces the USA to conduct a foreign policy capable of adapting as much as possible to every evolution of international relations.

The bipartisan agreement which followed the rejection by Congress and Senate of the amendments on balanced budget and tax limitations⁴ was made possible, as Clinton’s group of counsellors who worked on this project has admitted, by the Democratic and Republican party leaders’ shared concern over the future of American security policy and foreign policy.

The future of Europe, for which the Americans have fought three wars in this century — the costs of the Cold War were in fact no lower than those sustained in the two preceding world wars — continues to occupy a prominent position in these concerns. With the prospect of a new European monetary pole, now considered by the US administration to be inevitable, the American economy in fact can no longer count on the uncontested power of the dollar in international trade — the European Commission forecasts that after 1 January 1999 at least a third of international trade will be effected in EURO — far less on the maintenance of a substantial inflow of financial resources towards America. The USA must therefore prepare for greater financial competition or cooperation at global level. And the degree of bitterness of competition or of intensity in cooperation will presumably depend on the evolution of the equilibria affirming themselves in Europe. All this is sufficient to explain the determination with which the USA is conducting a policy of national unity in the area of budgetary policy.

The turning point announced in the American budgetary policy is of enormous significance when one considers that until the end of the Eighties the tendency was to rely on public borrowing for federal expenditure to support the growing costs of the social and defence programmes, rather than on higher taxes. In the first half of the Eighties the deficit quadrupled in five years and the debt doubled. It was the end of the Cold War which made it possible to reverse this trend. The fact that all this is happening, for the moment, without affecting the position of world

leadership held by the USA, offers the Clinton Administration a unique opportunity to inaugurate a policy of national unity otherwise impossible. In fact, the recent Russian-American agreements on the reduction of their nuclear arsenals, which do not weaken the Russian-American supremacy on this terrain, and the decision to enlarge NATO, which allows the USA to maintain a role of leadership in the Alliance with the prospect of sharing out the financial burden more, have made it possible to agree on the budget and launch an unprecedented development plan. It is thanks to this context of détente that almost a third of all cuts to be made by 2002 can be made on the budget of the Pentagon, to an amount comparable to the investments made in Europe through the Marshall Plan in the five years bridging the Forties and Fifties.

But if the end of the Cold War has made reform of the American economy possible, the prospect of the birth of the European monetary pole has accelerated its launch.

Accepting the European challenge, the USA have announced their intention to go beyond the commitments undertaken by the Europeans in the Treaty of Maastricht. The point of departure of the American plan for development is the same as Delors' European plan: the adaptation of society to the new phase of development of the scientific and technological revolution, starting with education⁴. But the parallel ends there. The plan presented by Clinton is in fact a government plan supported by a political agreement of national unity. The European plans are intergovernmental agreements on which the approval of the individual national governments must daily be sought.

The US however cannot underestimate the fact that, in this phase, they can reconcile the reinforcement of their Welfare policies (which, moreover, are below the levels of social protection guaranteed in Europe) with the balanced budget by exploiting the peace dividends of the end of the Cold War.

For the USA it is therefore of vital importance to maintain a stable and secure world context, without which it will certainly not be possible to carry out the announced plan. The expansion of NATO, the relaunch of transatlantic relations between the USA and the European Union, the reinforcement of NAFTA in North America and the proposal of a Hemispheric Free Trade Area with Latin America, bear witness to a US foreign policy designed to consolidate this favourable moment for America by extending their area of economic and military influence.

As the G7 summit in Denver, the New York summit on the environment and the Madrid summit on NATO showed, the policy of reinforcing the American leadership cannot be tolerated and endured for long by the other states. It is a policy which can therefore have limited successes in the short term, but not in the medium and long term, when inevitably it will become manifest that the USA cannot guarantee an American world peace. If at that moment there were as yet no mature alternative to the path followed by the USA, the world would risk being indefinitely swallowed up into a dangerous phase of disorder and international instability. In such a situation the problems of reform and relaunch of development plans on both sides of the Atlantic would inevitably give way to the day-to-day policies to guarantee the survival of the institutions essential for the survival of the States.

It is unlikely that such an alternative could emerge from the USA. It is true that twice in this century, following the First and Second World Wars, first President Wilson and then President Roosevelt laid the foundations for the reorganization of the international order starting with world institutions which were proposed to reinforce cooperation between States, but without putting sovereignty in discussion. The problem facing us today instead consists in going beyond cooperation and national sovereignty. An impulse in this direction is unlikely to come from Russia, which is grappling with a difficult process of economic and political transformation where internal objectives take priority over international ones; or from the emerging Chinese and Indian powers, not yet fully part of the process of globalization of the economy and commerce.

The construction of an alternative to world disorder must therefore start from Europe and from the model of the international state which the Europeans propose.

When it becomes clear what limitations constrain the American policy in its attempt to guarantee security and stability in certain key regions of the world, or to tackle certain serious global problems with any probability of success, what point will the European Union have reached in the process of transforming itself into a federal state capable of action? On the European response to this question depends not only the future of the debate on relations between federalism, financial reform and development plans, but also the future of the world order.

Franco Spoltore

NOTES

¹ *The Balanced-Budget Constitutional Amendment, Report from the Committee on the Judiciary, together with Additional and Minority Views, Filed under the Authority of the Order of the Senate of January 30, 1997, 105th Congress.*

² This problem, far from being a merely technical question, also came up in the Treaty of Maastricht, which however left to an explanatory protocol — that on the convergence criteria — the problem of taking account of the difference between the public deficit and public expenditure for investments (art. 104 C).

³ Alexis de Tocqueville, *La Démocratie en Amérique, I*, first part, second chapter.

⁴ The *bipartisan* agreement proposes to relaunch education policy. Educational standards are to be spread out and raised: it is the largest investment in education made in the USA in the last thirty years. Taken as a whole, between direct support and fiscal deductions, the transfer into the education sector in the next five years will equal the cuts planned for defence. In health care, both savings and greater health care cover for the most needy are planned. In environmental protection new investment is planned for the cleaning up of contaminated areas (500 zones by the year 2000) and for the safeguarding of the people's health. As we see, the USA is reaffirming the role of the state in promoting the growth of primary factors of development — like education — and in guaranteeing the health service and minimum social security for all citizens.

Interventions*

RETHINKING EURO-ATLANTIC
FEDERALISM

For all its difficulties and setbacks, the process of integration and federalisation has reached a stage far more advanced in Europe than in any other part of the world. The situation in Europe is in marked contrast with the global situation; indeed, in the world as a whole, hardly any progress has been made, even since the end of the Cold War. This is why we probably need a concept which provides a link between the spheres of European and world federalism. For the same reason, there are important lessons to be learned from the European experience if we really want to further the principles of federalism throughout the world.

Even in Europe, where the economic and cultural differences are far fewer, the process of creating working supranational structures took several decades. There is no reason therefore to think that this can be achieved quickly or at once on a global scale. Moreover, it is highly predictable that the model of world organisation in any foreseeable future will resemble that of contemporary Europe which has 1) the OECD — an all-inclusive forum with little or no decision-making power, dealing primarily with external aspects of its members' behaviour, and 2) alliances between countries sharing the same basic principles and values, with institutions vested with the power to make mandatory decisions on behalf of their members and to implement them (EU, NATO). The UN can already be seen as a rough world version of the OECD and, indeed, is often seen by world federalists as an embryo of the future world government. From the viewpoint presented here, however, this is both problematical and risky as failure could seriously jeopardise even the simplest functions which the UN currently performs and which will be

*This heading includes interventions which the editorial board believes readers will find interesting, but which do not necessarily reflect the board's views.

needed for a long time to come. Therefore, a world version of EU/NATO/NAFTA still remains to be created.

As regards the future evolution of the EU, I agree entirely with Francesco Mazzaferro who said, in Moscow in late 1992, that the fundament of the present Europe was the reappraisal and reconciliation of the Latin and German cultures (partly thanks to their postwar “Americanisation”) and that the next task for the EC/EU must be “that of opening our mind to the third cultural component of continental Europe: that of Russians, Czechs, Poles etc....”

These words, however, were said just at a time when a new policy of the West towards this “third component” was starting to take shape. Until around 1993, the West had tended to demonstrate a uniform approach to the postcommunist world. Subsequently, however, and as a result largely of pressure from Germany, another scheme emerged which saw the postcommunist area as consisting of two parts: while one of these was considered suitable “to join” Europe, for the other, membership was denied. Moreover, the particular manner in which this scheme was developed gave the impression that there existed no objective criterion governing this division, but rather that there was a sort of unspoken understanding among Western leaders as to which countries “by their nature” could be accepted and integrated and which could not. Apart from anything else, this meant that the cultural and historical differences between postcommunist countries, which only a few years earlier may have been perceived as unimportant or at least of only minor significance, now became decisive and practically insurmountable.

What is most amazing is that, at the time, Moscow did not officially display any signs of concern or discontent. Strange as it may seem, the people in power there simply did not appear to appreciate the real significance of what was happening, with all its mid- and longer-term implications. They started to worry only when the next, and in my opinion quite logical and inevitable, step was taken — in other words when NATO announced its decision to expand and embrace those who definitely identified themselves with the “West”.

Since the early 1990s, one of the most popular topics in academic and intellectual circles in Russia has been a concept developed by S. Huntington who suggests that the ideological struggle on our planet is giving way to a struggle amongst civilisations, and that the border areas of such civilisations will represent the main lines of division in the decades to come. As it is certain that Prof. Huntington is not a believer in the federalist ideal, the criticism of his theory which appeared in *The*

Federalist Debate was — despite being in my opinion rather unconvincing — not undeserved.

The reason why Huntington’s views have received such extensive coverage and attention in Russia (probably more than in the US, and certainly more than in Western Europe) seems to be that his account of the motivations underlying Western policies is very much in line with the way Western policies are actually perceived in Moscow. Indeed, if we take a look at the political map of Europe, we cannot but notice a striking resemblance between the projected frontiers of the political alliances of the West (the EU and NATO) and those of the area in which Latin script and the Western version of Christianity have been superseded by Cyrillic script and the Orthodox tradition.

Although any detailed analysis of relations between the EU and Russia goes beyond the scope of this paper, I would nevertheless like to draw attention to two particularly striking aspects. The first is the astonishing extent to which the stereotyped conception of Russia current in Western thinking resembles that of the Russian nationalist opposition, for whom the primordial incompatibility of Russia with the “West” represents the alpha and omega of its political philosophy. By this, I do not mean that all Western thinking can be interpreted in terms of mistrust and hostility; it may even be quite benevolent. But Western thinking is still entirely self-sufficient; it still considers Russia as an alien, and I cannot see within it even the slightest interest or inclination towards “opening our mind to the third great cultural component of continental Europe” as advocated by F. Mazzaferro whom I cited earlier.

As far as Russian relations with the West are concerned, another important aspect is the curious role reversal that has taken place within Russia. In modern Russian history, the attitudes of the state and of society have seldom reflected one another. Under communist rule (at least during its last thirty years), while the state ideology of Russia was strongly anti-Western, society was becoming increasingly sensitive to the ideas and values originating from the West, including its political philosophy. This, along with other factors, finally led to the breakdown of communism. Now, it appears that public opinion in Russia is in fact less pro-Western than the state administration and, what is more, that there have been no moves to change this situation, or even to understand this reversal of roles. Many Russians feel that the hand which Russia, by dismantling its former undemocratic system, held out to the West has gone largely unacknowledged.

It should not be forgotten that in the years of democratic upheaval, two

great hopes or, more precisely, two great demands went hand-in-hand in Russia as well as in other EEC countries: on the one hand, the demand for human rights, freedom and democracy and, on the other, the hope that the country might be reintegrated into Europe and into the world as a whole. These two demands, or hopes, are practically inseparable, and if the people are disappointed in the way the second is realised, they are less than likely to remain enthusiastic about the first. This is why failure to create an effective “Euro-Atlantic anchor” for Russia is also a major factor undermining Russian democracy.

The leaders who may finally come to power on this wave of disillusionment (provided present trends continue to move in their current direction) will not necessarily be anti-democracy in the way that the former communist rulers were. Rather, they will probably consider democracy as an instrument which was not, in itself, a bad thing, but one which was seized upon first by the “West” (Western civilisation) who successfully exploited it in order to achieve its own selfish economic and political aims. They will probably not be afraid of it or opposed to it in principle and will argue that, since it has already become a weapon of the “West”, the most effective course of action would be to find something else capable of performing the same function for *their* civilisation. I strongly doubt, whatever term they may give it — “Euro-Asian”, “Pan-Slavic” or whatever — that they will ever succeed in turning Russia into a separate civilisational entity, although attempts to do just this may in the end cost Russia, and not only Russia, just too dear. Ironically, the cost may be high *precisely because* Russia is, in fact, not as “alien” to the West as most people in Western Europe (together with Russian nationalists) usually think.

The currently complicated, even tense relations between the Ukraine and Russia provide an illustration of what I am saying. As an independent state, the Ukraine was in sore need of a sense of history and nationhood that was distinguishable from that of the USSR or Russia. However, because the two peoples were, historically, too closely linked, this problem, when tackled in a rational way, proved very difficult to solve. As a result, there has been a considerable temptation to resort (to put it mildly) to irrational arguments, and a number of biased (sometimes verging on anecdotal) publications and historical “discoveries” mysteriously sprang up every time there was a worsening in relations with Russia on an official level. But how else was this new nation to stress its new-found independence from its greater and economically stronger neighbour?

Something similar, but on a far greater and more dangerous scale, might be expected if the “Euro-Atlantic anchor” for Russia fails completely and Russia — urged by some “to create the second federal pole” — sets off in search of an ideology to link the parts of this “second pole”, aiming to prove that it is not inferior to the “first pole” (i.e. EU/NATO). Here, I again agree with Huntington when he predicts that dialogue with future Russian leaders (if Russia really does start to look for a way of its own, outside the framework of Euro-Atlantic civilisation) may turn out to be more difficult than with its communist leaders of the past.

Moving on, however, our visions differ. I do not think that Huntington’s description of the world is entirely accurate although, taken as an anti-Utopia, it is provocative and useful. It is a picture of the world that may well become reality if we fail to learn from our history.

I share Huntington’s scepticism over the belief that federalism is a universal notion. Rather, federalism is, surely, a product of Euro-Atlantic civilisation. It is not civilisationally neutral and efforts to play down its Euro-Atlantic roots and origins are not likely to be very successful. Indeed, I strongly believe that we should not make such efforts.

After winning the Cold War, the West, in order to redefine itself, had to choose between three models. The first was represented by maintenance of the status quo but, in view of the subsequent enlargement of the West, this possibility seems to have been abandoned to the past. The opposing model is what I term “open Euro-Atlanticism”. It is absolutely free from all remnants of traditional geopolitics. It opens its doors to all those countries, regardless of their size or location, which adhere to the basic principles proclaimed by the EU and NATO. It is a return to the initial spirit of Euro-Atlanticism which, unfortunately, was partially lost during the long decades of the Cold War. There is nothing unrealistic about this model. Ira Straus indicated four stages, or four generations, in the history of the Atlantic Alliance, the first and second of which were directed against Germany — in WW1 and WW2 respectively. Since, in the third generation, the old enemy Germany was included, it is reasonable to suppose that Russia might be included in the fourth generation.

Moreover, I see no reason why this fourth generation has to be the last. There may still be countries which are not ready to join now, or which are even seen as a source of danger, that can be expected to grow and be ready to join the fifth or sixth generation. But it is of course, not as simple as it sounds. By “Atlantic Alliance” I mean something that goes beyond formal membership of the present-day, or even of a reformed NATO, and this makes sense only if each of the parties, the Alliance and the

newcomer, are able to think of the other as “us” instead of “them”. But if it was possible with postwar Germany, why should it not be possible with others?

The worst and most dangerous model of all is an intermediate model, something along the lines of a “half-open Atlanticism”. With this model, membership is open to some and closed to others. In other words, it represents a return to a policy which implies the drawing of new lines of division and thus provokes revanchism.

The considerations set forth above probably do not represent the dominant line of thinking in world federalism, characterised by its traditional emphasis on ever wider representation and quick solutions and by the relatively little attention it pays to the economic and socio-cultural aspects of integration. However, the experience of fifty years of European and world federalism in parallel with each other, is extremely instructive. It shows that an effective federation is much more than a superstructure over a series of constructions which vary in height, design and strength. It requires a proper foundation of basic social values which will sometimes have to undergo major modification before it can be built upon. Moreover, this experience gives rise to a “heretical” question: could it be that, instead of world federalism, it will eventually prove to be European (or, more precisely, Euro-Atlantic) federalism which eventually unites mankind?

Federalist Action

POLITICAL REPORT OF THE PRESIDENT AT THE 17th CONGRESS OF THE UEF

(Vienna, April 18-23, 1997)

Mister President, Ladies and Gentlemen, dear friends,

The process of globalisation, which is now continually gaining momentum, is turning mankind into a single community of destiny. The marked increase in the interdependence of human relations makes it impossible to understand any regional process unless it is interpreted within the context of the world political and economic balance.

Yet the essential characteristic of the current phase of globalisation is that it is not governed by politics, that is, the conscious will of men. The great networks that today connect the most remote areas of the world, rendering quick and easy the flow of information, capital, people and goods, serve only to promote private interests and not the common good. Technocracy is shirking the management of democracy. Moreover, interdependence, by putting profoundly different lifestyles and standards of living in contact with one another, lies at the foot of impending tensions, of the spread of local wars, of mass migrations, terrorism, drug-trafficking and the spread of epidemics.

On the other hand, the de-humanising of human relations brought about by the technocratic nature of the globalisation process, has produced in reaction a search for the community values, which it endangers, in true or fictitious religious, ethnic or cultural identities that are devoid of any connection with a specific territory and which express themselves in turn in an outright rejection of the universal values which are the basis of democratic debate. This development causes the growth of closed communities which can not conceive of their own diversity as their original contribution to the creation of a single, universal community of communication, but experience it as a closed specificity which rejects all forms of dialogue and confrontation other than violent ones and calls into

question the very idea of truth. Furthermore, this phenomenon is running out of the control of politics and is contributing to the crisis of democracy, which now involves not only the countries of Europe, but also the United States of America.

Unless a radical change of direction takes place, the world is destined to fall into disorder and war. It is therefore necessary and urgent that men and women regain possession of their destiny by reviving the supremacy of politics as the guarantee of ordered civil co-habitation, by restoring the democratic control of economic and technological processes by citizens in specific territorial contexts with a view to pursuing the common good and thereby recuperating the capacity to imagine and plan the future.

The nation-state has proved to be definitively superseded as regards this objective. The process of globalisation and the "identity" and micro-nationalistic reactions that are following on from it have deprived the nation-state both upwards and downwards and removed the possibility of its being a reference point for the consensus of its citizens. Today, a radical re-thinking of politics and its instruments is therefore necessary. We need to extend democracy to the level of international relations, to allow it to deal with problems which are now continental and worldwide issues; and at the same time we need to allocate power so that the disorganised communitarian impulses that currently represent factors which are tending towards the collapse of civil co-habitation are channelled into an institutional framework which is able to discipline them and transform them into forces which rekindle the debate at the local level and consequently boost democracy at the grassroots level of daily life.

For this reason, the 21st century will either be the century of federalism or of chaos. Mankind will be able to meet the challenge of globalisation and its consequences only if, on the one hand, it succeeds in creating great pan-continental federations which are able to achieve a more advanced order within their borders and, on a world scale, to take on the responsibility for guaranteeing through the UN the introduction of a peaceful balance based on justice, which will open the way towards the creation of the world federation; and if, on the other, it proves possible to organise the institutional structure of these great federations, with a more long-term view to the creation of the world federation, into multiple governmental layers which will allow a return to the independence of local communities and therefore to the values of participatory democracy and practical solidarity.

This implies a profound change in the categories which normally define political activity. The main issue to resolve will no longer be that

of governing as well as possible the existing states, but that of questioning the dimensions of the framework in which the political struggle has been played out to date, and transferring the democratic contest into progressively larger spheres.

The region of the world where this process must start, so as to be able subsequently to spread and grow in strength, is Europe. Moreover, it is in Europe that the bases of nationalism have been fundamentally upset by the experience of the Second World War, that a process of economic integration has been launched which has generated a profound convergence among the interests of its member states, and that an institutional structure has been progressively developed which, though insufficient, is without historical precedent and unique in the world. It is in Europe that the ambitious plans to create a common currency and therefore transfer monetary sovereignty to the European level are at an advanced stage. Hence, the meaning of the European unification process extends well beyond the borders of Europe and corresponds to the beginning of the federalist phase of world history.

If Europe does not prove equal to its responsibilities, the most likely alternative to its unification will be the advent of a second Middle Ages, in which the collapse of sovereignty and legitimacy will make civil co-habitation precarious, the rule of law uncertain, the state feeble, and the idea of the common good disappear from the horizon of human action.

The European Union is presently facing decisive deadlines. The third phase of monetary union, namely when the single currency comes into force, must start on 1st January 1999. The Intergovernmental Conference for the revision of the Maastricht Treaty, whose task is to tailor the European Union's institutions to the requirements imposed by the single currency and by the enlargement of the Union to the countries of Central Europe, a process which can be delayed no longer, will come to an end this June. In 1998, the extent of the Community's resources, namely the size of its budget, has to be decided. The very vicinity of these deadlines is the clearest indication that Europe's monetary union and political union are not two different processes, but different aspects of the same process. The failure of one of these aspects would result in the failure of the other.

European monetary union, if separated from the existence of a government that is able to implement a satisfactory budgetary policy, will not be able to correct the imbalances that, regardless of any stability pact, could not help but arise between the different economies of Europe. Without a European economic government, monetary union would be

condemned to premature collapse and would throw the entire process into crisis. Yet there is more: the uncertainty of financial markets over the prospect of the rapid creation of democratic European political institutions that are capable of effective action is calling into question the very creation of monetary union, by creating uncertainty in the expectations of market operators, who penalise the weaker economies, favour the stronger ones, and therefore render it increasingly difficult, the closer the date for the start of the single currency draws, to respect the convergence criteria laid down by the Maastricht Treaty. In this way, rumours grow of a postponement of the 1st January 1999 deadline, which in turn provokes speculative flows which make such rumours all the more credible.

The federalists should make respect for the 1st January 1999 deadline one of the main priorities of their struggle and oppose strenuously those who, while often professing to be supporters of Europe, hold up a prospect which would render less credible all the commitments to Europe that the various governments have undertaken, and would cast doubt on the implementation of the entire process. The federalists must not provide a mechanical interpretation of the essential indivisibility of the monetary and political unification of Europe, because in doing so they would accept the insidious logic of many false Europeanists who, ostensibly wishing to postpone monetary union until a real political union is created, actually aim to ensure that neither one nor the other is implemented. The fact that monetary unification and political unification are two different phases of a single process does not mean that monetary union cannot be achieved before political union: without political union, however, monetary union will not be able to last long and indeed, once monetary union has been created, it will throw up such evident contradictions as to render inevitable the rapid creation of a democratic and federal government, or collapse. This awareness must strengthen our resolve to channel all our efforts into the fight to ensure that monetary union is created on 1st January 1999, if not earlier, as allowed for in the Treaty.

Yet this does not in any sense mean that the federalists should not commit themselves right now with all the forces at their disposal to the issue of political unity, and that they should not try to influence the work of the Intergovernmental Conference. We are all aware of the fact that the results achieved so far are disturbingly meagre. We also know that progress will accelerate in the final phase, when the heads of state and government will take part directly, rather than their representatives. Yet we nevertheless know that agreements among the Fifteen will provide the Union with an institutional structure that does not go beyond the current

intergovernmental philosophy and that, whatever improvements there may be decided regarding the details, the overall result will be neither democratic nor federal.

The federalists have repeatedly highlighted the minimum requirements of a reform of Europe's institutions that will permit them to govern the single market, to complement economic and monetary union and to survive the challenge of enlargement. The reform must provide for the extension of the co-decision making powers of the European Parliament to all the competences lying within the first and third pillars, the transformation of the Council of Ministers into a true senate of the Union, and of the Commission into a European government which is answerable to the Parliament. Furthermore, it should turn the European Council into the Union's collegial presidency and the Court of Justice into a real supreme court; it should also, in the longer term, provide for the transfer of responsibility for foreign and security policy to the Community level.

The federalists have been arguing for many years now that such a reform will never come to pass by a unanimous vote of all the members of the Union. This assertion, which was already true in the Europe of Twelve because of the attitude of Great Britain and Denmark, is truer than ever in the current Europe of Fifteen. The reality is that the degree of European awareness of governments, political forces and public opinion is not everywhere of equal strength. This is why for a long time, initially within the Community and subsequently within the Union, we have promoted the idea of a federal core which, while not compromising the *acquis communautaire* of those who do not wish to enter it or causing them to lose any of their acquired rights, nevertheless allows the states which desire to link themselves by a federal-style constitutional bond to do so without being hindered by the other states. This idea has been widely debated in Europe since the 1992 Schäuble-Lamers document circulated the proposal of a solid core in European political circles.

That this idea corresponds to a serious need is demonstrated by the fact that one of the subjects for discussion in the Intergovernmental Conference is "flexibility" or "strengthened co-operation." This mechanism should allow a variable number of the Union's governments to establish forms of increased integration in certain sectors through majority decisions, so long as they receive the Council of Ministers' unanimous authorisation and respect the indivisibility of the Union's institutional framework. Yet in reality, these formulas are a distortion of the idea of the federal core that we have always supported and which is expressed in the Schäuble-Lamers document, precisely because they propose to reinforce

a method (the intergovernmental one) which has already fully demonstrated its inability both to produce rapid and effective decisions and to carry the process forward. In reality, the problem of the solid core becomes decisive only when it involves the institutions specifically, that is, when it enables certain states to go beyond the intergovernmental method and organise their relations on the basis of the federal method.

The federalists must have the courage to say that raising the problem of the overcoming of the intergovernmental method means raising the problem of sovereignty, that is, of the transfer of the principal stage of the political struggle from the nations to Europe, in other words the creation of a federal state, whose components are the current national states. Yet at this stage it is necessary to formulate the decisive strategic question: is it possible to overcome the intergovernmental method *through* the intergovernmental method? Will the Union's most advanced governments be sufficiently lucid and determined to establish a federal core, even in the face of strong resistance from the opposing countries? Both distant and recent experience of the European unification process and the hardly encouraging spectacle of disagreement expressed over virtually all the issues under discussion in the Intergovernmental Conference must lead us to the conclusion that this lucidity and determination do not exist, and that even the countries that are most conscious of the need to pursue the path of political union will end up seeking a compromise on the basis of a platform which will not change the confederal nature of the Union. This compromise will be presented to public opinion as a success and will probably represent in theory a step forward along the path toward integration. Yet in practice it will be no such thing, since the time available for turning the Union into a democratic body capable of action is short and the era of little steps forward has gone for good. Europeans have now got used to considering the continent's unification process as something similar to Zeno's arrow, which keeps on flying without ever reaching its target. Yet they must shake themselves out of their torpor and enter *the next era*, before it is too late.

The reality is that in order to achieve a solid federal core inside the Union a new actor must participate in the process: Europe's citizens. Europe cannot be the result of a conquest nor be imposed by an external power. It can only derive from the exercise of the constituent power belonging to the people of Europe's nations. This does not mean that we should underestimate the role of the governments. They will wield power until such time as a federal constitution drawn up by the representatives of the citizens is ratified by the national parliaments. Moreover, the

citizens' representatives will act on the basis of a mandate which will be conferred on them by the governments. Nevertheless, the governments alone will not be able to extract the European unification process from the impasse in which it presently finds itself. They need the support of the European people, as the source of the new legitimacy which Europe is currently looking for, even though they will resort to it only when confronted with a serious crisis and in the presence of a conscious movement of public opinion which allows them not to feel alone when faced with a responsibility that, on their own, they are not able to shoulder.

The political nature of the Union which will emerge from the events of the coming years will not depend only on its institutional composition, however important that may be. A real transfer of sovereignty is above all a matter of consensus, linked to whether the principal stage of the political struggle will, or will not, be transferred from the nations to the Union. From this derives the fact that the nature of the future European Union will depend very closely on the nature of its foundation. If its foundation is an act of expression of a strong popular will, it will be able to give life and strength even to imperfect institutions, while good institutions which are not supported by the popular consensus will run the risk of remaining empty shells. For this reason, we will never have a European federal union which is endowed with real legitimacy without a constituent act carried out in the final instance by the citizens of Europe.

The common objection to the above is that public opinion is not yet ready and that Euro-sceptic attitudes are widespread among the citizens of all European states. Yet, public opinion reflects, at least in part, the short-sightedness and timidity of the governments and political parties, which focus their attention on petty national problems and avoid raising the European issue in its real terms. This attitude is in turn dramatically exacerbated by the media. All these actors have actively promoted the diffusion of the idea that Europe is a bureaucratic monster against which citizens need primarily to seek protection, and not a great task which they are called on to undertake. Public opinion is overwhelmingly conditioned in a national sense by the combination of these influences. In this way, it seems that we find ourselves in a vicious circle. The timidity of the governments feeds the inertia of public opinion and vice versa.

If there were no escape from this vicious circle, the European unification project would be inevitably doomed to fail. Yet in fact history provides numerous examples of radical changes, where ideas (which do not have power) have defeated the powers-that-be: and each of these changes has been achieved thanks to the breaking of a vicious circle. The

truth is that the need for the political unity of Europe exists within the consciousness of citizens, albeit in an undefined way, despite the smoke screen that has been created by national politics and the mass media. The people of the European nations is maturing. In normal times, it is not conscious of itself and of its own identity, but the succession of crises and dead-ends will force it to gain this awareness. An active minority will be able to mobilise it and turn it into a decisive force in the process.

For this to come to pass, it is necessary that a group of men and women who are independent and aware is able to take the initiative, hold firmly to the European people's point of view and indicate resolutely the path to follow. Such a group can not but be the federalists, because only the federalists have chosen to make the struggle for the political unification of Europe the sole reason of their political existence. They have the specific responsibility to draw the conclusions of their analysis of the process and to promote a campaign in support of a European constituent assembly. They must be prepared for a difficult beginning. Initially, their ideas will either generate scandal, or be derided or ignored. They will have to work like the Hegelian mole, which digs tunnels under the walls of the castle of power, undermining its strength until it collapses. Their destiny is that of all innovators, who must not confine themselves to taking account of the state of public opinion, but must strive patiently to modify it. Yet their function is indispensable, since they represent the conscience of the process.

Mister President, Ladies and Gentlemen, dear friends,

As many of you already know, I am no more to stand as a candidate for the presidency of the UEF. I have held this position for seven years, and I am firmly convinced that, particularly within international organisations, there comes a time when one should hand over the reins to new people who come from different places, who bring a different set of experiences and who can bring fresh energy to the role. On this occasion, fortune has favoured me and the UEF, because a young German politician, Jo Leinen, who is a representative in the Saar Parliament and a long-time federalist, has indicated his willingness to take on the position. His candidature corrects what up until now has been a serious omission in the UEF's history. In fact, since 1973, the year of the UEF's re-founding, no president has ever come from the strongest of the UEF's member movements, the *Europa-Union Deutschland*. The righting of this state of affairs will help to improve even further our organisation's internal

relations. I am sure that Jo will be an excellent President of the UEF and that, in carrying out this role, he will be able to put the interests of the UEF above his party membership. As far as I am concerned, I have not the slightest intention of reducing my federalist commitment and I will be at the disposal of the new President to give him all the help which my past experience will enable me to. I invite the delegates to use their vote to express their complete trust in and unanimous support for him.

The UEF is a difficult organisation. It covers a vast territorial area; its members speak many languages; they come from different political environments; and mutual understanding is not always easy. The means at the disposal of the Brussels office, in terms of staff and finances, are totally inadequate in relation to the size of the tasks which it faces. In spite of this, throughout these years, the relations within the Bureau and the Federal Committee have strengthened, and we have started to talk a common language, which has allowed us to take some very advanced and coherent stands. Relations with the national organisations have gradually grown more intense and substantial. Certain demonstrations have involved thousands of federalists coming from all the countries in which the UEF is present, and have been highly successful. Please allow me to take this opportunity to highlight the decisive role during the years of my presidency that some genuinely disinterested, skilled and committed people have played in the running of our movement: starting with Gerard Wissels, without whose commitment it may be asserted without the slightest exaggeration that the UEF simply would not exist today; and also the greatly-missed treasurer Henk Ijdo and the present treasurer Theo van Rhijn; and finally the current deputy secretary general Bruno Boissière, whose great commitment and spirit of initiative many of you have had the opportunity to appreciate, as well as the kind, ever-helpful and tireless Bibiane Cogels. I wish to thank all of them most sincerely, both personally and on behalf of the Congress itself.

In all political circles, leaving aside the condescension that those who believe themselves to be the *true* politicians and to wield *real* power inevitably display towards those who pursue an ideal, federalists are thought of as the spearhead of the European unification process. It is no coincidence that the name "federalist", with connotations that are positive or negative depending on the case in point, means for all people, be they Europeanists, Euro-sceptics or nationalists, the attitude of those who are resolutely in favour of Europe's political unity, without the hypocrisy and compromises that are justified in the name of a "realism" which is nothing other than cowardice. It is our duty to continue to honour in this

way the name which denotes our identity. It was one of our founding fathers, Altiero Spinelli, who wrote that Europe will not fall down from the sky. This is a phrase which we must not forget. We must continue to feel the task of European political unification as the personal responsibility of each one of us. As long as there exists a group of men and women which possesses this awareness and this moral independence, our battle cannot be lost.

Francesco Rossolillo

Federalism in the History of Thought

THOMAS PAINE

Only with the Convention of Philadelphia, in 1787, did the institutional consolidation of the Union become the priority political objective of the American Revolution. At the convention of Annapolis, one year before the Convention of Philadelphia, one of the fathers of American federalism, Madison, still despaired of a Convention ever being called to reform the Confederation, and hoped to be able to achieve at least a *commercial Reform*. And only three months before the conclusion of the Convention of Philadelphia, another father of the American Revolution, Washington, wrote to Hamilton that there was no hope of the latter having a favourable outcome. During and after Philadelphia, Hamilton was the only figure of note to clearly grasp the revolutionary meaning of what was happening, and even today, outside the federalist movements, the federalist aspect of the American Revolution is rarely taken into consideration. It is therefore no wonder if those who, like Thomas Paine (1737-1809), did not take part in that final part of the Revolution, considering that the federalist battle was exhausted with the victory of the War of Independence in 1783. For them, the new Constitution was simply a mechanical and unavoidable step which wisdom would sooner or later have imposed on the former colonies.

Paine, who, as we shall see, took an active part in the first phase of the federalist battle, is known above all for his commitment to civil rights. However, the experience and the contribution of Thomas Paine represent an example of how deeply rooted federalist aspirations already were in America during the War of Independence, and are an interesting testimony of how widespread the consciousness was among Americans of the constituent task which they had undertaken.

Paine, imbued with the ideals of the Enlightenment, and a forerunner of the permanent revolution, was not always able to temper revolutionary tension with a lucid analysis of reality. At crucial moments in American

and European history, this made it hard for him to reconcile his total devotion to the battle to affirm the universal values of humanity, with a patient and continuous political commitment, concentrated on the strategic objectives of the moment. Often he came across the contradiction between actions and values, and denounced it with rare ability and effect. But, as he himself admitted, he was no politician. He considered himself, and was, a revolutionary author on loan to politics. Certainly during the War of Independence he was one of the most effective prophets of the federalist cause, with an instinctive understanding of its possible outcomes, shared by few of his fellow-combatants at that time.

An English citizen by birth, and American and French citizen by revolutionary merit, he was able to write in his will with good reason "to have lived an honest and useful life to mankind."¹

Abandoning England on the advice of Franklin, having long since left the English country district in which he was born and having discovered the numerous possibilities of action and study offered by a big city like London, Paine reached Boston in the autumn of 1774, and in Philadelphia, only a little over a year later, published *Common Sense* (1776), the political document of the Revolution, which showed Americans and Europeans the true nature of the struggle for American independence. *Common Sense* was one of the greatest publishing successes of the era: in the first year of its publication around 150,000 copies were sold. Independence and Constitution were the key words in the success of this book, words which, before the publication of *Common Sense*, had only timidly circulated in America. The author of this pamphlet remained anonymous for a long time, so that initially, as Jefferson admitted, it was believed that *Common Sense* was the work of Franklin. For years Paine continued to sign himself and was known to the American and European public as *Common Sense*, or, more concisely, *C.S.*

With this work Paine had not only embraced the cause of independence, but also that of federalism, drafting a plan to achieve a federal constitution, in which he maintained that America needed a new form of continental government, a republican system with two federated levels of power. "Our present condition," he wrote, "is, legislation without law; wisdom without a plan; constitution without a name; and, what is strangely astonishing, perfect independence contending for dependence."²

Paine was writing at a period when the time was not yet ripe to determine the federalist content of the new American Constitution. But the excerpt from *Common Sense* published below shows his consciousness of the need to involve the people in the constituent process and to propose a constituent plan. In fact, according to Paine, a government is legitimate only if it is based on a constitution. It is not by chance that he defines countries with and without a constitution, as countries with a legitimate government and countries with "a temporary form of government"³ (including among these Great Britain, for which he by now nursed a deep contempt).

His fame and his ability as a polemist were sufficient to justify the secret charge entrusted to him in 1782, when he was already secretary of the Committee for Foreign Affairs of the Congress, by General Washington, by the Superintendent of Finance Robert Morris and by Secretary of State Livingstone to "inform the People and rousing them into Action". They sought in fact "the aid of an able pen to urge the Legislatures of the States to grant sufficient taxes."⁴ The objective was that of convincing public opinion in the colonies that it was necessary to provide the Union with a new institutional structure, having a federal level of government with independent powers of taxation. But all this could not be reached without the reinforcement of the powers of the Congress, and hence without a new Constitution supported by the people. Paine's task was "to prepare the minds of the people for such restraints and such taxes and imposts, as are absolutely necessary for their own welfare."⁵ Paine was aware that between the drawing up of the Articles of Confederation in 1777 and their coming into force in 1781, many Americans had reached the conclusion that a profound constitutional reform was necessary. It was in fact increasingly obvious that the Articles of Confederation were simply a slightly more advanced stage than the Articles of Association of 1774. In essays and letters published in the American newspapers of the time, Paine took up the themes dealt with in *Common Sense*, and agreed with and supported the views Hamilton was contemporaneously publishing in *The Continentalist*.

One of the weak links of the Union at that time was constituted by the firm opposition of Rhode Island to the request of Congress to impose a tax on all goods imported into America. This measure required the unanimous agreement of all States, and Rhode Island's contrary vote to this provision had provoked a serious crisis in the confederation. Paine explained to Morris his plan of interventions in the press after he had already published his first letter: "the second letter will be on the

convenience and equality of the Tax... My third Number will be particularly calculated to enforce the necessity of a stronger union, for at present we hang so loosely together that we are in danger of hanging one another... All these embarrassments are ascribable to the loose and almost disjointed Condition of the Union. The states severally, not knowing what each other will do, are unwilling to do any thing themselves.”⁶ Paine then expressed to Morris the conviction that by now the only way to overcome the obstacle of the individual States’ veto in the legislative assembly was to propose a system of government in which the executive was to exercise “the right of War and peace, all foreign Affairs, the direction of the Army and Navy when we have one,”⁷ and the legislative branch, including between three and five delegates per state, should occupy itself with laws of continental concern regarding commerce, the postal system and duties. But on the very day after Congress’s decision, on Hamilton’s proposal, to send a commission to Rhode Island to persuade its Assembly to think again, and while Paine, on appointment by Morris, was about to fire off a new press campaign against the enemies of the Union, all was frustrated by Virginia’s vote against the continental tax. This event did not have time to exert a negative influence on the outcome of the war against the English, which had now reached a conclusion, but rang a very serious alarm bell for the future of the Union.

The end of the War of Independence marks for Paine, as we have already mentioned, the reaching of an intermediate objective, which would almost automatically lead to a further reinforcement of the Union, as he explains in *The Last Crisis* (1783). But for the restless Paine, the revolution could not stop at the American continent. In his letter to the Abbé Raynal (1782), Paine clarified how the American Revolution was to be considered as a springboard to affirm the universal values of peace, universal citizenship and freedom in the rest of the world, starting with Europe. Taking his cue from the Abbé Raynal’s essay *Révolution d’Amérique* (1781), Paine had prepared a propagandistic essay in response, which he discussed with Morris, in which he contested the opinion, held by many Europeans, that the events in America were simply the result of an exaggerated accentuation of a fiscal dispute between the mother country and its colonies. Paine rejected the Abbé Raynal’s conservative and limiting definition of the term revolution: a cyclical process which, as in the motion of the planets, would return to its starting

point. For Paine, in contrast, the American events were revolutionary in that they had demolished a preconceived way of thinking of the government of human affairs, irreversibly changing a power structure and the political behaviour linked to it.

Paine was so convinced of the need to export the American Revolution that he did not hesitate to return in 1787 to Europe, to Paris, where he experienced the French Revolution too as a protagonist, becoming one of its principal champions and publicists. This decision marginalized him from the American scene. *Rights of Man* (1791-2), the most famous defence of the French Revolution, even excelled *Common Sense* in popularity. Having become a member of the French National Convention, in 1793 he fought against the death penalty voted for Louis XVI. His motion on *Reasons for Wishing to Preserve the Life of Louis Capet* was not passed, and was severely and publicly attacked by Marat during the subsequent debate in the Convention. In further connection to this episode, he was suspected of treason and imprisoned during the Terror, just as he was about to publish *The Age of Reason*. Repudiated by Great Britain, by now considered a French citizen by the Congress of the United States, and a traitor by the French Government, Paine lost all right to citizenship. Reflecting bitterly on this state of affairs in an exchange of letters with the then American ambassador to Paris, James Monroe, he wrote “why the people of one nation should not, by their representatives, exercise the right of conferring the honour of citizenship upon individuals eminent in another nation, without affecting *their* rights of citizenship, is a problem yet to be solved.”⁸ And Monroe answered: “by being with us through the revolution, you are of our country, as absolutely as if you had been born there, and you are no more of England, than every native of America is.”⁹ This indirect certification of American citizenship finally obtained his release from prison after almost a year of imprisonment in which he had, among other things, risked being sent to his death along with Danton.

The day after Bonaparte’s *coup d’état*, in 1799, Paine decided to leave Paris to return to America, where he lived the last years of his life in constant polemic with the majority of his old companions of the federalist struggle. He was by now obsessed by the fear that the budding American political life, which was organising itself around the competition between the republican party and the federalist party, would degenerate into the excesses of the French Revolution, in which “the principles of it were good, they were copied from America, and the men who conducted it were honest. But the fury of faction soon extinguished the one and sent

the other to the scaffold.”¹⁰

But America did not follow the destiny of France, precisely because, apart from benefiting from its distance from the European power struggles, it was able to enjoy to the full, and for many years to come, that very rule of law championed by *Common Sense*.

NOTES

¹ John Keane, Thomas Paine. *A political Life*, London, Bloomsbury Publishing Plc, 1995, p.533.

² Thomas Paine, *Common Sense*, in Eric Foner (ed.), Paine, Collected Writings, NY, The Library of America, 1995, p.50.

³ Mark Philp, *Paine*, Oxford, Oxford University Press, 1989, p.34

⁴ John Keane, *op. cit.*, p.218.

⁵ *Ibid.*

⁶ *Ibid.*, p.236.

⁷ *Ibid.*

⁸ *Ibid.*, p.418.

⁹ *Ibid.*

¹⁰ *Ibid.*, p. 468.

COMMON SENSE *

If there is any true cause of fear respecting independence, it is because no plan is yet laid down. Men do not see their way out — Wherefore, as an opening into that business, I offer the following hints; at the same time modestly affirming, that I have no other opinion of them myself, than that they may be the means of giving rise to something better. Could the straggling thoughts of individuals be collected, they would frequently form materials for wise and able men to improve into useful matters.

*The excerpts from *Common Sense* and *The Last Crisis* are taken from Paine, Collected Writings, ed. Eric Foner, NY, The Library of America, 1995, pp. 32 to 36 and pp. 350 to 353. The passages from the letter to the Abbé Raynal have been taken from the edition published in London by Ridgeway in 1792.

Let the assemblies be annual with a President only. The representation more equal. Their business wholly domestic, and subject to the authority of a Continental Congress.

Let each colony be divided into six, eight, or ten, convenient districts, each district to send a proper number of delegates to Congress, so that each colony send at least thirty. The whole number in Congress will be least 390. Each Congress to sit and to choose a president by the following method. When the delegates are met, let a colony be taken from the whole thirteen colonies by lot, after which, let the whole Congress choose (by ballot) a president from out of the delegates of that province. In the next Congress, let a colony be taken by lot from twelve only, omitting that colony from which the president was taken in the former Congress, and so proceeding on till the whole thirteen shall have had their proper rotation. And in order that nothing may pass into a law but what is satisfactorily just, not less than three fifth of the Congress to be called majority...

But as there is a peculiar delicacy, from whom, or in what manner, this business must first arise, and as it seems most agreeable and consistent that it should come from some intermediate body between the governed and the governors, that is, between the Congress and the people, let a CONTINENTAL CONFERENCE be held, in the following manner, and for the following purpose. A committee of twenty-six members of Congress, viz. two for each colony. Two members from each House of Assembly, or Provincial Convention; and five representatives of the people at large, to be chosen in the capital city or town of each province, for, and in behalf of the whole province, by as many qualified voters as shall think proper to attend from all parts of the province for that purpose; or, if more convenient, the representatives may be chosen in two or three of the most populous parts thereof. In this conference, thus assembled, will be united, the two grand principles of business, knowledge and power. The members of Congress, Assemblies, or Conventions, by having had experience in national concerns, will be able and useful counsellors, and the whole, being empowered by the people, will have truly legal authority.

The conferring members being met, let their business be to frame a CONTINENTAL CHARTER, or Charter of the United Colonies; (answering to what is called the *Magna Charta* of England) fixing the number and manner of choosing members of Congress, members of Assembly, with their date of sitting, and drawing the line of business and jurisdiction between them: (Always remembering, that our strength is

continental, not provincial:) Securing freedom and property to all men, and above all things, the free exercise of religion, according to the dictates of conscience; with such other matter as is necessary for a charter to contain. Immediately after which, the said Conference to dissolve, and the bodies which shall be chosen comfortable to the said charter, to be the legislators and governors of this continent for the time being...

Should any body of men be hereafter delegated for this or some similar purpose, I offer them the following extracts from that wise observer on governments Dragonetti. "The science" says he "of the politician consists in fixing the true point of happiness and freedom. Those men would deserve the gratitude of ages, who should discover a mode of government that contained the greatest sum of individual happiness, with the least national expense. *Dragonetti on virtue and rewards.*"

But where says some is the King of America? I'll tell you Friend, he reigns above, and doth make havoc of mankind like the Royal Brute of Britain. Yet that we may not appear to be defective even in earthly honors, let a day be solemnly set apart for proclaiming the charter; let it be brought forth placed on the divine law, the word of God; let a crown be placed thereon, by which the world may know, that so far as we approve of monarchy, that in America THE LAW IS KING. For as in absolute governments the King is law, so in free countries the law ought to be King; and there ought to be no other. But lest any ill use should afterwards arise, let the crown at the conclusion of the ceremony be demolished, and scattered among the people whose right it is.

A government of our own is our natural right: And when a man seriously reflects on the precariousness of human affairs, he will become convinced, that it is infinitely wiser and safer, to form a constitution of our own in a cool deliberate manner, while we have it in our power, than to trust such an interesting event to time and chance. If we omit it now, some Massanello¹ may hereafter arise, who laying hold of popular disquietudes, may collect together the desperate and the discontented, and by assuming to themselves the powers of government, may sweep away the liberties of the continent like a deluge. Should the government of America return again into the hands of Britain, the tottering situation of things, will be a temptation for some desperate adventurer to try his fortune; and in such a case, what relief can Britain give? Ere she could hear the news, the fatal business might be done; and ourselves suffering like the wretched Britons under the oppression of the Conqueror. Ye that oppose independence now, ye know not what ye do; ye are opening a door to eternal tyranny,

by keeping vacant the seat of government. There are thousands, and tens of thousands, who would think it glorious to expel from the continent, that barbarous and hellish power, which hath stirred up the Indians and Negroes to destroy us, the cruelty hath a double guilt, it is dealing brutally by us, and treacherously by them.

To talk of friendship with those in whom our reason forbids us to have faith, and our affections wounded through a thousand pores instruct us to detest, is madness and folly. Every day wears out the little remains of kindred between us and them, and can there be any reason to hope, that as the relationship expires, the affection will increase, or that we shall agree better, when we have ten times more and greater concerns to quarrel over than ever?

Ye that tell us of harmony and reconciliation, can ye restore to us the time that is past? Can ye give to prostitution its former innocence? neither can ye reconcile Britain and America. The last cord now is broken, the people of England are presenting addresses against us. There are injuries which nature cannot forgive; she would cease to be nature if she did. As well can the lover forgive the ravisher of his mistress, as the continent forgive the murders of Britain. The Almighty hath implanted in us these unextinguishable feelings for good and wise purposes.

They are the guardians of his image in our hearts. They distinguish us from the herd of common animals. The social compact would dissolve, and justice be extirpated from the earth, or have only a casual existence were we callous to the touches of affection. The robber, and the murderer, would often escape unpunished, did not the injuries which our tempers sustain, provoke us into justice.

O ye that love mankind! Ye that dare oppose, not only the tyranny, but the tyrant, stand forth! Every spot of the old world is overrun with oppression. Freedom hath been hunted round the globe. Asia and Africa, have long expelled her. — Europe regards her like a stranger, and England hath given her warning to depart. O! receive the fugitive, and prepare in time an asylum for mankind.

NOTE

¹ Thomas Anello, otherwise Massanello, a fisherman of Naples, who after spiriting up his countrymen in the public market place, against the oppression of the Spaniards, to whom the place was subject, prompted them to revolt, and in the space of a day became king.

THE LAST CRISIS

The debt which America has contracted, compared with the cause she has gained, and the advantages to flow from it, ought scarcely to be mentioned. She has it in her choice to do, and to live, as happily, as she pleases. The world is in her hands. She has now no foreign power to monopolize her commerce, perplex her legislation, or control her prosperity. The struggle is over, which must one day have happened and, perhaps, never could have happened at a better time...¹

But that which must more forcibly strike a thoughtful penetrating mind, and which includes and renders easy all inferior concerns, is the UNION OF THE STATES. On this, our great national character depends. It is this which must give us importance abroad and security at home. It is through this only that we are, or can be nationally known in the world. It is the flag of the united states which renders our ships and commerce safe on the seas, or in a foreign port. Our Mediterranean passes must be obtained under the same stile. All our treaties, whether of alliance, peace, or commerce, are formed under the sovereignty of the united states, and Europe knows us by no other name or title.

The division of the empire into states is for our own convenience, but abroad this distinction ceases. The affairs of each state are local. They can go no farther than to itself. And were the whole worth of even the richest of them expended in revenue, it would not be sufficient to support sovereignty against a foreign attack. In short, we have no other national sovereignty than as united states. It would even be fatal for us if we had — too expensive to be maintained, and impossible to be supported. Individuals or individual states may call themselves what they please; but the world, and especially the world of enemies, is not to be held in awe by the whistling of a name. Sovereignty must have power to protect all the parts that compose and constitute it: and as UNITED STATES we are equal to the importance of the title, but otherwise we are not. Our union well and wisely regulated and cemented, is the cheapest way of being great — the easiest way of being powerful, and the happiest invention in government which the circumstances of America can admit of. — Because it collects from each state, that, which, by being inadequate, can be of no use to it, and forms an aggregate that serves for all.

The states of Holland are an unfortunate instance of the effects of individual sovereignty. Their disjointed condition exposes them to numerous intrigues, losses, calamities and enemies; and the almost impossibility of bringing their measures to a decision, and that decision into

execution, is to them, and would be to us, a source of endless misfortune.

It is with confederate states as with individuals in society; something must be yielded up to make the whole secure. In this view of things we gain by what we give, and draw an annual interest greater than the capita. — I ever feel myself hurt when I hear the union, the great palladium of our liberty and safety, the least irreverently spoken of. It is the most sacred thing in the constitution of America, and that which every man should be the most proud and tender of. Our citizenship in the united states is our national character. Our citizenship in any particular state is only our local distinction. By the latter we are known at home, by the former to the world. Our great title is, AMERICANS; our inferior one varies with the place.

So far as my endeavours could go, they have all been directed to conciliate the affections, unite the interests, and draw and keep the mind of the country together; and the better to assist in this foundation work of the revolution, I have avoided all places of profit or office, either in the state I live in, or in the united states; kept myself at a distance from all parties and party connections, and even disregarded all private and inferior concerns: and when we take into view the great work we have gone through, and feel, as we ought to feel, the just importance of it, we shall then see, that the little wranglings and indecent contentions of personal party, are as dishonorable to our characters, as they are injurious to our repose.

It was the cause of America that made me an author. The force with which it struck my mind, and the dangerous condition the country appeared to me in, by courting an impossible and unnatural reconciliation with those who were determined to reduce her, instead of striking out into the only line that could cement and save her, A DECLARATION OF INDEPENDENCE, made it impossible for me, feeling as I did, to be silent...

But as the scenes of war are closed, and every man preparing for home and happier times, I therefore take my leave of the subject. I have most sincerely followed it from beginning to end, and through all its turns and windings: and whatever country I may hereafter be in, I shall always feel an honest pride at the part I have taken and acted, and a gratitude to Nature and Providence for putting it in my power to be of some use to mankind.

NOTE

¹ That the revolution began at the exact period of time best fitted to the purpose, is sufficiently proved by the event. — But the great hinge on which the whole machine turned

is the UNION OF THE STATES: and this union was naturally produced by the inability of any one state to support itself against a foreign enemy without the assistance of the rest.

Had the states severally been less able than they were when the war began, their united strength would not have been equal to the undertaking, and they must, in all human probability, have failed. And on the other hand, had they severally been more able, they might not have seen, or, what is more, might not have felt, the necessity of uniting; and either by attempting to stand alone, or in small confederacies, would have been separately conquered.

Now, as we cannot see a time (and many years must pass away before it can arrive) when the strength of any one state, or of several united, can be equal to the whole of the present united states, and as we have seen the extreme difficulty of collectively prosecuting the war to a successful issue, and preserving our national importance in the world, therefore, from the experience we have had, and the knowledge we have gained, we must, unless we make a waste of wisdom, be strongly impressed with the advantage, as well as the necessity, of strengthening that happy union which has been our salvation and without which we should have been ruined people.

While I was writing this note, I cast my eye on the pamphlet COMMON SENSE, from which I shall make an extract, as it applies exactly to the case. It is as follows.

"I have never met with a man, either in England or America, who hath not confessed his opinion that a separation between the countries would take place one time or other.

As all men allow the measure, and differ only in their opinion of the time, let us, in order to remove mistakes, take a general survey of things, and endeavour, if possible, to find out the VERY TIME. But we need not go far, the enquiry ceases at once, for, THE TIME HATH FOUND US. The general concurrence, the glorious union of all things prove the fact.

It is not in numbers, but in a union, that our great strength lies. The continent is just arrived at the pitch of strength, in which no single colony is able to support itself, and the whole, when united, can accomplish the matter; and either more or less than this, might be fatal in its effects."

LETTER TO THE ABBE RAYNAL

It is yet too soon to write the history of the revolution; and whoever attempts it precipitately, will unavoidably mistake characters and circumstances, and involve himself in error and difficulty. Things like men are seldom understood rightly at first sight. But the Abbé is wrong even in the foundation of his work; that is, he has misconceived and misstated the causes which produced the rupture between England and her then colonies, and which led on, step by step, unstudied and uncontrived on the part of America, to a revolution, which has engaged the attention, and affected the interest of Europe.

To prove this, I shall bring forward a passage, which, though placed towards the latter part of the Abbé's work, is more intimately connected with the beginning; and in which, speaking of the original cause of the

dispute, he declares himself in the following manner:

"None," says he, "of those energetic causes, which have produced so many revolutions upon the globe, existed in North-America. Neither religion nor laws had there been outraged. The blood of martyrs or patriots had not there streamed from scaffolds. Morals had not there been insulted. Manners, customs, habits, no object dear to nations, had there been the sport of ridicule. Arbitrary power had not there torn any inhabitant from the arms of his family and his friends, to drag him to a dreary dungeon. Public order had not been there inverted, the principles of administration had not been changed there; and the maxims of government had there always remained the same. The whole question was reduced to the knowing whether the mother country had, or had not a right to lay, directly or indirectly, a slight tax upon the colonies."

[...]

The *whole* question with America, in the opening of the dispute, was, Shall we be bound in all cases whatsoever by the British Parliament, or shall we not? For submission to the tea or tax act, implied an acknowledgement of the declaratory act, or, in other words, of the universal supremacy of Parliament, which, as they never intended to do, it was necessary they should oppose it, in its first stage of execution.

[...]

It is an observation I have already made in some former publication, that the circle of civilization is yet incomplete. A mutuality of wants have formed the individuals of each country into a kind of national society; and here the progress of civilization has stopt. For it is easy to see, that nations with regard to each other (notwithstanding the ideal civil law, which every one explains as its suits him), are like individuals in a state of nature. They are regulated by no fixt principle, governed by no compulsive law, and each does independently what it pleases, or what it can.

Were it possible we could have known the world when in a state of barbarism, we might have concluded, that it never could be brought into the order we now see it. The untamed mind was then as hard, if not harder to work upon in its individual state, than the national mind is in its present one. Yet we have seen the accomplishment of the one, why then should we doubt that of the other?

There is a greater fitness in mankind to extend and complete the civilization of nations with each other at this day, than there was to begin it with the unconnected individuals at first; in the same manner that it is somewhat easier to put together the materials of a machine after they are formed, than it was to form them from original matter. The present

condition of the world differing so exceedingly from what it formerly was, has given a new call to the mind of man, more than what he appears to be sensible of. The wants of the individual, which first produced the idea of society, are now augmented into the wants of the nation, and he is obliged to seek from another country what before he sought from the next person.

Letters, the tongue of the world, have in some measure brought all mankind acquainted, and, by an extension of their uses, are every day promoting some new friendship. Through them distant nations become capable of conversation, and losing by degrees the awkwardness of strangers, and the moroseness of suspicion, they learn to know and understand each other. Science, the partizan of no country, but the beneficent patroness of all, has liberally opened a temple where all may meet. Her influence on the mind, like the sun on the chilled earth, has long been preparing it for higher cultivation and further improvement. The philosopher of one country sees not an enemy in the philosopher of another: he takes his seat in the temple of science, and asks not who sits beside him.

This was not the condition of the barbarism world. Then the wants of man were few, and the objects within his reach. While he could acquire these, he lived in a state of individual independence, the consequence of which was, there was as many nations as persons, each contending with the other, to secure something which he had, or to obtain something which he had not. The world had then no business to follow, no studies to exercise the mind. Their time was divided between sloth and fatigue. Hunting and war were their chief occupations; sleep and food their principal enjoyments.

Now it is otherwise. A change in the mode of life has made it necessary to be busy; and man finds a thousands things to do now which before he did not. Instead of placing his ideas of greatness in the rude achievements of the savage, he studies arts, science, agriculture, and commerce, the refinements of the gentleman, the principles of society, and the knowledge of the philosopher.

There are many things which in themselves are morally neither good nor bad, but they are productive of consequences, which are strongly marked with one or other of these characters. Thus commerce, though in itself a moral nullity, has had a considerable influence in tempering the human mind. It was the want of objects in the ancient world, which occasioned in them such a rude and perpetual turn for war. Their time hung on their hands without the means of employment. The indolence they lived in afforded leisure for mischief, and being all idle at once, and

equal in their circumstances, they were easily provoked or induced to action.

But the introduction of commerce furnished the world with objects, which in their extent, reach every man, and give him something to think about and something to do; by these his attention is mechanically drawn from the pursuits which a state of indolence and an unemployed mind occasioned, and he trades with the same countries, which former ages, tempted by their productions, and too indolent to purchase them, would have gone to war with.

Thus, as I have already observed, the condition of the world being materially changed by the influence of science and commerce, it is put into a fitness not only to admit of, but to desire an extension of civilization. The principal and almost only remaining enemy it now has to encounter, is prejudice; for it is evidently the interest of mankind to agree and make the best of life. The world has undergone its divisions of empire, the several boundaries of which are known and settled. The idea of conquering countries, like the Greeks and Romans, does not now exist; and experience has explored the notion of going to war for the sake of profit. In short, the objects for war are exceedingly diminished, and there is now left scarcely any thing to quarrel about, but what arises from that demon of society, prejudice, and the consequent fullness and untractableness of the temper.

There is something exceedingly curious in the constitution and operation of prejudice. It has the singular ability of accommodating itself to all the possible varieties of the human mind. Some passions and vices are but thinly scattered among mankind, and find only here and there a fitness of reception. But prejudice, like the spider, makes every where its home. It has neither taste nor choice of place, and all that it requires is room. There is scarcely a situation, except fire or water, in which a spider will not live. So, let the mind be as naked as the walls of an empty and forsaken tenement, gloomy as a dungeon, or ornamented with the richest abilities of thinking; let it be hot, cold, dark, or light, lonely or inhabited, still prejudice, if undisturbed, will fill it with cobwebs, and live, like the spider, where there seems nothing to live on. If the one prepares her food by poisoning it to her palate and her use, the other does the same; and as several of our passions are strongly characterised by the animal world, prejudice may be denominated the spider of the mind.

Perhaps no two events ever united so intimately and forcibly to combat and expel prejudice, as the Revolution of America, and the Alliance with France. Their effects are felt, and their influence already

extends as well to the old world as the new. Our style and manner of thinking have undergone a revolution, more extraordinary than the political revolution of the country. We see with other eyes; we hear with other ears; and think with other thoughts, than those we formerly used. We can look back on our own prejudices, as if they had been the prejudices of other people. We now see and know they were prejudices and nothing else; and relieved from their shackles, enjoy a freedom of mind we felt not before. It was not all the argument, however powerful, nor all the reasoning, however elegant, that could have produced this change, so necessary to the extension of the mind and the cordiality of the world, without the two circumstances of the Revolution and the Alliance.

Had America dropt quietly from Britain, no material change in sentiment had taken place. The same notions, prejudices, and conceits, would have governed in both countries, as governed them before; and, still the slaves of error and education, they would have travelled on in the beaten tract of vulgar and habitual thinking. But brought about by the means it has been, both with regard to ourselves, to France, and to England, every corner of the mind is swept of its cobwebs, poison, and dust, and made fit for the reception of generous happiness.

(Prefaced and edited by Franco Spoltore)

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Direttore Responsabile: Giovanni Vigo - Editrice EDIF - Autorizzazione
Tribunale di Pavia n. 265 del 13-12-1981 - Tipografia Pi-Me, Pavia -
Sped. in abb. postale art. 2 comma 20/c legge 662/96 - Filiale di Pavia

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YEAR XXXIX, 1997, NUMBER 2