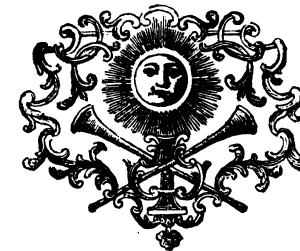


THE FEDERALIST

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



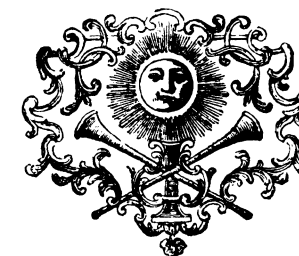
YEAR XLIII, 2001, NUMBER 3

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. Three issues a year. Subscription rates: Europe 35 € or 35 \$; other countries (by air mail) 50 € or 50 \$. A three-year subscription (100 €, 100 \$ or 125 €, 125 \$ respectively) is also possible. All payments should be made by cheque or Eurocheque directly to Edif.

YEAR XLIII, 2001, NUMBER 3

CONTENTS

<i>Europe and the Islamic World</i>	p.	155
FRANCESCO ROSSOLILLO, <i>Notes on Sovereignty</i>	»	161
NOTES		
<i>The Scientific Revolution and Genetically-Modified Organisms</i> (Franco Spoltore)	»	193
<i>Fortress Europe or Open Space?</i> (John Parry)	»	201
<i>The Limits and Dilemmas of Pacifism</i> (Nicoletta Mosconi)	»	208
<i>Index to Volume XLIII (2001)</i>		

Europe and the Islamic World

The 11th September attacks on the Twin Towers and the Pentagon, and the war in Afghanistan that followed in their wake, have turned the spotlight once again on the theory of the clash of civilisations. No one could have asked for a more glaring confirmation of Huntington's prediction that the tensions between the West and the Islamic world would progressively build up in the second half of the nineties and the start of the twenty-first century and culminate in events of the most extreme gravity.

In truth, the clash of civilisations theory is an ambiguous one, founded on a concept — the concept of civilisations which, moreover, is in many settings confused with that of religion — that has not been defined with enough clarity to serve as a useful instrument for interpreting reality, and that is, furthermore, open to the risk of a racist drift. It goes without saying that rejection of the theory does not amount to a denial of the political importance of cultures. Politics is based on consensus, and must therefore echo certain values and certain ways of living together. In this sense, Islam plays a central role in the lives of the peoples of the states that identify with it, and can thus serve as an ideological instrument of indisputable efficiency. But the intrinsic objective of politics is power, and the ideological instruments that can be used to win or conserve power change on the basis of internal and international equilibria. Moreover, all religions express, internally, profoundly differing tendencies, which can range from violent and intolerant forms of radicalism (certainly present in the Christian world, too) to interpretations based on love of one's neighbour and on a belief that there is a place for dialogue with other religions. To confuse Islam with Islamic fundamentalism, as the clash of civilisations theory implicitly does, is thus a crude error. Rather, we should be seeking to understand the reasons why, today, it is religion's most radical expressions that are the ones most open to political exploitation.

Indeed, we should not forget that the political manipulation of Islam (mirrored by the anti-Islamic political manipulation of so-called western values) assumed its current importance only in relatively recent times. During the Cold War, the contrast between the United States and the Soviet Union was reflected in the ideological conflict between communism and democracy, that is, between two entirely laic world-views. It must be noted in this regard that for as long as the American and Soviet empires continued to oppose one another from positions of equal strength, much of the world was split between their two spheres of influence, whose solidity the two superpowers sought to guarantee by assuming responsibility for ensuring both the security and an acceptable level of development of their respective satellites. This meant that the Cold War was, in spite of the serious dangers inherent in the logic of mutual deterrence, a period of stability. The Arab-Islamic world was not an exception to this rule. In the main, the states belonging to it were subject to the hegemony of one or the other of the two superpowers, and those that did manage, at least in part, to escape both of them, by defining themselves part of the "Third World," used not religion, but the idea of neutrality to justify their position mid way between the two blocs.

The collapse of the Soviet empire and the end of the Cold War left the United States with the burden of responsibility for filling the enormous political void that had been created. The old bipolar equilibrium had been replaced by relations of a new kind, characterised by the existence of a single hegemonic power. But this radical change seriously undermined the stability of the system. The Cold War certainly had not strengthened the power of the United States. On the contrary, America had been weakened by the arms race and by the economic and moral exhaustion that come with the exercise of leadership. In the phase following the end of the Cold War, the absence of the old enemy substantially emptied the old ideological weapons — democracy and the fight against communism — of all their significance. At the same time, the responsibilities of the United States on the world stage increased enormously and became more difficult to manage, since the disappearance of the Soviet hegemony had produced a fragmentation not just of the Soviet Union, but also of its entire sphere of influence, leaving the countries that had been part of either of these devoid of an ideological direction that might allow them to conserve a degree of internal cohesion and to find a place in a stable system of alliances.

Thus, just as some in the United States were starting to hail the "end of history" and the definitive triumph of democracy (i.e., of the United

States), a period of growing global instability was actually beginning, marked, among many conflicts, by the Gulf War, by the long and bloody process of disintegration of the former Yugoslavia, by the proliferation of civil wars in Africa, and, finally, by the attacks on New York and Washington and the war in Afghanistan, the latter prompting a tragic escalation of the tensions between Israel and Palestine. Ten years on from Bush senior's talk of the advent of a "new world order," Bush junior finds himself faced with a situation that has been pertinently dubbed a "new world disorder."

* * *

This, then, is the backdrop to the tragic events of New York and Washington. The United States has been forced, by the conclusion of the Cold War, to pay less and less attention to the development of the populations of the poorer parts of the world (an enterprise that would necessitate considerable and long-term employment of resources) and to focus instead on supporting the regimes, for the most part corrupt and authoritarian, that govern them. While the United States' exercise of its world leadership has manifested itself, in an increasingly clear and exclusive fashion, through its armed intervention in crisis areas, the defence of national (American) interests has emerged, increasingly openly, as its main concern. The universal ideal of the affirmation of democracy has been replaced by the arrogance of nationalism. This is an attitude that cannot fail to be reflected, outside the United States, in a spread of anti-Americanism, and the poorer and more outcast the social and political settings in which this anti-Americanism emerges are, the stronger this feeling becomes.

Violence tends, inevitably, to break out in the areas most heavily penalised by an international equilibrium that is both unstable and unjust. The main concern of hegemonic powers has always been to preserve and strengthen the status quo, and thus to maintain order, while the stimulus to upset the existing balance, and thus to encourage disorder, has always been generated in countries that see the creation of a new equilibrium as the only path that will lead to their independence and economic development. This is the situation in which the world's Islamic countries, to varying degrees, find themselves. It can be no wonder, then, that in a considerable section of their populations, religion, in its most intolerant and fundamentalist guises, has become, in the ideological void created in the wake of the end of the Cold War, the main catalyst to the vindictiveness that the current power situation in the world cannot fail to foster.

Neither can it be any wonder that it manifests itself through terrorism, which is the only instrument of war that poor and technologically backward states can use to inflict severe material and moral damage on a great power.

The United States, like all imperial powers, tends to associate its own security and the stability of its hegemonic position with the weakness of its satellites and potential enemies. An exception to this rule can be seen in the United States' attitude to Europe following the end of the Second World War, when an enlightened political class realised that America's stability and leadership and the health of the US economy depended on the prosperity and unity of the country's most important allies — the states of Western Europe. But, with the passing of the decades, and in part as a result of the Europeans' refusal to assume their own responsibilities, the old logic of power inevitably began, gradually, to regain the upper hand. This is why, in the historical phase that followed the end of the Cold War, the United States promoted in every way possible the dissolution of the Soviet Union, failed to oppose the forces that led to the disintegration of Yugoslavia (actively encouraged, moreover, by the governments of the European Union), supported the secessionist movements of Tibet and Xinjiang and now views with approval the watering down of the European Union into a vast free trade area. But in reality, these policies have weakened rather than strengthened its world leadership. They have contributed to the creation of fragmented and politically irresponsible areas, in which weak and impotent states have "sold" their sovereignty and placed themselves at the service of the terrorism, international crime and money laundering, and thus to the proliferation of trouble spots in which there is tension and disorder. Under the illusion that it was favouring the birth of a more governable world, the United States has, itself, created, funded and trained its own enemies.

* * *

It is a dangerous mistake to think of bin Laden as the lunatic leader of a group of relatively isolated terrorist fanatics. Not only is bin Laden in possession of vast financial resources, he is also assisted by the governments of several states within the Islamic world and enjoys widespread popularity in the Arab and Muslim worlds generally. The ground in which he cultivated his terrorist enterprises is thus deep and vast, and this is a reality that his disappearance from the scene would not alter. Added to this, his actions appear to have been guided by a clear design: to under-

mine the power of the Islamic world's conservative and unpopular regimes so as to be able to build a form of Islamic unity founded on fundamentalism.

It is clearly utopian to imagine political unity in the fragmented and heterogeneous Islamic world of today. But the need that underpins this dream is a very real one, because the world as a whole will not know a reasonable level of stability and security until there starts to be a movement towards a solution to this problem. Moreover, it is certainly possible that, in the framework of a more stable world equilibrium, aggregations capable of evolving into federal-type groupings might emerge within the Arab-Islamic world, and even embrace Israel. In no other way can the enormous section of the world whose populations identify with Islam break free from the spiral of injustice, poverty, violence and corruption that currently imprisons them. Moreover, it is inconceivable that the Arab countries, and in more general terms the Islamic countries, might be led towards unity by the regimes by which they are currently ruled. Neither is it conceivable that they will ever follow this path under the guidance of the totalitarian and obscurantist theocracies that bin Laden and Islamic fundamentalists are fighting to establish. They will be able to do it only if they evolve in the direction of democracy and greater social justice and if, within their populations, humane and tolerant expressions of religion can prevail over fanatical and violent ones.

American bombs can certainly do nothing to encourage an evolution of this kind, and neither, in a more general way, can the continued exercising of the hegemony of the United States, which the large majority of Islamic populations now tend to see as the antithesis of the very founding values of their own civilisation. What is needed to change the current world equilibrium is the entry on stage of another actor — one that is strong but that does not base its strength on its military might, one that is pluralist and thus accepting of those different from itself, and one that, because of its geopolitical position, is not interested in establishing itself as a hegemonic power, but in counterbalancing the hegemonic power of others, encouraging unity among peoples and peaceful dialogue between them.

Europe is the only possible candidate for this leading role. Only Europe has all the requisites, in power terms, to act as a mediator and to promote effective initiatives designed to bring about the start of processes of democratisation and economic and political integration within the Islamic world. But its capacity to fulfil this role, which history appears to have assigned it, depends on its capacity — having first achieved its own

political unity — to be an authoritative and independent presence in the global picture and to show the world how unity in diversity can be achieved. Europe is thus faced with an extraordinary, historic opportunity. But if its states prove unable to seize it, refusing to be bound by federal ties and continuing to see the preservation of their sovereignty as more important than the pursuit of Europe's common good and the progressive building of peace in the world, then they will be irremediably overwhelmed by the disorder and intolerance that — lacking the necessary courage and vision — they themselves will have failed to oppose.

The Federalist

Notes on Sovereignty *

FRANCESCO ROSSOLILLO

1. The Pure Concept of Sovereignty

Power and Sovereignty.

The concept of sovereignty is embraced by the broader concept of power. For our purposes power can be defined as the possibility of individuals or groups to impose their will on others. In the life of men, and in political life in particular, power manifests itself in a whole range of guises, relationships and situations: power is possessed by states, alliances of states, international organisations, political parties, pressure groups, churches, public opinion and individuals. Power relationships between these entities evolve in many different ways and, like the infinite number of factors that give rise to power — the degree of consensus, bureaucratic efficiency, military force, economic and financial resources, etc.¹ — change continuously.

Within this infinitely complex and ever-changing web there is one form of organisation of power that remains relatively stable and that is usually perceived as being superior to the others. I am referring to the state — the state that brings about, albeit imperfectly, social peace through the enforcement of law. This is possible only thanks to the existence of a subject (initially identifiable with the state itself) which has the *power to decide in the last instance*, i.e., an *irresistible* power, and which nobody can prevent from taking and enforcing its own decisions. This power is sovereignty.²

Sovereignty and the Common Good.

It must be stressed that the existence of an irresistible power, and therefore of power in its most radical form, appears paradoxically to run counter to the very logic of power, as the state, through its irresistible

* This essay is an integration of a previous paper, published in No. 3/1995 of this review under the title "Sovereignty and the World Federal People as its Subject", the bibliography of which is referred to.

power, neutralises the power differences between citizens and groups existing within it, or rather, given the inevitably imperfect correspondence between historical reality and the models by which it is guided and which serve for its interpretation, strongly reduces them. It therefore creates conditions in which law prevails over power in a wide range of social relationships. This establishes the condition of *equal necessity* which, in the dialogue between the Athenians and the Melians, is considered to be the premise of justice. Furthermore, by imposing the observance of a series of legal norms, the state disciplines the struggle for power within itself, thus rendering this struggle radically different from power confrontations between states. Between the two antithetical aspects of power highlighted by Meinecke in the introduction to the *Theory of the Raison d'Etat*, two aspects that constitutes its ambiguity, the irresistibility of power makes the *ethos* prevail over the *kratos*. The state, thanks to the attribute of sovereignty that makes it the foundation of social life through the enforcement of law, is the premise of politics regarded more as an activity *which pursues the common good* than merely as a struggle for power, because the internal security, i.e., the achievement of the value of social peace, that it guarantees is the indispensable condition for the promotion of all those values on which relationships between people are based.³

The Decline of Sovereignty?

There is a widespread tendency today, especially in Europe, to regard sovereignty as an attribute of a kind of state that has now ceased to exist and to maintain that sovereignty is now incompatible with the kind of social relationships that characterise the era of globalisation. According to this view, the supremacy of one legal system, enforced by an irresistible power, is substituted by a network of unconnected contractual relationships. These give rise to a series of rules of equal value, all equally non-binding, and render the state nothing more than one of the numerous agencies that mediate in relationships and settle disputes between people and between groups. Many of those who believe sovereignty to be surpassed predict, and with deplorable intellectual irresponsibility even seem to wish for, the advent of a “new Middle Ages.” They conveniently forget that the Middle Ages was an era in which permanent and unresolved conflict between different and uncoordinated powers resulted in endemic violence. This prevented the consolidation of social peace in Europe and therefore the formation of the premises for the flourishing of

civilisation that subsequently proved to be the consequence of the birth of the modern state. Behind this attitude there is usually an unconscious acceptance of Fukuyama’s spanglossian thesis of the “end of history,” which is perfectly serviceable to the hegemony of the American super-power in the world, as indeed is the tacit conviction that an era is dawning in which, at least in the industrialised world, power will tend to dissolve and people will peacefully regulate their reciprocal relationships on the basis of reasonable compromises between their respective interests.⁴ But the truth is that where there is no sovereignty there is no law, and where there is no law there is anarchy and anarchy is the negation of all values of civilised life. Precisely because they are not regulated by law, relationships between sovereign states are relationships of power, and disputes between them can only be decided, *in the end*, by war. This is as true today as it has been throughout the the history of humanity.

The People as Holder of Sovereignty.

The idea of an irresistible power evokes that of an absolute power, and it is not by chance that some associate the idea of sovereignty exclusively with the absolute monarchies of seventeenth— and eighteenth— century Europe. To make this association was justifiable while the prerogatives of sovereignty were exercised by the monarch alone (the “sovereign”). All the decision-making power of the state was concentrated in the monarch, even though, in reality, even the power of absolute monarchies was limited by a whole system of checks and balances. But in the wake of the great European and American revolutions this error of perspective can no longer be justified. It has become evident, except to those who think that sovereignty is a reality now superseded by history, that the prerogatives of sovereignty are exercised by the entire institutional structure of the state and, in every single case, by the institutions to which, on each occasion, the Constitution assigns the appropriate competence. One might therefore conclude that sovereignty belongs to the Constitution (understood materially, i.e., in terms of the way the powers of the state are actually organised and co-ordinated and as a set of fundamental values which steer the behaviour of men within it).

But this conclusion holds only in normal situations, however, and not in those exceptional circumstances in which the profound nature of the subject of the historical and social dialectic emerges and the true nature of the people shows itself. The latter are the circumstances which give rise to institutional crises. Thus, the question that must be answered is, who

ultimately holds the power to decide in a situation of *institutional crisis*, or when there is a crisis in the political community itself (i.e., the spatial framework in which social life is organised), in other words, when the constitution itself is in question? One must therefore look beyond the fact that the Constitution is the source of the *legality* of the acts carried out by the state institutions. We must ask who establishes the *legitimacy* of the Constitution itself, and therefore holds the power to replace it.⁵ The answer to this can only be the *people*, and the people exercises this power in two distinct ways: explicit and implicit. The former is through the exercise of *constituent power* during revolutionary phases, when the people is active and expresses a will (the *general will* of Rousseau).⁶ The latter is through tacit consensus for the Constitution during normal phases when the prerogatives of sovereignty are exercised by institutions which popular support guarantees permanence and legitimacy. Without this guarantee a crisis develops that creates the conditions for the direct re-appropriation of sovereignty by the people, or for chaos or dictatorship.^{7,8}

It is worth reaffirming that the object of general will and consensus, which together constitute the basis for sovereignty, is not the legal system in its entirety. It is the whole set of fundamental rules and values through which the people defines its identity and the main patterns of social life within the state, i.e., the Constitution in its material sense, whereas the basis of the validity of non-constitutional rules and decisions, depending on the changing circumstances in the formation of parliamentary majorities, lies in their conformity to the Constitution.⁹

Sovereignty and Legitimacy.

Attributing sovereignty to the people is the only way to escape the antinomy which otherwise affects any theory of sovereignty: that of obtaining, caught between the need to found the legitimacy of the legal system on the irresistible power of the holder of sovereignty (*non veritas sed auctoritas facit legem*) and the contrasting need to found the power of the holder of sovereignty on some form of legitimacy, the observance of certain principles having intrinsic validity (*non auctoritas sed veritas facit legem*), without which the way would be open for the legitimisation of all kinds of abuse. This is the worrying factor that prompts Bodin and other sixteenth— and seventeenth—century theorists to maintain that the absolute monarch, though the holder of sovereignty, should in any case be obliged to observe the *lois du royaume*.¹⁰ In fact the people has irresistible power because, hypothetically, it is, at once, the embodiment

of those who impose the rules and of those who have to observe them. At the same time the people constitutes the *measure of justice*, in so far as it is the only arbiter of the common good, which coincides with *its own good*. This does not necessarily amount to a denial of the essential importance of certain values as the basis of social life, and therefore of the legitimacy of the state. On the contrary, as will be seen later, a people is a people inasmuch as it constitutes a community of values. This means, however, that those values must not be considered, in this context, from the normative perspective of their universal validity, but rather from that of their actual effectiveness, or of the degree to which they are shared by real people. Recourse to the people therefore resolves the question of supremacy between sovereignty and legitimacy. Sovereignty denotes the power of the people to make the rules defining its own identity; while legitimacy is the acceptance by the people of the rules it gives itself. And since those who set the rules and those who obey them are one and the same, sovereignty and legitimacy are the same thing. It also follows that the definition of sovereignty as the *monopoly of legitimate force* is circular. If, in fact, legitimacy and sovereignty are the same thing, legitimacy cannot constitute part of the definition of sovereignty. On the contrary, legitimacy and sovereignty are both defined by the monopoly, held by the people, of strength alone, thus neither is it possible, unless we resort to the idea of legitimacy founded on absolute values, i.e., on divine right, to conceive of an *illegal monopoly of force*.

It must be remembered that to identify the people as the true sovereign is not to deny the fact that sovereignty was born in European political history with the absolute monarchies of the beginning of the Modern Age. Absolute monarchy, after feudal anarchy with its disorder and violence, had actually created a new link between power and subjects, and therefore between the subjects themselves. It created a peaceful space, hitherto nonexistent, that allowed the creation, albeit imperfect, of relationships between men based on law, and thus created the conditions for the building of modern civilisation. From chaotic medieval multitudes, consisting of subjects belonging to different and intersecting spheres, bound by contrasting loyalties and dominated by changeable centres of power, it made a *people* from which it received conscious support.

The Identification of the People with the State.

It is important to note that to attribute sovereignty to the people is not to contradict the attribution of sovereignty to the state. The people and the

state are two poles of the same phenomenon, even though the people is more visible in constituent moments and the state more visible in ordinary times. In any case, a people can only exist where there is a state, and when the institutions of a state, or even of a political community as such, experience a crisis, the crisis inevitably involves the people too. Bearing this in mind solves an apparent contradiction which, as long as people and state are considered as two completely separate entities, makes it difficult to understand the dynamics of the *transfer of sovereignty*. This is a particularly important problem for those involved in the struggle for the federal unification of Europe today. This process implies the transfer of sovereignty from the national states to a federal European state. Many affirm that the project of a European Federation is unfeasible because it would require the existence of a European people, which does not exist.¹¹ According to this view, therefore, the people would have to precede the state and would constitute the condition of its birth. This opinion has a semblance of plausibility, but so too does the opposite view, whereby a people cannot be born except in the framework of a state (and according to which the people would come *after* the state).¹² The truth is that the idea of the state implies the idea of the people and vice versa, and the problem of the precedence of one over the other is like that of the chicken and the egg. A state is born when the people wants is to be born, just as the people is born when it wants a state. This comes down to the state and the people being the same thing.¹³

From all this we can conclude that it is true that today a European people does not exist (even though the conditions for its formation are there, thanks to the effects of a long process of integration). But this conclusion does not constitute an argument against the realisation of federal institutions, even in the near future. A European people will be born, if at all, when circumstances allow the formation of a common will (the will to establish federal institutions). A European people and a European state will therefore come about at the same time, in a very intensive but short-lived process. It will be characterised by one or more symbolic events. These will imprint themselves forever on the collective memory and those who witness them will gain a sense of belonging to a newly born community. This aspect of the transfer of sovereignty must be borne firmly in mind, so as not to make the error of considering the latter as a purely institutional matter (it is an institutional matter, of course, but it is not only that). Unless its life and direction stem from an act of will, whose subject is the people and whose content is based on a *different way of living together*, then any institutional construct is bound

to be eminently ambiguous. The language it uses can easily be exploited to opposite ends. One need only consider how the meaning of the term “constitution” has been twisted in recent European political debate.

The Indivisibility of Sovereignty.

If sovereignty is the power to take final decisions, it is thus indivisible. Were it divisible, there could indeed exist two or more subjects with equal power on the same territory and within the same legal order. The decision as to which of these might, on each single occasion, exercise this power could thus be decided only by strength. And this would bring about a state of *civil war*, the very negation of the social peace that sovereignty is meant to guarantee and express. Civil war does occur in history from time to time, but as the expression of the absence of sovereignty, not of its divisibility.

To state that sovereignty is indivisible is to recognise that this indivisibility extends both to the policies and to the territorial orbit to which it applies. It is thus wrong to attribute, as we see in Europe today, monetary sovereignty to the European Central Bank and political sovereignty to the nation-states, just as it is wrong to consider the federal state as a model in which sovereignty is divided between federal government and member-states. Sovereignty remains undivided in federal states too. But it is not the prerogative of any specific level of government, and no specific level of government is thus allowed to hold sway over the others. This role instead goes to the federation as a complex institutional system comprising a level of central government and one or more levels of regional governments (“regional” meaning each level of government below the federal one).

The Indivisibility of the People.

The indivisibility of sovereignty must correspond to that of the ultimate subject to which it belongs, i.e., the people. Recognising the uniqueness of the people, even the people of federal states, certainly does not mean negating its pluralistic nature when it is, in reality, characterised by marked cultural differences. The indivisibility of the people merely indicates the existence of an entity that a) is able to express a single will in constituent or revolutionary times and b) guarantees, in ordinary times, by its consent, the supremacy of a fundamental law (the Constitution) and of an institution equipped with the power to interpret the fundamental

law (the Supreme Court). The latter would establish, case by case, the competence of one or the other subordinate legal system, central or regional. In each single case it would allow the unequivocal application of one and only one rule. The expression "Europe of the peoples," sometimes used even in pro-European circles with reference to the European Federation, is therefore wrong.

Federal states are founded on one people alone. From this uniqueness stems the fact that any attempt at secession by a member-state of a federation constitutes an extremely serious constitutional violation. Such violations must be prevented at all costs, even through recourse to war.¹⁴ From the indivisible nature of sovereignty also stems the significance of territory as a constitutive part of the state. If the state in ordinary times has the power to impose, in each single case, the observance of a legal system, and only one, because of its attribute of sovereignty, this power cannot be manifested within anything other than a territory delimited by frontiers. To speak of "de-territorialisation" of the state, or of a virtual state, is complete nonsense. This does not mean, however, that there cannot be situations of uncertainty as to which subject has ultimate decision-making power. These, however, are situations characterised by the absence of the state, and therefore of potential or actual civil war.

Federation and Confederation.

From the perspective of the indivisibility of sovereignty it can be seen that, in the eventuality of a union of states, the confederation-federation dichotomy retains its validity in spite of efforts of a certain doctrine to advance the thesis that this juxtaposition has been overcome and that the European Union — being neither a confederation nor a federation — is a demonstration of the fact. In truth, there can be no denying the evidence that, unless we fall into anarchy, sovereignty must reside either in the states that make up the union, or in the union itself (understood as the aggregate of federal government and regional governments). *Tertium non datur*.¹⁵ This does not mean of course that in certain historical situations, such as that prevailing in Western Europe for half a century after the end of the Second World War, a relatively stable contract between member states of a confederation cannot come into existence. Nor that this situation cannot provide the premise for an effective transfer of sovereignty. But it remains important to distinguish between the conditions for the emergence of a situation and the situation itself. The reality of today's European Union is that the holders of sovereignty, albeit

a weak one, are the member-states.

In situations like this, institutions can be created (like the Court of Justice and the Central Bank in the case of the European Union) that have the formal competence to make final decisions in certain sectors. On the other hand, real power, particularly the power to make changes with respect to the competences of the various bodies of the Union, to disregard their decisions, to predetermine their content through blackmail, even to abandon the Union or to decide together with the other partners to dissolve it, always remains in the hands of the member-states. Thus a sort of fictitious distinction is created between *formal sovereignty* and *substantial sovereignty*. But yet again, there remains, in the end, only *one* sovereignty, namely substantial sovereignty.

People and Citizens.

Many refuse to accept the attribution of sovereignty to the people, as the people is said to be an entity of an indeterminate and ideological nature. They maintain that sovereignty is a prerogative of *citizens*, i.e., concrete individuals. This affirmation rests on a misunderstanding. Citizenship, as the basis for the ownership of a number of rights and responsibilities, is a prerogative rooted in the Constitution. In contrast the people, as the holder of constituent power, is *outside* the Constitution¹⁶ because it forms the basis of its legitimacy. Citizenship is *constituted*, whereas the people is *constituent*. Furthermore, citizens hold rights and responsibilities *uti singuli* while the people expresses a single collective will and is not a holder of rights, but of *power*. To affirm that sovereignty is a prerogative of citizens therefore reveals a radical misunderstanding of the nature of sovereignty, which is not an attribute of citizenship, but the basis of it.

The Difference between Democracy and the Will of the People.

Consequently, manifestation of popular will must not be confused with choices expressed by the electoral body (which is made up of a section of the citizenship) in electing its representatives according to the Constitutional rules. The use parties make of the expression "popular will", applying it to electoral results, is ideological. The electoral body is an organ of the state which acts within the limits, deadlines and according to the rules defined by the Constitution and the law. It does not express a single collective will, but distinct individual preferences. On the

contrary, the will of the people only expresses itself actively during periods of crisis and without following any fixed procedure, because it constitutes the basis of the legitimacy of all procedures. It goes without saying that, in certain circumstances, to manifest itself, it can also make use of electoral or referendum procedures, which therefore acquire a constituent content. But when this happens, it is purely coincidental. A distinction must therefore be drawn between the will of the people and democracy. The former is the fundament of the Constitution. The latter is the most advanced technique of the struggle for power within the state and it is applied *within* the Constitution.¹⁷

The Will of the People and Rights of Freedom.

The above considerations do not imply any devaluation of the democratic rights and rights of freedom that Western constitutional tradition guarantees citizens. These are values rooted in the acknowledgement of the inviolable dignity of the individual. What they do imply is that neither governments nor parties can justify, before the Tribunal of history and of world public opinion, positions that are authoritarian, intolerant, demagogic or factitious, claiming that they are sanctioned by popular will. They also imply that it is entirely legitimate, in the name of the principles of democracy, to grant access to electoral competition only to parties that identify fully with the principles of democracy (even though in practice complying with this requirement can be quite difficult). The idea of the irresistible power of the sovereign people manifesting itself in constituent moments therefore has nothing to do with the representatives of a majority of citizens exercising government functions. If this latter aspect is not finely regulated, it can give rise to populist regimes, which are corrupt and totalitarian. So much so that in modern liberal democracies the constituent will of the sovereign people expresses itself by adopting constitutions that purport, among other things, to curb excessive power of the majority through a system of checks and balances. It also sets out to guarantee citizens, through the recognition of a number of rights, a sphere of freedom that political power cannot violate.

The Exceptional Nature of the Manifestation of Popular Will.

The fact that popular will as an active expression of sovereignty manifests itself only in revolutionary or constituent times is explained by the fact that people make the general interest their main concern, and

therefore are actively involved in the pursuit of the fundamental rules which discipline their coexistence only when the foundations of the latter are in danger. Only then do the interests of all actually coincide with private interests of each.¹⁸ During periods of normality, when social existence seems secure, this does not occur and people mostly get on with their own private affairs and are not concerned with the common good (which they believe to be guaranteed by the institutions, upheld by their tacit consent). Or else they interpret the common good through the distorting lens of their private interests, which are by definition divergent.

It is worth noting that this situation is perfectly functional to a social existence that encourages to the full the individual vocations of its members. In a utopian community, in which everyone is always concerned with seeking the common good, the distinction between general will and democracy would be lost, as would the distinction between public and private: there would be no Constitution as a stable sediment of an act of will accomplished in the past, still surviving in the passive form of consensus. Social existence would be a kind of continuous, frantic re-founding of the state. Liberal values, expressing the need to guarantee citizens a sphere of freedom from the government, would no longer have any reason to be defended, because government and citizens would amount to the same thing.

It is easy to see that the realisation of a utopia of this kind would mean the total politicisation of life, and would therefore go against the very premises on which it was built. The public sphere, if extended to all areas of social existence, would not only cancel out the very reality of private interests, but it would also lose its function as promoter of the main aspects of civilisation: the arts, sciences, literature and philosophy that are cultivated through *absorption and reflection*. This in turn can only be achieved by guaranteeing the individual a space that *is free from politics*, a space in which even the most democratic of powers cannot interfere. For this to happen politics must, during normal periods, remain the prerogative of a class of professionals. The direct assumption of power by the people must only happen under exceptional circumstances, even though it must be stressed that this is in no way incompatible with the need to render the citizens' control of power as strong as possible nor to improve the quality, and increase the extent and the intensity of their participation in normal political life in the manner provided for by the Constitution and by the law.

The Link between the Will of the People and Democracy.

Democracy and sovereignty, although quite distinct, are in fact closely linked. A well-run democracy presupposes the existence of a power capable of taking ultimate decisions, and therefore *of a state*. The idea of a democracy without a state, which its supporters seek to promote by citing the role of the European Parliament within the European Union, is completely senseless. The premonition of a European democracy that manifests itself in the feeble powers of the European Parliament exists only to the same extent as the European Union itself is a premonition of a state. Similarly, in a state whose sovereignty is seriously compromised, and in which all the important decisions are taken by subjects outside itself, democracy is reduced to mere ritual. We have to conclude from this that popular sovereignty is a *necessary condition* for the exercising of democracy, even though it does not identify with the latter. It must also be remembered that democracy cannot be considered without reference to the question of public interest, and there are two reasons for this. First, the existence of a mechanism allowing peaceful discussion of private interests is obviously in the general interest and second, as already mentioned, in some cases elections or referenda can coincide with a constituent moment.

2. Sovereignty within a Historical Context

The People and International Relations. People and nation.

Historically, the concept of the people has never materialised fully. Concrete manifestations of popular sovereignty have always been subject to two kinds of limitation. The first is rooted in the plurality of historical peoples, as a result of which every creation of a new state, like every transformation of the Constitution of an existing state, happens in an international context that often reduces quite drastically the freedom to decide of the holder of constituent power. Caution must therefore be taken when stating that a historical people ultimately has the power to decide its own destiny. More accurately, its decisions are taken into consideration not only with a view to its own abstract interest, but also taking into account the power relations existing *between* states; and sometimes they are even taken *by* other states (such as when a state has been defeated in war and the winners impose a new constitution, albeit

almost always with the support of a part of its citizens and its political class).¹⁹ The internationalist doctrine has tried to remove this difficulty through the formulation of the principle of non-interference, according to which each state is thought of as an entity completely isolated from the international context. But the principle of non-interference has never really been applied in history, which instead offers, and has always offered, nothing more than the spectacle of the continual interference of states in the internal affairs of other states. The principle thus remains confined to the sphere of international law, which politics always uses to its own ends.

Furthermore, the plurality of historical peoples calls into question the fact that the people is by nature the arbiter of the common good, which in theory is the same thing as its own good. In fact, in the international context, the good of every actual people does not correspond to the common good (which is the good of humanity), but rather to the particular good of a section of humanity. This ambiguity is reflected in the idea of people as it has appeared in history, where it has tended to be confused with the idea of *nation*, with its connotation of the *difference* of each single people from all others and, when the events determining the international balance so require, of its *opposition* to them. The idea of nation brings in the idea of *the other*, of *the enemy*, in such a way that each nation is no longer an abstract entity pursuing the common good, but a concrete individual pursuing its own particular interests. It should be underlined here that the idea of nation in the strict sense of the word indicates a specific ideology that was born with the French Revolution.²⁰ It must be noted that today states of continental dimensions, like the United States, Russia, China and India, have linguistic, ethnic and religious differences that are so deep that they cannot really be called nation-states in the strict sense of the expression (even though in each a process of assimilation of the state to the model created by the French Revolution is under way). The fact remains, however, that, whenever a sovereign community, albeit an imperfect one, perceives its own identity also in opposition to other communities, the idea of people will be tainted by that of nation, albeit in the loose sense of the term. This will continue to be inevitable for as long as many independent communities continue to live side by side in the world. It is only from the perspective of a world people that the idea of people can be disentangled from that of nation – a world people, the first true people in history, which would take shape through the foundation of a world federal state. It is only through the prospect of a world state that the idea of the common good as the

foundation for the legitimacy of the social contract can be purified from contamination by international power relations.

But to date the legitimacy of the historical states has been based on a combination of the rational idea of the common good and the solidarity generated by the need to present a united front against the enemy (a feeling that is present, albeit in a weaker form, even when relations between the states are peaceful, and the enemy is merely perceived as *the other*). The idea of the birth of a world people within the world federal state therefore presupposes an act of faith in the ability of men to go beyond the practice of politics as an activity founded on the Schmittian friend-foe polarity²¹ and in the capability of each individual to base his relations with his fellow men on the Kantian respect one owes to one's neighbours as fellow members of the human race and his consensus towards power solely on the idea of common good. Only in this way might the ideal of "constitutional patriotism" be realised.

The People and the Elites.

The second limitation to which the historical manifestations of sovereignty have been subjected lies in the fact that the holder of sovereignty — the people — never expresses itself unanimously. Even the great historical revolutions have always been the work of minorities that have proven able to overcome the resistance of other minorities thanks to the passive consent of the majority to the innovation the revolutionaries introduced. They therefore seem to deny the very ideas of sovereignty and legitimacy that are based on the identification of state with people, i.e., of the subject that dictates the fundamental rules of social existence with the one that receives and accepts them. This identification is lost if whoever dictates the rules constitutes only a section of the people, while those who have to follow them are the people in its entirety. Many conclude from all this that the idea of the people is a pure ideology, which conceals the reality of the power relations between classes, groups and interests that determine changes of regime and unifications of states and that subsequently guarantee the stability of the new regimes and political communities created by previous revolutionary insurgencies.

However, the fact remains that political language cannot do without the terms "people" and "popular sovereignty". In fact, in the revolutions that have marked the great moments of emancipation in the history of mankind, even though the process was, on each occasion, driven by only

a section of the people, the manifestation of the will of this active section led to the introduction of rules, values and patterns of behaviour into the historical process that have become the common heritage of (nearly) all the citizens of the existing states (and, beyond the citizens of the existing states, of the whole of humanity). In these circumstances the affirmation that the active minorities *did represent* the whole of the people is justified.

However it must not be forgotten that history also offers numerous examples of occasions where radical institutional transformations have been brought about by explosions of barbarism that, in some cases, have even been led by substantial minorities of the population of a state and been tolerated by the majority of the remainder, and have resulted in fiercely authoritarian regimes. We need only recall, as one of many examples, Hitler's ascent to power in Germany, which was the result of a great movement of public opinion. Events of this nature, if we are unwilling simply to abandon the idea that the people is the basis of the sovereignty and legitimacy of the state, force us to try to identify an objective criterion that might allow us to establish when, in the presence of insurgencies that profoundly change the constitutional structure of a state or that give rise to unions or dissolutions of states, we are confronted with a people exercising its constituent power and when, instead, we are faced with the crisis of a people, that is to say the dissolution of the bond that guarantees its unity, and thereby to escape the conclusion that, due to the identification of people with state, all the states that exist today and have existed in the past, from the most advanced democracies to the most savage dictatorships are equally legitimate.

History as the Realisation of the Concept of People.

Many try to escape this dilemma by denying that the people constitutes the basis of legitimacy, and by claiming that the latter should not be sought in the sphere of empirical reality but in that of values. Legitimacy would therefore be the prerogative of the State insofar as it realises, at least in part, certain universal values.²² But the truth is that values are not disincarnate ideas. They have a meaning inasmuch as they are *someone's* values, and they can be said to be universal only when they are *everybody's* values. Today, no universal system of values, beyond purely nominal agreements, exists, because in cultural contexts different from those in which we live, people hold values that are different from ours to be universal. On the other hand, the conviction that one's own values are *potentially universal* is the basis of both political commitment and of

social-historical research, and in the final analysis of the possibility of communication itself. To abandon it is to fall into relativism, i.e., into the negation of knowledge and morals. It is therefore essential to reconcile the rational need for the potential universality of values with the empirical fact of their diversity, and often of their opposition, in historical reality. This can only be done if we hold firmly on to the idea of the people as the basis of legitimacy. However, this is possible only if we adopt a philosophical vision according to which historical peoples are only temporary and transient pre-figurations of a future world people of equals, of which the historical process is the progressive realisation. This realisation is achieved through a long and laborious journey, slowed down by the persistence and the recurrence of violence, oppression and injustice. Nevertheless, on this journey the overcoming of economic and social inequalities between men and the bringing down of the barriers to communication progressively create the political and institutional conditions needed for an ever more rational formation of political will and an increasingly widespread and intense practice of solidarity, which tends to blend all values in the imperative requirement always to treat all men as ends and never as means.

Only on the basis of these premises can we identify an objective criterion that might allow us to orientate historical judgment and make it possible to distinguish between manifestations of collective will that are genuine expressions of popular sovereignty and those that are not. Only on this basis can we identify a criterion that is not *external* (which is what any system of values regarded as absolutely valid would be), but *internal* to the idea of the people. This criterion can indeed only be that of an approach of historical peoples to the idea of people: i.e., of the extension of the orbit of the state and of the consolidation of its institutions, founded on free consensus. It is the application of this criterion that allows us, for example, to interpret events like the overcoming of feudal anarchy by the modern state (albeit in the form of absolute monarchy) as a genuine, if embryonic, manifestation of the sovereignty of peoples in the making, or the recent dismembering of Yugoslavia (with the concurrent birth of the so-called “peoples” of the secessionist republics) as a savage display of nationalist ferocity, which has led to the creation of states whose sovereignty is drastically limited compared to that of the previous Federation and that is a backward step in the process of the emancipation of mankind; or the past installation of regimes like the Nazi regime in Germany and the fascist one in Italy as the expressions not of the exercising of the constituent power of a people, but of the dying throes of

peoples in dissolution and of the extreme attempt of the elites in power to overcome an impending danger of anarchy through the imposition of dictatorship.

It is worth noting that this perspective allows us to free the relationship between the idea of people and that of nation from part of the ambiguity that characterises it. In the life of national peoples, the connotations of the idea of people will tend to prevail when the objectives pursued by active minorities are the overcoming of internal and external barriers hindering solidarity. On the other hand, the connotations of the idea of nation will tend to prevail when those objectives are the reinforcement of the external barriers or the creation of internal barriers that previously did not exist.

Sovereignty as in itinere Reality.

From all this it ensues that even sovereignty, and likewise the people as its holder, is a reality in the making, a reality that is drawing nearer to the purity of its concept as political civilisation itself progresses. That said, it may, depending on their size and power, be expressed with different levels of intensity in states in which civilisation has developed to an equal degree. It was present in the ancient world only as a premonition, particularly in Athens and in republican Rome, while it was absent in all the forms of imperial dominion, in which the small ruling class of a hegemonic population dominated the passive bulk of the subjugated populations.²³ Likewise it was substantially absent, apart from in an embryonic form, in the feudal anarchy of the Middle Ages. It was born with the birth of the modern state in the sixteenth century and for a long time remained limited to the countries of Western Europe. In the last two centuries it has progressively spread outside Europe, although the more the state whose people is its holder is independent in international relations and the more its constitutional arrangement is sustained by consensus on the part of the citizens, the much more advanced its form is.

This is not to say that the simultaneous presence in the world of many sovereignties of different intensities that condition and limit each other to different extents makes up a so-called zero sum game, in which the weakening of the sovereignty of one people necessarily corresponds to the strengthening of that of another. It is essential not to confuse sovereignty with the pure fact of power. The exercise of hegemony (as an expression of a superior power) by one state over another reduces the

degree of sovereignty of the state subjected to that hegemony. But it does not increase that of the state that exercises it: because sovereignty is *autonomy*, the exercise of a people's monopoly of power over itself, and it therefore has nothing to do with the dominion of one people over another. In the same way, the weakening of the sovereignty of a group of states due to the need for collaboration between them as a result of their interdependence (as we see in the case of the states of the European Union) does not automatically translate into a transfer of sovereignty to the institutions created to manage cooperation, nor to a hegemonic state outside the group. This is why, in the current European Union, sovereignty, however weakened, remains the exclusive prerogative of the nation-states.

The Degrees of Sovereignty.

Even in the wake of its assertion with the birth of the modern state, therefore, sovereignty can be seen to manifest itself only to a degree in the reality of the historical states and peoples. This means that the very idea of state, which is inextricably linked with that of sovereignty, can be realised in individual historical contexts to a greater or lesser extent, in the sense that the historical "states" must in fact be regarded as *more or less states* according to the degree of sovereignty that they have (even though they must all have the minimum amount necessary to justify the very perception of them as states). This is despite the fact that the international community, with the help of theories developed by international law, and particularly through the affirmation of the principle of non-interference and the practice of recognition, keeps up the pretence that all the states equally exercise the reciprocally recognised fullness of their sovereignty. In actual fact, this is an equality that is continually disregarded by the practice of war and by the reality of the permanent interference by the strongest states in the internal affairs of the weakest. Here the expression 'organised hypocrisy' with which Krasner brands sovereignty and particularly its external appearance, is partially justified. But the fact that sovereignty is not present everywhere, nor everywhere to the same degree, does not prevent it from remaining the essential premise for the historically possible pursuit of the common good and the measure of the progress of civil coexistence. These objectives are in fact realised the more completely the greater the degree of sovereignty of the peoples that pursue them. This is why the violation of sovereignty, however limited and imperfect, of one state by another is a traumatic event that always

takes the form of war or the threat of war and deeply disturbs international public opinion.²⁴

Likewise it is inevitable that, in its march towards the full accomplishment of sovereignty, history experiences phases of backlash. The prospect of a second Middle Ages is not inconceivable. But what is morally unacceptable is that this prospect be accepted with a sort of serene resignation, forgetting that a long and general crisis of sovereignty at world level would mean a long and general crisis of the very idea of the common good. It would also therefore mean a crisis of peaceful coexistence within the state, and thus of civilisation as such. The primary aim of every responsible politician today should be to gain an understanding of the conditions in which sovereignty can be restored wherever it is compromised, and then to employ all his forces in pursuing the realisation of these conditions.

3. People and Values

Values as the Foundation of the State.

If the above is true, then sovereignty can, in order to guarantee peace as a social condition for the pursuit of the common good, be identified with popular will and with popular support for the institutions. But this connotation is still only formal. The very plurality of historical peoples, each occupying a different portion of the world's territory, is a demonstration of the fact that each one formed and maintained its unity in order to defend its own specific way of living together, that is to say, a set of shared values. Furthermore, if it is true that the state coincides with the people, then social peace cannot simply be imposed by the state: social peace is made possible by the almost unanimous sharing of certain basic values by the ideal partners in the social contract. And the role of the institutions of the state is only to ensure that certain behaviour is observed in those marginal cases in which individuals violate the rules drafted in conformity with the contract.²⁵ It should be noted that these values have nothing to do with the fundamental rights that are often listed in liberal-democratic constitutions, whose purpose is moreover to guarantee the citizen a sphere of autonomy in relation to power. Rather they are values that constitute the primary justifications on whose strength the social contract has been ideally stipulated and is observed. They are therefore the *foundation* of power and when they are formulated they do not take

the form of rights, but of duties i.e., of the surrender of freedom that everyone must agree to, and of the rules that absolutely must be observed, in order to make social existence possible. It is interesting to note here that in the first constitutional documents of the American colonies, the only documented historical examples of political communities born through something akin to a true pact, lists of duties, in the form of criminal laws, are often present.²⁶ Moreover, even in modern states, certain tendencies in criminal law provide the best key for interpreting the type of civil coexistence that the state expresses and protects.

These rules will fuse into a single system of values in the ideal moment of the birth of a world people and of a world state. Moreover the imperfect sovereignties of the historical states are the expression of the search for the universal content of the idea of the common good, which exists as a presentiment in every people. This common search is reflected in the fact that many fundamental rules of social life are essentially the same in all civilisations. It also allows the development of an elementary moral *lingua franca* that can be used as a vehicle for dialogue — often antagonistic but always present — between cultures.²⁷ This common search, however, develops in different political-social realities and, despite helping to make these realities converge in a single model in the very long term, in accordance with the philosophical-historical argument set out earlier, in the medium term it often produces extremely different historical results. Today therefore, as always in the past, there is a problem of compatibility between the values that inspire social existence in the states present in the great areas of civilisation over which humankind is distributed.

The State as a Neutral Arbiter.

The fact remains that historical states can only subsist inasmuch as they act as guarantors of the affirmation of certain fundamental values characterising the social existence of people within them. In other words, only inasmuch as they are *institutionalisations of systems of values*. The necessary nature of the link between state and values is negated by an entire cultural tradition going back to Max Weber. According to Weber the characteristic of the modern state is the fact that it is rationally legitimised (in that the consent of citizens to decisions made by power is justified solely by the fact that they were made by a political class and by a bureaucracy organised according to rules).²⁸

This theory was refined by Niklas Luhmann who sees the legitimisa-

tion of the political, administrative and legal decisions of the modern state as founded in *procedure*.²⁹ According to Luhmann, this is the result of a process driven by the positivisation of law (a result of the increasing complexity of social relations and the consequent impossibility of justifying every single rule and decision with reference to the values shared by the community). The sole function of procedure is to *reduce complexity* by offering a purely formal criterion for the verification of the legitimacy of a law, thereby allowing both power and citizens to get their bearings in a world that would otherwise become ungovernable, due to the infinite variety of interests, desires and relationships that emerge and take shape within it. In the same vein, although more vaguely, Habermas³⁰, analysing what is referred to as the “postnational constellation” and particularly the European unification process, tends to attribute the identification of the state with a system of values to a particular historical form of state, the nation-state. Habermas also considers the forms of political aggregation that are being born today and that go beyond the nation-state (to which he seems to attribute, although with some ambiguity, a state character as well) as neutral seats of arbitration between conceptions of social life inspired by different systems of values, which instead remain anchored to the nation-states.

Values and the Constitution.

These theories evidently leave major questions unanswered. The main problem that remains unresolved is that of establishing on the strength of what criteria the rules of Max Weber and the procedures of Luhmann are justified in the eyes of men who have to legitimise them with their approval, and by which principles Habermas’ arbiter-state is to be guided when it drafts the rules for settling clashes between demands that arise from conflicting values. The truth is that values thrown out of the window find their way in again through the back door. What the theoreticians that separate the state from values fail to see is the difference that exists on the one hand between constitutional rules, imposed by the people in constituent moments and supported by its silent approval in times of normality (and which are imposed and supported because they express a conception of civil life inspired by certain values) and, on the other, the rules passed and the decisions taken by state institutions in normal phases (that are not necessarily accepted because they are just or correct in themselves, or because they fulfil specific values, but because they derive from a legitimate authority, which founds its legitimacy on

the Constitution).

Primary and Secondary Values.

We thus return to the observation that the state is never neutral, but expresses certain fundamental values that people share. The European unification project, for example, is possible because Europeans share certain values and because this sharing constitutes, for them, the basis of their possibly becoming one people. Beyond these values shared by (almost) all, the life of civil society is enriched by the contrasts between different values and models of behaviour, rooted in traditional nations or other forms of aggregation. These contrasts — that can become sources of conflict — are only saved from becoming disruptive factors within the state if the said values and models of behaviour are *secondary* and recognised as such by (almost) all, and if (almost) all accept that the clashes that their diversity provokes must be resolved on the basis of rules inspired by *primary* values that (almost) everyone shares and that are guaranteed by the state in the exercising of its sovereignty.

Multiculturalism.

The problem of the postnational state (or constellation) that Habermas highlights resurfaces much more acutely with the phenomenon of multiculturalism, which is not the consequence of the unification of nation-states with a pluralistic but substantially common cultural heritage, but a consequence of the migration of large human groups to cultural contexts radically different from their original ones. In accordance with what we have said thus far, looking at this phenomenon too, a progressive attitude cannot and should not be based on a neutral conception of the state. This would imply that it is possible to downplay or to ignore the fact that certain practices and traditions — that have meaning in other political-cultural contexts — are incompatible with the fundamental principles on which civil life in the host countries is based. The truth is that the state's pretence of "neutrality" only masks its hypocrisy. In the name of a form of tolerance that Kant termed "haughty", culturally diverse groups become segregated and, providing they form only small isolated societies within the larger societies that accommodate them, are left in peace. As this phenomenon spreads, this conception of the multicultural society is destined to undermine the very foundations of the state, because it cuts the ties that link institutions and a community that

are held together by a common conception of their coexistence. The only way to confront this problem is to integrate the value of tolerance with other values — dialogue and solidarity — with a view to overcoming conflicts between the fundamental models of social life to which the different communities within the state aspire (which in no way is to assume that the cultures of immigrant groups cannot make important contributions to the evolution of those of the host societies). That said, tolerance remains essential as a provisional value, needed in order to prevent contact between cultures from generating phenomena of racist violence: but it should not be used to mask the indifference of the privileged towards the dispossessed, nor as a means of allowing the state to justify permissive attitudes that are incompatible with the requirements of its own survival.³¹

Identity.

The march of humankind towards unity within a world federation certainly does not presuppose the juxtaposition of opposing cultures that ignore each other reciprocally under an aseptic and neutral power, but rather the progressive formation, through sometimes traumatic conflict between them, of a single system of values that places the foundations of the social life of the whole of humanity in a single state framework and allows each person to see in every other member of the human race, wherever he or she may reside, a fellow countryman with whom one can and must work for the construction of a society that is better for all. From this perspective, the ambiguity of the concept of *identity* emerges. This concept emphasises the multiplicity of and the conflict between *cultures*, playing down the universal vocation of *culture* understood in a more elevated sense. We do not wish to deny here that the existence of a plurality of languages, dialects, architectural and artistic styles, dietary and folkloristic traditions, etc. is important and gives meaning to the concept of identity. But whilst acknowledging this, we should not allow ourselves to forget that the progress of civilisation, that is to say of human emancipation, coincides with the progressive birth of a *community of universal communication*, thanks to which humans resort to dialogue and to a common idea of justice, rather than to violence, in order to resolve their differences.

The identities to which today we attach such importance, believing them to be the instruments through which to defend ourselves against the homogenisation that is accompanying the process of globalisation,

should therefore always be subordinate to the values on which the existence of the sovereign people are founded and, looking ahead, to those on which the feeling of belonging to the whole human race will one day be founded. They should therefore be considered factors that enrich social life only to the extent to which: a) they do not become so important to our sense of identification with a group that they obstruct the spread of the systems of common values and of the linguistic vehicles that favour their use (a spread that will continue until we reach one system of fundamental values and one language of universal communication); b) they do not prevent or render difficult a *change of fatherland* in a world characterised by a continual growth of interdependence and in which people's lives must be able to develop in any number of different places without anyone ever feeling foreign; and c) they do not suffocate the free development and the full expression of the individual personality, the ultimate seat of moral autonomy and creativity. It is also worth remembering that so-called "cultural identities" are certainly not the sole vehicles of pluralism in civil life, which is such an important condition of democracy. Pluralism is fully compatible with the sharing of one system of fundamental values and of one instrument of communication. It stems from the variety of problems and tasks that the diversity of resources and of territorial structures places before the different human, national, regional and local communities and that must be faced at each of these levels with different tools and strategies, but always in pursuit of the same values and without harming communication and reciprocal collaboration through the application of spurious and provincial barriers and exclusions.³²

Methodological Appendix

The concept corresponding to the term "sovereignty", like many others in political and juridical language, is not a simple and faithful reproduction of "objective" facts, nor the result of a process of generalisation that takes as its starting point a series of phenomena present in historical and social reality. Rather, it is, first of all, and as Max Weber would have it, an *Idealtypus*, i.e., a theoretical construction that Weber himself defines as "utopian" and that, in his words, results from "a unilateral emphasis put on one or more points of view and from a coherent representation of a series of phenomena, scattered and differentiated in

reality, sometimes more and sometimes less frequently present and sometimes altogether absent and adapted to those unilaterally expressed points of view."³³ The function of the *Idealtypus* is therefore to act as a criterion of selection for those aspects of reality considered relevant to an understanding of an event, an ideology or an institution. Every individual historical event or entity is in fact infinitely complex, and would be impossible to understand if we did not have at our disposal a conceptual tool capable of identifying within it a finite number of connotations useful to those wanting to understand it. To a greater or lesser extent, these theoretical constructions are able to approach the concrete reality of the subject under investigation, and sometimes they can entirely depart from it. But this does not undermine their usefulness as models with which to compare concrete historical phenomena with a view to placing them in a coherent conceptual scheme that will allow them to be understood. The attempt to understand the nature of sovereignty can therefore lead us, as it has done, to the conclusion that sovereignty has never existed in history except in imperfect forms and that until relatively recent times it only existed in an embryonic form, a conclusion that in no way diminishes the usefulness of the investigation.

However the concept of *Idealtypus* is useful only initially. Actually, as applied by Max Weber, it is only a criterion of interpretation of reality (as such present only in the mind of the historian or of the social scientist) and therefore it is founded on the premise that historical reality does not have a meaning in itself but can only receive one from whosoever studies it. Max Weber is perfectly aware of the fact that many *Idealtypen* correspond to ideals that motivate the behaviour of humans in historical reality. Likewise he is perfectly aware of the fact that the values of people that claim to understand historical reality are an integral part of the understanding process as they determine the choice of the subject under investigation and the manner in which the *Idealtypus* is developed. Nevertheless, his ideal of the objectivity of science induces him to maintain a radical separation between the subject and object under investigation and to remove the former from the historical process. The values of the investigator are therefore the result of a choice of his own, ultimately an arbitrary one, while those of the actors of the process are only open to an inquiry which is not logical but psychological, and that therefore does not acknowledge their validity but only their existence in fact.

But in reality Max Weber's irreducible conflict between subject and object does not hold. The arbitrariness of the subject's choice of the

values that guide his research is necessarily translated into an arbitrariness of knowledge itself, that is to say into a dissolution of the concept of truth. In historical reality, subject and object inhabit the same world and are linked by a *continuity of meaning*, so that whoever comes next continues the advance towards new horizons, while sticking to the same general direction, or route, followed by his predecessors, even if this is at the cost of failures and diversions. Action, as far as it has a sense, is always understanding, and understanding is always action, as far as it is an event. And the acknowledgement of this continuity of the meaning of history implies recognition of the cumulative nature of the development of culture (in the elevated sense of the word). However, this recognition must certainly not be allowed to result in a return to the naïve nineteenth-century conception of history as a linear progress, in which *radical evil* itself is gradually overcome through the refinement of civilisation. Whoever reflects on history in the wake of the terrible events that marked the twentieth century cannot fail to recognise the dialectic nature of the historical process and the hefty presence in it of violence and of oppression of humans by other humans. But this recognition is not incompatible with a conception of history as a journey, certainly a laborious journey and one full of obstacles, of the human race towards some form of unity. The diversity of values that motivate the behaviour and reflections of humans is the result of the different conditioning to which they are subjected by historical circumstances. However those values, in their diversity, are in any case the expression of a single inclination present *in nuce* in humans since their very appearance on the planet. It is an inclination that is destined to emerge explicitly and consciously as a system of universal values once the evolution of circumstances has led to the overcoming of the technological, economic, social and institutional barriers that have obstructed and continue to obstruct reciprocal understanding and the free circulation of ideas. This conception of history implies a refusal of Weberian polytheism, inasmuch as it postulates that the historian, if he wants to obtain a correctly selective and deep understanding of past events, should *listen* to those events, pick up the message addressed to him by those who have gone before, in spite of the vagueness and ambiguity of that message. On this basis he should also select the values that will guide his investigation. This certainly does not mean affirming that today we can show the objective superiority of some values over others, nor, *a fortiori*, that we can legitimately force others to adopt them. But it does mean that we must reject the temptation to consider our own choice of guiding values as totally arbitrary and as such

exempt from discussion. Only in this way can we free ourselves from ethical and cognitive relativism and regain the idea of the existence of one morality and one truth, albeit in the full knowledge that nobody has a monopoly on either.

This philosophical inclination inevitably has repercussions on the nature of certain important concepts of the historical and social sciences. They are the ones (like democracy, federalism, sovereignty) that denote at once an aggregate of facts and values, and that lose any explanatory effectiveness when their value aspect is removed. This happens because what they denote is a reality *in motion*, a reality that progressively fulfils the value that is part of it and that is the driving force behind its development. It therefore cannot be understood if that value is removed from its very concept.

Thus, when it comes to ideas such as sovereignty, recourse to the Weberian *Idealtypus*, a useful tool initially, should be replaced by a recourse to a more adequate instrument, that is to say to the Kantian *idea of reason*.³⁴ The Kantian idea, like the *Idealtypus* of Max Weber, is a model that finds no true correspondent in reality. However, whilst in the Weberian *Idealtypus* the model is in its entirety created by the individual who studies the historical-social reality, in the Kantian idea it is present as an ideal within reality itself. This means that subject and object of the historical-social investigation are linked by an intrinsic continuity of meaning and are part of the same process. The content of the Kantian idea does not depend on a subjective and therefore arbitrary choice of values by the historian or the social scientist. It corresponds to objective tendencies in society, of which the historian or social scientist is in turn a manifestation, and that he must, in any case, try to *understand*. The Kantian idea therefore tends, although asymptotically, towards its own accomplishment in the course of the historical process because of the tension between the imperfection of reality and the awareness, implicit or explicit even in the mind of the actors, of the distance separating reality from values. These values are, at once, the ideas of the actors themselves and the ideas of those who aim to understand what the actors are or were doing. The Kantian idea is not an arbitrary instrument with which to compare the phenomena of historical-social reality, but rather constitutes the intrinsic ideal towards which the phenomena of historical-social reality spontaneously evolve and that will be accomplished in the ideal moment that is the end of history. In this way is it possible to overcome both the arbitrary nature of the value choices made by the historian or the social scientist — which must be in tune with those of the actors of the

process —and the purely “factual” or “objective” nature of the latter, which, in order to be understood, can and should also be examined according to their validity, that is to say their greater or lesser closeness to the ideal.

NOTES

¹ For a detailed analysis of the constituent elements of power see the classic work of Hans J. Morgenthau, *Politics among Nations. The Struggle for Power and Peace* (Brief Edition, revised by Kenneth W. Thompson), 7th ed., New York 1993, p. 124 onwards.

² In an essay on sovereignty we might expect the definition of the subject of the analysis to be given at the end and not at the beginning. But in reality the objective of this essay is not to define sovereignty. The definition of sovereignty as the power to make ultimate decisions or, alternatively, as the control of an inexorable power is taken for granted, albeit in the full knowledge that it would not be accepted by one part of the doctrine. Moreover it is not an arbitrary definition, as it is in any case shared by the major part of the same doctrine and can replace the *definiendum* in many of the contexts in which it is used in political and juridical language. The aim of the investigation is, rather, to verify the consequences of the strictest possible use of the term, in accordance with the definition that is given at the beginning of the essay, of the correct formulation of the expressions in which it is commonly employed and of the meaning of the terms related to it.

³ See Bertrand de Jouvenel's important book *De La Souveraineté. A la recherche du bien politique*, Paris, 1955.

⁴ Francis Fukuyama, *The End of History and the Last Man*, New York, 1992. The literature on this argument is now very vast. We only cite, as an example, Jean-Marie Guéhenno's short but very clear essay, *La fin de la démocratie*, Paris, 1993. On the subject of the alleged disappearance of sovereignty and power in international relations, see, amongst other works, Robert Cooper's *The Post-Modern State and the World Order*, London, 1996, which divides the states present in the world today into three categories, roughly according to their degree of technological, economic and civil evolution. These are the pre-modern states, which have still not reached full political subjectivity and which are characterised by tribal divisions and by deep internal splits; the modern states, which have reached the stage of sovereignty and which act on the basis of the dictates of the traditional *raison d'état*; and the post-modern states, which have gone beyond being conditioned by the traditional *raison d'état* and by power and which have established among themselves a type of relationship based on collaboration and on a reasonable reconciliation of their interests. Cooper is obliged to take note of the fact that the United States, as the hegemonic world power, is an exception, as it has to be placed in the category of the modern states, despite having reached a high level of development. In the field of internationalist literature see Bertrand Badie's volume, *Un monde sans souveraineté*, Paris, 1999, which supports the thesis that the state is no longer the exclusive protagonist in international relations, since its role is taken on more and more often by the increasing number of international organisations and by non-governmental organisations. This thesis is now repeated *ad nauseam* by innumerable contemporary observers. Badie also claims that in the post-bipolar world power is progressively being replaced by responsibility, thus setting in opposition two

justifications for the behaviour of humans and states that in reality are inextricably linked, inasmuch as the exercise of power is also the exercise of responsibility, both in domestic and in international relations.

For an analysis of these problems from a federalist perspective see, in this review, Luisa Trumellini "Global Interdependence and the Crisis of Statehood", Year XLII (2000) p. 123 onwards, Nicoletta Mosconi, "The Crisis of the States as a Criterion in Historical and Political Analysis", Year XLII (2000), p. 185, as well as, in a broader context, Sergio Pistone's essay "The *Raison d'Etat*, Peace and the Federalist Strategy", Year XLIII (2001), p. 10 onwards. For a world federalist viewpoint, again in this review, see Lucio Levi's essay "The Unification of the World as a Project and as a Process. The Role of Europe" published on p. 150 in the year XLI (1999).

⁵ This problem is one of the main subjects of Carl Schmitt's reflection. It was reviewed recently with exemplary clarity by Ernst-Wolfgang Böckenförde, even though the solution proposed remains ambiguous. See, for example, the essay "Begriff und Probleme des Verfassungsstaates" in *Staat, Nation, Europa*, Frankfurt. A. M., 1999.

⁶ The origins of the theory of popular sovereignty go back a very long way. Its classic formulations are those of Rousseau and of the Abbé de Siéyès. But in the two previous centuries, reference to the people had emerged in the essays of the so-called Monarchomachs, both Calvinists like the author of the *Vindiciae contra tyrannos*, and Jesuits, even though their writings were instrumental to the religious disputes of that time and aimed to throw into question the legitimacy of those monarchies that were imposing creeds and practices that the Calvinists or the Jesuits saw as heretic, resorting to the idea of the violation of a pact between the people and the monarch (who also continued to obtain power from God, albeit conditionally). Likewise the idea re-emerged in seventeenth-century England. See some of the essays contained in the two volumes edited by Joyce Lee Malcolm, entitled *The Struggle for Sovereignty. Seventeenth Century English Political Tracts*, Indianapolis, 1999.

⁷ It is worth underlining that possessing an irresistible power is identified by many with control of the army (or of the power to recruit one when necessary). This identification can be a useful approximation of reality in normal situations. However, the army is an institution whose loyalty and discipline depend on the existence of a sufficient degree of general consensus, often lacking in situations of crisis. Which brings us back, once more, to the people.

⁸ The link between legal system and sovereignty is refuted by H.L.A. Hart in his classic work *The Concept of Law*, Oxford, 1st ed. 1961, 2nd ed. completed with a postscript, 1994. Hart hinges his theory of law on the observation that every legal order includes two categories of rules: primary rules, which refer directly to citizens and imposing on them specific actions and omissions, and secondary rules, which regulate the structure and the functioning of institutions that produce and apply primary rules (rules of procedure and, ultimately, constitutional rules). According to Hart, the identification of a legal rule with a rule enforced through the threat of sanctions, which could be applicable, albeit imperfectly, in the case of primary rules, is not applicable in the case of secondary rules, which do not involve sanctions. This distinction, according to Hart, reveals the fictitious nature of the problem of sovereignty, whose ultimate source should be an authority that has the power to ultimately impose the observance of law through the application of sanctions, whereas the structure and behaviour of that authority, in turn, is regulated by norms (the secondary rules) which do not carry sanctions. Hart is however compelled, in order to avoid running into pure legal formalism, to admit that rules, especially secondary rules, should be "generally accepted," i.e., based on the approval of institutions and citizens. But this admission does not lead Hart to conclude that the foundation of the legal system is popular sovereignty, though he does ask himself the question, albeit in passing. Examining the fact

that no institution can consider itself sovereign because no institution, including the electorate, is exempt from rules that limit its sphere of action, Hart concludes (p.78): "Are we to say here that the society as a whole is sovereign and these legal limitations have been tacitly ordered by it, since it has failed to revolt against them? That this would make the distinction between revolution and legislation untenable is perhaps a sufficient reason for rejecting it." For Hart therefore, who also denies the existence of any necessary link between law and morality, the foundation of every legal system is purely formal. It coincides with the set of secondary rules of which it is comprised, which in turn do not derive their legitimacy from the nature of the subject who dictates and enforces them or from the values by which they are inspired. Furthermore, every revolutionary historical break between two successive legal systems is totally outside the sphere of law.

This position reflects an implicitly conservative view of history that rejects any evolutionary conception of law and is limited to the question of the formal criteria according to which, in each individual case, we can decide whether or not what we are faced with is a legal system. Hart's theory can only be refuted by contrasting this conservative view with a "progressive" philosophical-historical view according to which law tends to actualise its own idea, and therefore to perfect itself, in the course of its historical development. We shall return to this point in the course of this essay. Adopting this perspective, revolution, which Hart refuses even to take into consideration, is linked to the exercise of the constituent power of the people, i.e., to the affirmation of the fundamental principles of a legal order that an institutional system now superseded by the evolution of social life is no longer capable of realising, thus depriving it of its original content. On the other hand, the consensus that supports the system in phases of equilibrium is only the sediment of a constituent will that has reached its objective. Revolution is therefore the mother of law.

⁹ The *dualist democracy* concept, which highlights the essential nature of the difference between the constitutional decisions taken by the people and those taken by the government (in the Anglo-Saxon sense of the state's institutions as a whole) is the main focus of Bruce Ackermann's reflection in his beautiful volume *We the People. Foundations*, Cambridge, Mass./London, 1991.

¹⁰ Numerous historical references to this theme are found in Bertrand de Jouvenel's previously cited work, p. 252 onwards.

¹¹ This thesis has been used repeatedly by politicians such as Tony Blair and Giuliano Amato. In the literature, Ernst-Wolfgang Böckenförde, amongst others, has expressed himself along these lines in "Welchen Weg geht Europa?", in *Op. cit.*, p. 68 onwards.

¹² See for example the recent volume by Jean-Marc Ferry, *La question de l'Etat Européen*, Paris, 2000, p. 43 onwards.

¹³ This assertion means that the state's historical evolution is driven not by its incomplete coincidence with the people, and therefore by the emergence of contradictions between the historical states and the respective peoples. On the contrary, it is driven by the fact that the historical manifestations of both state and people do not coincide with the concepts that are, as we shall see, those of a universal state and a universal people. The factor responsible for the historical evolution of the state, the factor that has been the cause of the successive transformations that have led us from the Greek city-state to American continental democracy, is therefore the fact that, in certain circumstances, the contradiction between a specific form of state (and of people) and the pure concept of state (and of people) becomes acute and conspicuous. It gives rise to the events that determine the birth of a new form of state (and people), which continues not to coincide with their pure concepts, but which has moved one step nearer. This does not change the fact that, prior to the birth of a new state (and of a new people), the evolution of the relations of production, of the situation of power, and of the capacity of institutions to respond to the primary needs of citizens,

create the *conditions* for this kind of institutional change. And yet it remains true that a new people is born at the moment in which it becomes aware of the need for the birth of a new state and that a new state is born out of this awareness, and as such should be clearly distinct from the material conditions that make it possible.

¹⁴ For a deeper discussion of the "right" to secede see, in this review, Nicoletta Mosconi, "The right to secede", year XXXVII (1995), p. 40 onwards.

¹⁵ For a look at the way the conflict between federation and confederation has shaped up in the American constitutional debate that accompanied and has followed the Philadelphia Convention, see in this review the essay by Franco Spoltore, "The debate between American federalists and anti-federalists from 1787 to 1800 and its current situation", Year XLII (2000), p. 156 onwards.

¹⁶ On the idea of the people before and above the Constitution, see Carl Schmitt, *Verfassungslehre*, cit., p. 238 onwards.

¹⁷ The theory of popular sovereignty, referring to constituent moments and to consensus for the Constitution, is therefore perfectly compatible with Schumpeter's classic critique of democracy (in *Capitalism, Socialism and Democracy*, London, 5th ed. 1974, and with its identification with the idea of *polyarchy*, developed by Dahl throughout his work.

¹⁸ For a general outline of the approach to this problem, see Mario Albertini's essay, "La Politica", in *Il Federalista*, II (1960), today republished in *Una rivoluzione pacifica. Dalle nazioni all'Europa*, Bologna 1999. Bruce Ackermann's analysis, from this perspective, of the constitutional history of the United States, in the work previously referenced, is also extremely interesting.

¹⁹ See Stephen D. Krasner's volume, *Sovereignty. Organized Hypocrisy*, Princeton, 1999.

²⁰ It is not necessary to recall here the sheer wealth of literature on the idea of nation. We need only recall that in federalist culture the fundamental reference is still Mario Albertini's classic work, *Lo Stato nazionale*, Milan, 1960. See also Michael Walzer's *What it Means to Be an American. Essays on the American Experience*, New York, 1996, in which the author draws a distinction between political and cultural appurtenance, which applies to American citizens, particularly to those of non British origin, claiming that the feeling of a common political loyalty is sufficient to define a specific American identity. This is a problem that will be examined more deeply in the third part of this essay. We must underline, however, that a political sense of belonging cannot be a loyalty based on nothing, but is the result of the common acceptance of a certain type of common life, i.e., of certain values that prevail over those that define a "culture", inasmuch as they guarantee the unity of the political community. In fact, in the event of conflict between the latter, anyone identifying with any of these must be ready to renounce them in the name of the superior requirement of the safeguarding of social existence, and hence of the values that underpin it. Lack of this hierarchy would mean the creation of a state of virtual civil war.

²¹ See Carl Schmitt, *Der Begriff des Politischen*, Berlin, 1932.

²² See, for example, Hermann Heller's classic statement, in *Staatslehre*, Leiden 1934, 6th edition (Tübingen, 1983) p. 245 onwards.

²³ The problem of the incompatibility of sovereignty with the idea of empire is mentioned by Bertrand Badie, *Op. cit.*, p. 28 onwards.

²⁴ It is to be noted, moreover, that all this means negating the distinction that is commonly drawn between *internal* and *external* sovereignty (the latter being founded on recognition by the international community) as if they were two clearly distinct prerogatives. The recognition of a state by the international community coincides as a rule with the recognition of the existence of a relatively autonomous entity, equipped as such with a degree of sovereignty *tout court*. And yet this is not a prerequisite of sovereignty, unless

from the purely formal perspective of international law. No one could claim that the People's Republic of China was not a sovereign state before its recognition by a large part of the international community. We can therefore reasonably claim that sovereignty is always only internal, and that international relations only impose different degrees of limitation of sovereignty on the different states. It is for this reason that sovereignty will only manifest itself to its fullest extent when the international aspect of politics is transcended and a fully autonomous world people is born. See p. 209 onwards of C. E. Merriam, Jr.'s classic volume, *History of the Theory of Sovereignty since Rousseau*, New York, 1900, reprinted in 1968. See also Krasner's cited work.

²⁵ See John S. Searle, *The Construction of Social Reality*, New York, 1995, particularly p. 90 onwards and p. 115 onwards.

²⁶ See *Colonial Origins of the American Constitution. A Documentary History*, edited and with an introductory essay by Donald S. Lutz, Indianapolis, 1998. See also, in this review, Lorenzo Petrosillo and Elio Smedile, "The Origins of Modern Federalism: the 'Covenant' in American History", XXXVIII (1996), p. 175 onwards.

²⁷ From the very similar perspective of criminal law, this theme is dealt with by Otfried Höffe, *Gibt es ein interkulturelles Strafrecht? Ein philosophisches Versuch*, Frankfurt s. M., 1999.

²⁸ See, in particular, Chapter III of the first part of *Wirtschaft und Gesellschaft*, Tübingen, 5th ed. 1976, and also "Die drei reinen Typen der legitimen Herrschaft" and "Soziologische Grundbegriffe" (§ 7) in *Gesammelte Aufsätze zur Wissenschaftslehre*, Tübingen, 3rd ed., 1968. In truth, in the short notes that Weber devotes to this problem, he hints at a legitimacy founded on rules that are "goal-rational" (*zweckrational*). In this way the values are in some way introduced into the picture. But the rules that are "goal-rational" are, in Max Weber's view, essentially those belonging to natural law, while "the most frequent form of legitimacy today" is that founded on the will to comply with "rules created in a formally correct manner and in the usual forms".

²⁹ In *Legitimation durch Verfahren*, Frankfurt s. M., 1982.

³⁰ *Die Postnationale Konstellation. Politische Essays*, Frankfurt s. M., 1998, particularly the essay "Die postnationale Konstellation und die Zukunft der Demokratie".

³¹ See Nicoletta Mosconi, "Tolerance and the Multicultural Society", *The Federalist*, XXXVIII (1996), p. 192 onwards.

³² See, in this magazine, Nicoletta Mosconi, "The identity of the individual between ideology and reason", XXXVI (1994), p. 196 onwards.

³³ In "Die 'Objektivität' sozialwissenschaftlicher und sozialpolitischer Erkenntnis", *Op. cit.*, p. 191.

³⁴ For a stringent critique of the foundations of Weberian methodology, see Eric Voegelin, *The New Science of Politics*, Chicago, 1952. An interesting, if only briefly mentioned conflict between the Weberian and the Kantian approach to historical knowledge can be found in one of the last letters Jaspers wrote to Hannah Arendt, in 1968. See Karl Jaspers/Hannah Arendt, *Briefwechsel 1926-1969*, Munich, 1985 (a letter dated November 16th 1968).

Notes

THE SCIENTIFIC REVOLUTION AND GENETICALLY-MODIFIED ORGANISMS

Charles Darwin was well aware of man's capacity to influence the selection of plant and animal species. This much emerges from his deliberate use, when presenting his revolutionary theory, of the expression *natural* selection to distinguish it from *artificial* selection. That the latter was introduced by man as long ago as ancient times is demonstrated by the episode in *Genesis* describing Jacob's feat with the speckled sheep and goats.

Today, genetic engineering can produce wonders far greater than Jacob's. Until a few decades ago, quantitative and qualitative improvements in farming were still the consequences of technological innovations in the fields of mechanics and chemistry and of selection practices applied to plants and animals. But the agricultural revolution that we are witnessing today is based on a new factor which, in view of its vast potentialities, gives rise both to grand hopes that it might become possible to meet the food requirements of a rapidly growing world population; and to numerous ethical and ecological concerns. This factor is the — increasingly widespread — application of gene manipulation techniques to plant and animal species. Indeed, thanks to these techniques, it is now possible to extract from some organisms the genes responsible for given characteristics, or for the production of, for example, vitamins and toxins, and to insert them into the genomes of other organisms with which the former would never have been able to combine naturally, thereby creating genetically modified organisms (GMOs). It is an innovation that has left public opinion perturbed and one to which states, in particular the European states, are responding on an individual basis, governed by the desire to defend their national interests and by the emotional reaction of public opinion in each country.

For as long as this new capacity remained the province of laboratory research and medical application, concerns over possible dangers connected with its use were limited to the sphere of scientific debate. And in

any case, the benefits appeared so great as to cancel out any doubts (such as when the human gene for insulin was inserted into the genome of a bacterium and led, at last, to the mass production of insulin for therapeutic purposes). Concerns grew when GMOs entered the human food chain and, at the same time, the inefficiency of the institutions in preventing serious contamination phenomena — such as “mad cow” disease and dioxin-contaminated chicken and fish — first became apparent.

One example, in particular, illustrates the contradictory nature of this situation.

The spraying of the potent toxin of the *thuringensis Bacterium* over crops as a method of pest control never sparked off any protest campaigns, but when one of its genes was introduced directly into the genome of the plants, to make them able themselves to develop defences against the insects capable of destroying them, then the bacterium became emblematic of the dangers of GMOs. It is important to recognise that the fear which spread and which has encouraged the birth of anti-GMO campaigns and movements has a very real basis: man has shown that he is capable not just of channelling, but also of creating diversification of species. But it must also be recognised that this is knowledge that cannot now be destroyed, knowledge that, as in the case of any other discovery or invention, we must learn to govern.

* * *

When attempting to make short-term predictions on the spread of transgenic crops, it is important not to underestimate the inherent capacity to spread possessed by all new cultivation techniques. We have already seen how, in the past, the introduction of new varieties had a huge impact on food production in most of the world’s developing countries. Indeed, between 1965 and 1969, the area given over to the cultivation of new varieties of wheat and rice — these varieties being the fruit of natural cross-fertilisation — rose from a hundred hectares to almost fifteen million hectares, allowing India to triple its annual wheat production, and China, in the space of twenty years, to double its production per hectare of rice and wheat. Looking at today’s GMOs, a similar trend appears to be emerging: even though the USA’s very first fields of transgenic crops were planted only six years ago, today as much as twenty percent of the land given over to the cultivation of grain in the USA is planted with genetically-modified seed, while throughout the world as a whole, twenty-five million acres of land are now cultivated using transgenic

seeds.

At the same time, it cannot be ignored that an uncontrolled spread of GMOs could have effects, the consequences of which it is not easy to predict, on the global distribution of certain products — effects which could create very severe problems for the states affected and could, therefore, also create security problems. Just imagine what would happen to the Philippines, where thirty percent of the population depends economically on the production of palm oil, were this product to be extracted, as is now possible, from transgenic *canola* plantations in Canada. On the other hand, even were Europe and North America to begin moving in the direction of restrictions on, or reductions of, per capita food consumption (particularly meat consumption), these efforts would, today, still not be sufficient to satisfy the growing food requirements of Asia and Africa. Indeed, so-called organic farming (based on crop rotation, on the use of natural fertilisers and on natural methods of controlling diseases and pests) cannot realistically be seen as a solution to the world food problem: using these techniques it would be possible to produce only 60-85% of that which is produced using traditional methods — unless of course greater areas could be cultivated, which in turn would lead to increased water consumption and erosion of the land. For the moment, organic farming seems, therefore, to be only a partial solution, and one that can be adopted only by regions, such as western Europe, that have a considerable (continental) capacity for overproduction of food and a high enough level of wellbeing to allow them the luxury of eating less while spending more.

* * *

How are these contradictions being tackled? What political choices are being made by states and what proposals advanced by society and the world of science?

With reference to the states, while the USA and several other countries, China first and foremost, are tending to favour, on a legislative and commercial level, the study and spread of GMOs, Europe is striving to slow down the process. It must also be added that the distinction that, in Europe, is made by parties and movements that declare support for transgenic applications in medicine, while rejecting them in the alimentary sphere, is based on a dividing line that — since it became apparent that genes capable of producing vitamins useful for eradicating serious disease can be introduced into various varieties of plant, and clear that there is an interaction between biogenetic therapy-oriented research and

agricultural applications — is becoming extremely blurred.

These different attitudes do not therefore have any real scientific or ethical basis, but are instead a reflection of an existing power situation. The USA is striving to preserve its world leadership in the biotechnology sector and as an exporter of agricultural produce all over the world. China, meanwhile, is anxious not to fall behind in the application of a technology that offers it the prospect of consolidating its autonomy in the provision of its foodstuffs, an autonomy that will enable it to cope with what is predicted will be one of the greatest mass migrations from the country to the cities that mankind has ever seen (around 150 million people); indeed, this phenomenon, together with the prospect of an increase in per capita consumption, will render it necessary to increase still further the yield from agricultural land. The European nations on the other hand, despite having contributed to the research and development of biotechnologies, now find themselves faced with a series of problems: the need to reform the Common Agricultural Policy; the need to adapt production systems in response to the growth in international competition; the prospect of the enlargement of the EU to countries wanting to enjoy the same advantages that EC, and subsequently EU, farmers have for years enjoyed; the crisis of legitimacy that, since their glaring impotence and inefficiency in the management of the “mad cow” crisis came to light, has rocked both national and European health control authorities.

In Europe therefore, as far as these issues are concerned, confusion reigns. This fact is amply illustrated by the behaviour of the European Commission which, since 1990, has issued directives seeking to reconcile its wish, on principle, to approach with caution the production and consumption of GMOs with its desire not to penalise the biotechnology industry in the various member states. As a result, by the time the next directive is issued — a directive that will stress the opportuneness of labelling genetically modified products in order to allow consumers to recognise them — in some countries over 40% of tested maize on the market will, according to data released by the French food safety organisation, already present traces of GMOs and a number of transgenic crops will still be being cultivated in open fields (maize, beetroot, rape, potatoes, sunflowers, grapes, poplars, coffee, tobacco, fodder crops, etc.). In truth, even were Europe to place a complete ban on GMOs, a decision that could not fail to generate commercial tensions between Europe on the one hand, and the USA and China on the other, it would still be difficult to regain full control over the natural origins of products introduced into the European food chain. Incidentally, we actually lost

sight of the natural origins of food products long ago (although no one ever worried about it until now), given that the wheat, rice, potatoes, tomatoes and strawberries we eat — to cite just a few examples — are no longer the original natural varieties; those have long since disappeared.

The attitude of the anti-GMO protest movements meanwhile has, to date, not differed all that much from that of the peace movements. While the latter demand the dismantling of nuclear and other arsenals, the former call for the eradication of transgenic farming and the boycotting of products containing traces of GMOs. But the getting rid of existing arms, like the elimination of crops deemed to be dangerous, would not eliminate man's capacity to build new bombs or to develop new GMOs. The question that needs to be asked therefore is this: what political instruments can, at world level, bring the study and production of GMOs under stricter control?

As far as the reactions of the world of science are concerned, it is possible, as highlighted by a recent American¹ report, to identify five broad aspects of the GMO debate. Three of these were analysed by the report and are: the dangers to human health, the possibility of environmental contamination, and the risks associated with the possible emergence of more resistant forms of plant disease. The other two, not dealt with in the study, are the possible repercussions on agriculture in the Third World and objections, on principle, against interventions deemed to be “unnatural.” The report examines only the products themselves and not the processes by which they were created, declaring explicitly in the introduction that it does not “address philosophical and social issues surrounding the use of genetic engineering in agriculture, food labeling, or international trade in genetically modified plants.”

Regardless of how one might judge the conclusions of this report — as far as the efficiency of existing controls are concerned, they are rather over-optimistic — this approach establishes a clear boundary between what falls within the sphere of scientific investigation and what falls within that of politics and international relations. But presumably, this is only in line with what any scientific committee, national or international, might do. It has to be realised that no type of technical body or committee of experts can take decisions that, in the final analysis, must be taken in a political setting by political bodies.

Gordon Conway, current president of the Rockefeller Foundation, which has funded important research in the field of genetic engineering, claimed that the ideal way of overcoming widespread hostility to GMOs would be to establish an independent European, or even world, authority.

In other words, an impartial body with the capacity to test the effects of transgenic products both on the environment and on human health.² The idea behind the proposal is to reassure, using scientific arguments, a public that has been left bewildered by inconsistent political decisions and by the clash of opposing interests. But what decision-making and sanctioning power would this authority have? Even were it to be established, it would be unlikely to produce findings and conclusions much different from those contained in the aforementioned National Research Council report. Moreover, in Europe, the European Commission already has plans to set up a food authority founded on the principles of independence, excellence and transparency. Having said that, it has also established that risk situations must continue to be managed by existing Community institutions, in other words that they must remain within the sphere of the control regulations agreed by the states, thus admitting that this new authority will ultimately be conditioned by the intergovernmental politics of the member states.

Unfortunately, however, the problem is more general than this, and the growing delay in the processes of regional unification in the world threaten to trigger increasingly serious biotech crises. The unregulated production and marketing of GMOs both stem from the agricultural imbalances that have been created on a continental and on a world scale. The responsibility for these imbalances, since they are closely linked with the energy, production and trade policies pursued by states, in particular by the largest, most highly populated and most developed ones, must lie with these states. It is clear that a problem of this magnitude cannot, in a fragmented world, made up of almost two hundred states, be tackled and solved through reform, however radical, of the existing international bodies and institutions, or through the creation of new, but similar, bodies. Neither is the creation of a democratic world government an immediately achievable objective. What is needed is for a transitory period to take shape, a period in which it might be possible to reduce the current chaos in the biotechnology sphere and to render feasible and credible efforts to create large regional (continental) federations in the world as the first step towards the creation of a world federation. This is by no means a new idea, indeed it was considered even prior to the creation of the United Nations and analysed by historians of urban development like Lewis Mumford, who drew closer to federalist thought as it was becoming politically active in Europe and the world. It was he who, in the '30s, considering the problem of the irrational exploitation of the land and of agricultural resources, came to the conclusion that the only

solution was the creation of a "world federation of balanced regions."

* * *

In the light of the above observations, two conclusions can be reached. The first concerns the evolution of international equilibria and the other the future of scientific research and the regulation of intellectual property.

On an international level, the behaviour of Europe can be seen as increasingly indefensible and irrational: after all, in over fifty years, the continent has proved unable to advance beyond the creation of a weak institutional structure in which, embryonic expressions of supranational democracy and of continental monetary power aside, what has continued to prevail has been the determination of the Union's member states not to relinquish their sovereignty. This has been, and will continue to be, reflected negatively in all the most important aspects of domestic and foreign policy in all the European nations. One need only think — to remain on an agricultural note — of the crisis over Europe's Common Agricultural Policy,³ which has even seen chancellor Schroeder going so far as to propose a European federation in which control over agricultural policy would be restored to the nation-states. Or of the fact that the France's research minister feels able to claim that there is no need, in his country, to replace national legislation with European directives on biotechnological safety, given that France already has stricter standards in force.

The sooner public opinion and the political class realise that there is a political problem that must be solved before it is possible even to begin tackling efficiently the problems raised by these new gene manipulation techniques, the smaller the damage due to the uncontrolled use of GMOs will be. The need for this realisation can be seen as even more pressing when one considers the extent to which the possibility (or impossibility) of reducing the imbalances between rich and poor countries depends on the foreign policy and security choices made by the large continental states. Neither the European states, nor the institutions of the European Union are currently capable of playing anything like a guiding role in this respect. It is easy to imagine that, unless at least some of the European states can show the whole world that they are capable of forming a federal state, it is very unlikely that we will see, in other continents, the emergence of equally important movements towards the creation of new regional federations. And in the absence of these, there can be little hope of reducing the production and trade imbalances that are at the root of the

anarchic, and thus dangerous, trend now emerging in the use of new genetically modified products.

As far as the future of genetic research is concerned, in spite of the concerns generated, in public opinion, by the prospect of yet more new discoveries, an affirmation made by Einstein in the 1930s still holds true:⁴ it is technology, or applied science, that time and time again brings man face to face with problems of extreme gravity, not science itself. One need only consider the extent to which discoveries in the field of biogenetics are still in their infancy: it is still not possible, even today, to establish with certainty how many living species actually exist; and of those that do exist, only a relatively small number have been studied and classified, a fact illustrated by the vast difference between the scientists' estimation of the number of existing viruses (400,000) and the number actually classified (just 1,550!).⁵ No one can predict what the consequences of crossed biogenetic and biodiversity studies will be. What can be predicted, however, is that the influence (positive or negative) that their effects have on the future of mankind will depend on the institutions that man proves able to create. In fact – and this applies to biotechnologies too – only the state can adequately manage the relationship between scientific applications and the fulfilling of new needs, by governing innovative forces and by educating society about their application. But none of this can be brought about in the fragmented state framework of Europe today – a Europe in which innovation, a factor emerging in various fields, has long escaped proper national control, and in which the capacity to influence the balance of world power, in turn determining the directions followed by the various international organisations and agencies, is sadly lacking.

On a more general, international level, it is no coincidence that the current debate within the sphere of the WTO and the UN on the relationship between public and private research and on the regulation of intellectual property – two aspects of fundamental importance in the government of scientific applications in any state – has apparently failed to produce any real answers. The debate over the future of intellectual property rights, in particular, is bringing to light a currently unbridgeable gap between the interests of rich countries, like the USA, which are committed to strengthening the principle, in the biotechnological field as in others, of the commercial exploitation, on an international scale, of patents, and less developed countries, China and India first and foremost, that insist on their right to protect their markets and not to release data relating to their natural genetic resources.⁶ In this setting, Europe contin-

ues to be absent and, lacking in influence, unable to propose innovative solutions.

Franco Spoltore

NOTES

¹ *Genetically Modified Pest-Protected Plants: Science and Regulation*, report produced by a National Research Council Study Commission, National Academy Press, 2001.

² *Il Sole 24 Ore*, 16th September, 2001.

³ See, Alfonso Sabatino, "Reform of the Common Agricultural Policy and a European Constitution," in *The Federalist*, XLIII (2001), pp.99-124.

⁴ Albert Einstein, *Out of My Later Years*, 1950.

⁵ W. Wayt Gibbs, "On the Termination of Species," in *Scientific American*, November 2001.

⁶ See the article, "China opposition may delay plant genes agreement," published in the *Financial Times*, 24th October, 2001.

FORTRESS EUROPE OR OPEN SPACE? *

The European Union is based on a commitment to the common values briefly listed in the Treaty¹ as "liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law" and set out in greater detail in the EU Charter of Fundamental Rights. In addition, all member states are signatories to the European Convention for the Protection of Human Rights and Fundamental Freedoms which applies to all persons within their territories regardless of nationality or ethnic origin. The EU institutions are now also legally obliged by treaty to respect the Convention. Taken together, these documents offer EU citizens a vision of the responsible, humane society we are striving to build in our continent.

By its nature the European Union is multicultural. Geographically it stretches from the Mediterranean to the North Sea and the Baltic with member states ranging from Finland to Greece and from Portugal to

*Report at the 24th Congress of the UEF (12-14 October 2001).

Sweden, countries with widely differing histories, cultures and languages. Enlargement will further increase the Union's diversity. Moreover, many member states and applicant countries have long-established indigenous minorities. Although the rise of nationalism over the past 200 years led to new nation states being created on the basis of a deliberately fostered ethnic identity, their populations were in fact seldom as ethnically "pure" as politicians then and since have claimed. What is true is that attempts to impose uniformity on culturally and linguistically diverse groups have been a frequent source of conflict.

A further source of diversity is to be found in the thousands of displaced persons left homeless at the end of the 2nd World War. Many could not return to their original countries and settled instead in Western European states. As Europe began to rebuild, leading to the economic resurgence of the fifties and sixties, those same states began actively recruiting workers from other countries and continents. Most of this first wave of migrants and their descendants are now permanent residents.

Patterns of Migration.

Migration today needs to be considered from two main viewpoints: first, freedom of movement between EU member states; and, second, immigration from outside the EU.

On the first point, migration between member states was already foreseen in the European Coal & Steel Community Treaty (1951)² which protected workers in those industries from discrimination on grounds of nationality. In the Treaty of Rome (1957) this protection was extended to cover all forms of employment, including self-employment. Treaty negotiations were then initiated on the mutual recognition of qualifications with the aim of making migration easier. This in itself was a clear sign of its importance for the economy. The Maastricht Treaty (1993) went even further by introducing an EU citizenship³ for "every person holding the nationality of a member state" giving such migrants the right to vote in local and European Parliament elections anywhere in the Union, at the same time making the right to "move freely and reside in any member state within the territory of the Union" available to all citizens, whether economically active or not. These provisions were a logical development towards today's EU which, under the Schengen Accord, is largely free of internal borders, though it must be noted that "freedom of movement" rights do not apply to non-EU citizens however long they may have been legally resident in a member state, though they are

permitted to travel within the EU without a visa for a maximum period no longer than three months.

On the second point, it is not surprising that an area as prosperous, democratic, and committed to human rights as the EU should attract people wishing to lead better lives. Over the past century millions of Europeans have themselves emigrated to America, Australia and elsewhere for exactly the same reason and the countries where they settled have benefited from their presence. It has, for example, recently been claimed that the USA's more vibrant economy is helped by its comparatively liberal immigration policy. Immigration into the EU, on the other hand, is often seen as a problem rather than as a benefit. Yet most member states need immigrants, firstly because of their ageing populations—people are living longer, have fewer children, and the proportion of non-productive pensioners is increasing—and, secondly, because of shortages of trained workers in certain areas such as medical staff and teachers in the UK, information technology specialists in Germany, etc. EU citizens, accustomed to a high level of welfare, often fear that immigrants will be a drain on the public purse, but in many countries the opposite is true. Without immigration, past and present, it would have proved impossible to man the public services on which we all depend.

With globalisation the patterns of migration are changing: the numbers are larger, the geographical distances greater. A significant proportion of those wishing to enter the EU arrive as asylum seekers. For the most part they come from countries torn by civil wars or suffering from oppressive regimes, abuses of human rights, or intolerance of minorities; but because of the absence of a general immigration policy many economic migrants also attempt to enter the EU under the asylum heading. Often visa and other restrictions force them into the hands of criminal gangs who promise to smuggle them into EU countries. It is also worth noting that by far the largest number those fleeing war or oppression have found refuge in the world's poorer countries, in Africa and Asia. The number who reach Europe is small in comparison. Granting political asylum to those in genuine need is not only in accord with the Geneva Convention (1951); it is also moral duty in line with the common values to which the EU is committed.

Progress towards an EU policy on immigration and asylum has been slow. The first steps came with the Dublin Convention (1990) in which member states' governments agreed that a refugee should apply for asylum only in the country where he or she first arrives. This necessarily involved a degree of harmonisation of national rules, though in practice

the Convention has proved to be less than satisfactory and there have been discussions about revising it while retaining the basic principle that asylum seekers should not be allowed to "shop around." Meanwhile the intergovernmental approach continued in the Maastricht Treaty (1992) which simply listed asylum and immigration policy as "matters of common interest." It was not until the Treaty of Amsterdam (1997) that they were brought within the remit of the EU's institutions, subject to unanimity in the Council "after consulting the European Parliament" though with provision for visa agreements eventually to come under the codecision procedure. The draft Treaty of Nice extends codecision to certain cross-border judicial matters, though excluding aspects relating to family law. This remains the situation though a new and important step was agreed at the Tampere Summit (1999); namely, that there should be a Common EU Immigration and Asylum Policy. The legislative process, however, was not changed. It is still the member states' governments which are in control. The Commission drafts the directives, Parliament examines them, but in most matters the Council decides.

A Federalist Approach.

The present situation with regard to a controlled immigration and asylum policy is essentially one of cooperation between member states. While such cooperation is important, a federal Europe without internal borders also requires a more supranational approach. The policy itself and any related legislation should express a realistic view of the immigration needs of the EU and be fully subject to the co-decision procedure, thereby involving both arms of the legislature, Parliament and Council. Any "green card" system should not be confined to trained specialist workers. An additional annual quota should, as in the USA, be made available for more general immigrants. Control at the external borders would be best handled by absorbing the national immigration services into a single EU-wide organisation operating according to a common code of practice. The use of data systems at external borders such as Erodac for fingerprints, the Schengen Information System and the police SIRENE system should, while respecting the principle of confidentiality, be democratically accountable.

Such policies and practices must be based on the highest principles of human rights and migrants must at all times be treated with respect and have access where necessary to interpreters, lawyers and the right of appeal. Moreover, while the main policy direction is best agreed at EU

level, the principle of subsidiarity must be respected. The expertise of national, regional, or local authorities and NGOs will continue to be essential in applying the policy, and particularly in aiding the integration of the newcomers and their families into their new countries. In the current climate people fear that terrorists may infiltrate the EU posing as asylum seekers or legal immigrants. The risk, while real, is minute and should not be used as an excuse for slamming the door in the faces of genuine refugees. Closer police cooperation and the development of a federal investigation service offer the best protection against all forms of cross-border crime.

This paper has argued that mobility of labour through controlled immigration can be of benefit to the EU and its member states. At the same time, more serious effort needs to be put into tackling the gap between rich and poor countries which is one of the causes of migration. The EU should ensure that its policies and practices do not disadvantage the poorer countries and should use its own economic and political strengths to promote the improved trade, aid, investment, education and health programmes which are essential to the achievement of a more balanced distribution of wealth in the world.

Cultural Diversity in a Federal Europe.

Cultural diversity is inherent to the concept of European federation. The nature of the challenge facing us is already identifiable. Although for the most part people of different origins are living peacefully together there are unacceptable incidents of discrimination and even violence. The treaty of Amsterdam opened the door for EU legislation to combat discrimination in a number of different areas, and a European Monitoring Centre on Racism and Xenophobia has also been established, but these excellent initiatives, though valuable, are insufficient by themselves. If the European federation is to succeed as "an area of freedom, security and justice"⁴ based on the common values set out in the Treaties and in the EU Charter of Fundamental Rights as well as the European Convention on Human Rights, a change in public and private attitudes will be necessary.

The first step must be to promote acceptance of the multicultural nature of society as being essential to the success of the democratic way of life in today's Europe. Positive action towards this aim needs to be taken by both NGOs and governments. In the USA, which is largely an immigrant country, the "melting pot" strategy has been adopted. "Whatever your origins," this solution says, "we intend to turn you into an

American.” Superficially, this policy of total cultural assimilation, with everyone sharing a common identity, may to some extent have succeeded, though there are still deep divisions in American society. In Europe, with its long-established communities and many languages, it would be strongly resisted. A more suitable policy is needed, based on the principle of integration hand-in-hand with mutual respect for each other’s varied identities and cultures.

Over the past hundred years public authorities in most European countries have successfully implanted a sense of national identity in their peoples. The same methods — namely, through education and information — could be used to develop a pride in the EU’s multicultural nature, not simply as a form of tolerance but as a 21st century vision of a society enriched by its cultural and racial diversity, accepting it not as a threat but as a beneficial element in Europe’s social, cultural and economic life. This approach has already been used in many countries with positive results.⁵ Action in this respect is most likely to be undertaken at the national level.

At the EU level, the important issue is how to achieve equality and loyalty through integration. One obvious route is through a positive action programme to reinforce the policy on non-discrimination. Another would be for the immigrant to acquire the status of EU citizen which could be done by the process of naturalisation in his or her country of residence, though this is not always made easy. Moreover, there are such wide differences between the regulations in the various member states that harmonisation would almost certainly be resisted. An alternative, set out in a draft directive which is now being discussed, is to institute an “EU residence permit” guaranteeing equal treatment in relation to employment, education, and freedom of movement for any third country national legally resident in a member state for an uninterrupted period of five years, and provided he or she does not pose a threat to public order or internal security. This is a significant step forward. However, as the European federation is a new concept in the history of political structures and not intended to be simply an enlarged version of the nation state, a more radical approach could be through legislation to enable third country nationals permanently resident in the Federation to apply directly for EU citizenship.

Most people are naturally proud of their roots. They value the influences which go to make up their personal identity, and which help them to feel secure. This must be respected. Nevertheless, any talk of the purity of the race must be suspect. History tells us it is most unlikely;

biology tells us it is undesirable, for the long-term health and development of a species depends on genetic diversity. The same is true of intellectual and cultural life. Many influences from all over the world have helped to shape that multifarious collection of ideas and artefacts which we call “European culture,” leaving no doubt that diversity in this area too can be beneficial. The real question we must ask is not whether a multicultural society possible, because it already exists, but how can we benefit from this diversity in our midst? How can we live in peace together, each person confident in his or her own identity, and all being members of the same political community, enjoying equal rights?

What we now rightly hold to be the “European” values of democracy and human rights have had a chequered history on our continent with its centuries-old tradition of non-democratic forms of government, suppression of free speech, religious wars, nationalism, and the exploitation of colonial peoples. The challenge facing us today is how to build a new secular form of society based on mutual respect and openness towards each others’ culture, customs and religion. Coherence with diversity is a better founding philosophy for a federal Europe than the old ethnicity-based on concept of nation state.

John Parry

NOTES

¹ Treaty on European Union (TEU), Art 6.

² Treaty of Paris, 1951, Art.69.

³ See Consolidated Treaty Establishing the European Community (TEC), Arts.17-22. These do not go as far as Amendment XIV to the United States Constitution which states, “All persons born or naturalised in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

⁴ TEC, Art.61.

⁵ See, for example, *Finding our Way*, by Will Kymlicka for the methods used in Canada, and *Rethinking Multiculturalism*, by Professor Bhikhu Parekh discussing the British situation.

THE LIMITS AND DILEMMAS OF PACIFISM

The outbreak of a war is unfailingly accompanied by a resurgence of the peace movement. Contrary to common beliefs, this is not a "normal" concurrence. Similarly, it is not "normal" that the pacifist reaction in the West is prompted only by conflicts that involve the Western world.

In reality, both of these facts are aspects of what might be defined "the scandal of pacifism" — the scandal of a pacifism that, on the one hand, seems able to demand peace only in the presence of a war in progress (which, by definition, must already have taken its toll in human lives), and, on the other, reacts in a lukewarm fashion to, and often ignores entirely, the never-ending succession of conflicts involving the "marginal" populations of the world, almost as though the latter belonged to a lesser mankind.

In neither circumstance is war itself called into question. What is actually denounced and decried are the individual conflicts that have been and continue to be a constant element in international relations, and the result, inevitably, is that war becomes an issue of guilt and innocence, goodness and evil. In other words, the quest is to establish "current" responsibilities, while the problem of the persistence of the phenomenon, and thus of its ultimate roots, is relegated in importance, thereby cultivating "the dream of eliminating war without destroying the world of war" (Mario Albertini, "War Culture and Peace Culture," in *The Federalist*, XXVI (1984), p.15).

This attitude is the product of a world in which there exists no mechanism for preventing war; it is rooted, too, in the fact that war has been an instrument necessary for the *affirmation* of the values that have progressively emerged throughout the course of history. The affirmation of each new value demanded the overturning of an order in which that value had no place, and whose social framework was embodied by institutions that needed to be abolished and replaced with a new institutional structure (the rule of law, the democratic state and the welfare state) equipped with the mechanisms and instruments of government needed for the progressive realisation of the value in question.

The historical acquisition of these institutions has contributed to the transformation of the human condition, providing mankind with peaceful instruments for the *realisation* of values whose *affirmation* was secured within the sphere of war.

But while all this describes the management of the political-social reality within individual states, it does not yet apply in the setting of

international relations, a setting still characterised by marked inequalities and in which power relations between sovereign states, and thus trials of strength, continue to hold sway.

These considerations enable us to consider with greater clarity a slogan often used by the peace movements: "There is no peace without justice." If this statement is taken to mean that peace cannot be built in situations in which severe inequality or despotism prevail, then there can be no refuting it. The recent acts of terrorism can, to a large extent, be explained as the tragic revolt of politically and socially outcast peoples for whom religion, manipulated by leaders, is nothing more than a force of cohesion applied in a void created by the absence of any national cohesion.

But unless we endeavour to understand the root cause of war, we will remain trapped in the very dilemma that pacifists have never been able to resolve: *the dilemma of the just war*. Being a pacifist should mean being opposed to all wars, but anyone who accepts that peace cannot be affirmed without the prior affirmation of justice must also accept the need for a war that has precisely this end.

Moreover, the concept of the just war has also been extended to wars that are conducted in self defence. But what happens when there is a meeting of two "just wars"? What happens, in other words, when not only the war waged by the oppressed against the oppressors may be deemed just, but also the defensive reaction of the latter? In such a situation only one conclusion is possible: war is a necessity that must be accepted.

The attack on the Twin Towers illustrates, in fact, this contradiction: underlying terrorism there exists a problem, both political and social, of justice. But the question that we need to be asking ourselves — leaving aside the inevitable freedom crusade rhetoric of the American government — is whether, in the current international system, there can be a real and immediate alternative to the self-defence reaction.

In short, we are faced with a perverse mechanism whose very perversity is exacerbated by this latest form of war: indeed, terrorism, and its virtually uncontrollable instruments, will — in the face of increasingly widespread fear and a growing demand for a security that can be guaranteed only through trials of strength that will be regarded as inevitable, and even invoked — probably end up by throwing the peace movements into disarray.

* * *

Does this mean that we are faced with a problem to which there is no

solution? Or is there, instead, a perspective from which we might understand and tackle the phenomenon of war, with a view to creating the conditions necessary for its definitive abolition?

It is not enough to decry war or to appeal to man's better nature. A considerable section of the peace movement has repeatedly adopted this approach, which has been described as "probably a more dangerous attitude than that of the hard-boiled realist, who is solely concerned to avoid war if he can and to win it if he cannot" (Lord Lothian, *Pacifism is not Enough*, London, New York, Lothian Foundation Press 1990, p.220). It is more dangerous because it feeds the illusion that the sphere of war is distinct from that of politics — and thus of power — and relies on a form of voluntarism that, by definition, excludes the possibility of any rational control of events or of socio-political phenomena.

It is not voluntaristic, on the contrary, to affirm the need to submit the sphere of international relations to the choices, and thus also to the will, of men. "The objective of peace, which implies the wish to control, in the general interest, the politics of all states, and not just that of one's own, turns international politics into an autonomous object of human will. In all other circumstances — wherein each is concerned with controlling directly the politics only of his own state — international politics depends, above all, on the level of conflict between states, which is to say on a factor that overrides the will of everyone."... "Only the theory of supranational government — based on the awareness that relations between states can be controlled, and that there are means that can be used to end conflict between them — views international relations as a process built by men and subject to the choices of men, and thus as an activity whose cause is well known and can be explained perfectly without plumbing the unfathomed depths of the human soul or drawing upon theories that claim to explain it. From all other perspectives, the conflict between states appears fatal and international politics — with its traits characteristic of war, of trials of strength, and of the unequal distribution of power in the world — appears in one respect the consequence of an immutable human inclination that lies outside both our control and our conscience, and in another a realm within which it is possible only to know historically what has gone before and to adapt human conduct accordingly, but not to plan what should preferably occur" (Mario Albertini, *Il federalismo*, Bologna, Il Mulino, 1993, p.144).

Thus, the affirmation of peace advances at the same rate as the creation of constraints that human will cannot override, and that are based on the establishment of juridical relations between states. What is needed

therefore is gradually to transform areas of potential war into areas of internal peace, by increasing the dimensions of the state through the only institutional instrument that, without recourse to wars of conquest and through democratic procedures, allows this enlargement, i.e., through the federal state.

* * *

This answer to the problem of peace is, at the same time, the answer to the problem of justice. Justice is a value that, following its historical *affirmation* through the instruments of war, it has been possible progressively (albeit still incompletely) to realise within those states that have consolidated the sphere of statehood and introduced decision-making and governing mechanisms capable of assimilating and responding to the needs and requirements that brought it to the fore.

Internationally, however, given the lack of a single state framework, and thus of decision-making and governing mechanisms that might allow inequality to be tackled peacefully and democratically, the "realisation" stage has yet to be entered, and justice continues to be subject to the iron laws of the "world of war" — a world in which the pacifist dilemma can never be resolved. A solution to it will be found only by starting out on the road towards international democracy — by moving, through the federal unification of vast regional areas, towards world unification. The pacifist slogan should thus be turned around. The cry should be "There is no justice without peace," because only peace can create the conditions, material and in power terms, in which justice can be realised without recourse to the instruments of violence.

The need (increasingly linked to the need for world security) to implement major development plans targeting backward areas cannot be divorced from the need to create areas of peaceful stability. A true and responsible pro-international justice policy implemented by the advanced nations of the world must therefore constitute more than a transfer of resources and investments. Such a policy should be concerned, above all, with creating a basis for peace by promoting the parallel unification of the areas of the world that, left to their own devices (both politically and economically), would continue to generate instability and to constitute hotbeds of war and terrorism.

A policy of this kind might generate accusations of "imperialism," albeit (not being based on violent means) a kinder form than that seen in the past. In actual fact, in a world that can be seen as a community of des-

tiny, but not yet as a single and democratically managed political community, the adoption of this policy would be tantamount to a shouldering of responsibility. The alternative — acceptance of the fragmentation of vast world areas into small and medium sized sovereign states — would only perpetuate “the world of war,” a world in which the shouldering of responsibility would ultimately mean the use of violence in response to violence.

Herein lies the great example that a united Europe, with its history of decay prior to and rebirth after the Second World War, can set before the rest of the world. American aid, accompanied by the development of the process of unification, made peace among the continent’s nation-states, and their economic rebirth, possible. If a European federation is created, it will be in a position to acquire the independence needed to shoulder, in its turn, its responsibilities vis-à-vis the rest of the world. It will have to do this in a world that continues to be divided, and it will therefore continue to find itself subject to the principles of the *raison d’état* that, within its own confines, it will already have overcome. But its history and its drama (which indeed reflects the drama of the world) will undoubtedly condition its choices, just as its “political-cultural identity, that has risen to become the political culture of the unity of mankind” (Mario Albertini, “L’identità europea” in *Il federalismo*, Bologna, Il Mulino, 1993, p.290) will influence the destiny of the entire world.

Nicoletta Mosconi

ABOUT THE AUTHORS

NICOLETTA MOSCONI, Member of the Central Committee of the Movimento Federalista Europeo.

JOHN PARRY, Former Vice-President of the Union of European Federalists.

FRANCESCO ROSSOLILLO, Former President of the Union of European Federalists.

FRANCO SPOLTORE, Member of the National Council of the Movimento Federalista Europeo.

INDEX TO VOLUME XLIII (2001)

EDITORIALS

<i>Europe after Nice</i>	p.	3
<i>Law and Politics</i>	»	89
<i>Europe and Islamic World</i>	»	155

ESSAYS

SERGIO PISTONEI, <i>Raison d'Etat, Peace and the Federalist Strategy</i>	»	10
ALFONSO SABATINO, <i>Reform of the Common Agricultural Policy and a European Constitution</i>	»	99
FRANCESCO ROSSOLILLO, <i>Notes on Sovereignty</i>	»	161

NOTES

<i>From Europeanism to Federalism</i> (Nicoletta Mosconi)	»	125
<i>"Dollarisation" in Latin America and the Mercosur Crisis</i> (Stefano Spoltore)	»	129
<i>The Scientific Revolution and Genetically-Modified Organisms</i> (Franco Spoltore)	»	193
<i>Fortress Europe or Open Space?</i> (John Parry)	»	201
<i>The Limits and Dilemmas of the Pacifism</i> (Nicoletta Mosconi)	»	208

DISCUSSIONS

<i>On the Topicality of World Federalism</i> (Lucio Levi)	»	57
---	---	----

<i>The Political Phase and Strategic Phase of Unification Process</i> (Roberto Castaldi)	»	69
--	---	----

<i>Europe Needs a New "Shuman Initiative"</i> (Andrea Chiti-Batelli)	»	140
--	---	-----

THIRTY YEARS AGO

<i>Monetary Union and Europe's Political Alternative</i> (Mario Albertini)	»	78
--	---	----

FEDERALISM IN THE HISTORY OF THOUGHT

<i>James Madison</i> (Franco Spoltore)	»	143
--	---	-----

Some articles from recent numbers:

1997

Editorials

Mario Albertini.
The European Council in Amsterdam.
New Problems, Old Alignments.

Essays

Dominique Rousseau, European Constitutional Heritage: A Condition
for European Constitutional Law.
Guido Montani, The European Government of the Economy.

Notes

Globalisation and New Inequalities: The Limits of the UN Human
Development Report 1996.
Peace and Disarmament.
Peace through Law.
NATO-Russia Pact and Enlargement of NATO.

Federalist Action

Francesco Rossolillo, Political Report at 17th Congress of UEF.

Thirty Years Ago

Mario Albertini, The Fast Track to Europe.

Federalism in the History of Thought

Thomas Paine.

1998

Editorials

Europe and Emigration.
Sovereignty and the European Currency.
Moving Towards a World System of States.

Essays

Lucio Levi, The Theory of the Nation.
John Pinder, Spinelli Monnet Albertini.

Karl Lamers, The New Challenges for Europe After the Monetary Union.
Guido Montani, Towards the Monetary Union: A Comparison of Two
Methods.

Notes

Regional Unification and Reform of the United Nations Security Council.
The Twentieth Century as Interpreted by Ernst Nolte.
Federalism and Citizeship.
Sovereign Yet Independent: The Future of the G7.

Viewpoints

J. Isawa Elaigwu, Federalism, Regionalisation and Globalisation. Africa.
Sergei A. Beliaev, The Problems of Federalism in the Former Soviet
Union.

Federalism in the History of Thought

Immanuel Kant.

1999

Editorials

The Decisive Battle.
Europe and the War in Kosovo.
How Europe Can Help the United States.

Essays

Francesco Rossolillo, European Federation and World Federation.
Lucio Levi, The Unification of the World as a Project and as a Process.
The Role of Europe.

Notes

The Scientific Revolution and the Internet.
Reflections on Totalitarianism.
Europe, Turkey and the Kurds.
Germany and the "Past that Will not Go Away".
The USA and the New International Anarchy.

Discussions

On the Subject of World Citizenship.

Thirty Years Ago

Mario Albertini, The Power Aspect of European Planning.

Federalism in the History of Thought

Giuseppe Mazzini.

2000

Editorials

Europe and the World Trade.

A Call for the Creation of a Federal Core.

American Economic Power and the Division of Europe.

Essays

Antonio Mosconi, The Euro and the Dollar: Towards a World Monetary System.

Franco Spoltore, The Debate between American Federalists and Antifederalists from 1787 to 1800 and Its Current Situation.

Notes

Europe and the New Lomé Convention.

Global Interdependence and the Crisis of Statehood.

Discussions

Does Interdependence Equal Unification?

The Crisis of the States as a Criterion in Historical and Political Analysis.

Thirty Years Ago

Francesco Rossolillo, Why Build Europe?

Federalism in the History of Thought

Ortega Y Gasset