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Is the European Union on the merry-go-round of a federal State? Considerations from Julien Benda, Alexander Marc and Joseph Proudhon

Introduction

The question of the modern state in Europe deserves being raised again, in light of two remarkable events: firstly, enlarging the Union from 15 Western European Countries to 27 Member States including 12 Eastern Europe and Mediterranean countries in 2004 and 2007 is something of a bet; the challenge that is given at present to adapt for countries that have diverging traditions, different cultures, and diverse expectations as to Europe is not yet resolved. Secondly, the recent tribulations of the Treaty on the European Constitution (TCE) signed on October 25th, 2004 in Rome (Italy) by the 25 heads of the Member States of the European Union: to date this Treaty's implementation is impossible since 9 Member States either voted against it (Netherlands and France) or delayed indefinitely its ratification from their political agendas (Poland, Czech Republic, Denmark, Sweden, UK, Ireland, Portugal). Even if 16 countries ratified the TCE, the lack of unanimity prevents its actual deployment.

Provided the seemingly contradiction between the enlargement of the Union and the striking event of TCE popular rejection, what could an explanation be? At any rate, this combination signals a divorce between the two associated objectives assigned for to Europe by the Rome Treaty (an ever closer Union) and the Nice Treaty (an enlarged Union). It seems henceforth impossible to speak simultaneously of an enlarged extensive and a deeper intensive union, for that would be contradictory with the now visible divergence between enlarging and deepening Europe. Despite its will, the European Commission cannot pursue all at once those two 'inseparable' objectives. There exists a risk that in doing so, the...

If the political personnel of the Union wants to go forward, it cannot do it blindly as ostriches putting their heads into the sand in order not to see what is happening. In order to accept the reality of a growing gap between the proclaimed European integration and the actual facts, one must be ready to consider that massive national identities and highly different historical paths cannot be manipulated at will. What a tragic mistake would it be to go on considering that Europe is an integrated whole on hastily fabricated grounds, while events accumulate to show quite the opposite.

Thus the thesis to be worked upon here is that the European Union is not what it proclaims to be: its ideological superstructure do not fit the new realities implied by the rejection of the TCE and by the jump from 15 to 27 Member States. The work focuses on the hypothesis that the European Union is not a nation, neither a political union, nor even a State — none of what what some proclaim it to be,

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but that it rather consists of a 'con-sociation' of nation-states sharing some common policies with significant opt-out clauses. So that basically the Union is today more of a Community than ever, which in turn raises question for its future. This is why, in order to assess where the Union could go from now on, this paper builds three scenarios from the present state to the future of the Union.

In order to build upon this hypothesis, we find it convenient to refer to three historical discourses on Europe that have spanned the French intellectual circles from 1850 to 2000: the views of Joseph PROUDHON (1809–1865) on the System of Economic Contradictions brings forward issues in competition, market and property that are still lively today; the federal inspiration driven forward by Alexander MARKOVITCH LIPIANSKY (1904–2000), born a Russian in Odessa, who became in France Alexandre MARC, the French founder of Integral Federalism, a concept that helped create the World Federalist Movement. Alexander Marc promoted the transformation of the European Union into a federation to come, until his last breath in Vence, near Nice — just before the European Summit elaborating the Treaty of Nice on conditions of admissions for East European Countries. And as a third testimony apt to stimulate the hypothesis, the Discourse to the European Nation, an extraordinary anticipation written in 1933, amidst a raging growth of nationalists tendencies, by Julien BENDA (1867–1956).

The following paragraphs examine point to point what would be an appropriate qualification for Europe; they follow the parallel between existential questions on Europe's nature and the three French intellectuals Julien Benda, Alexandre Marc, and Joseph Proudhon. This approach is meant to allow for a final discussion on three possible scenarios describing the Union's future.

1. Is the European Union a European Nation?

In his Discourse to the European Nation published the very year when Hitler seized power in Germany, Julien Benda swam against the tide of his times, making due reference to Aristide Briand while differentiating himself from Briand's pacifism: 'There exists today political leaders who want to unite peoples, leaders who think about the making of Europe; some think politics, others prepare economics, still others reason in laws. I do not pretend to address all of them, but only those who think that a revolution is needed both on intellectual and moral sides. Of course I do not want to negate the wide transformations which Europe will have to accomplish in the realm of economics. But I proclaim that such transformations will be acquired and reach some stability only if they are linked with a deep change in European moral values.. In order to exist, a European Nation necessarily requires due consideration to a new morality that would bring forward an absolute sense of goodness.'

Julien Benda is trying to show in 1933 that European nations, being used to fight each other as Nation-States, cannot be expected to reverse into the fundamental challenge of the making of Europe as a whole, save for a spiritual reversal of the millennium-long trend of intestine wars. From Jean Bodin's 1576 definition of a State (republic) as a governing body marking on a people's demography ('il n'y a de richesses que d'hommes'), sovereign rights ('la puissance absolue et perpetuelle d'une république') and a common currency ('la quantité de monnaie encourage les échanges'), the Treaty of Westphalia (1648) could establish the political notion of the State as a structuring entity. Max Weber would later define the State as 'something that can successfully claim the monopoly of then legitimate use of physical force within a given territory' with two attributes shaping international recognition: any State should possess a definable territory, and an associated sovereignty on land and people, with independence as a key issue. On the other hand, a Nation being 'a group of people who feel themselves to be a community bound together by ties of history, culture and/or common ancestry', then the Nation-State would typically be the basic component of the international order.

Talleyrand at the Vienna Congress (1814–1815) argued that the Quadruple Alliance between Russia, Austria, Prussia and England 'meant nothing' once Napoleon defeated, and he asked for room to be given not only to the four powers, but to the the eight signatories of the Treaty of Paris: 'Any prince may send plenipotentiaries to the Congress who had universally recognized sovereignty over a state that took part in the recent war, who has not ceded that sovereignty and

whose sovereignty is un-contested. The same holds true for any state which was independent before the recent war and which, having participated in the war is now independent again'. This proposal based on nation-states enabled the kingdoms of France, Saxony, Naples and Spain, 'naturally' to join in and influence the conclusions of the Vienna Congress, with the Nation-State as the model of a 'legal entity defined by its sovereignty over a population, a territory, and endowed by a government'.

During the 19th century, nation-states flourished over Europe, but devised mechanisms of alliances in order to ensure a pondering of military forces, leading to opposing groups of nations such as the Triple Alliance, — or German-speaking League of the three Emperors (Germany, Austria-Hungary, Italy)-, facing the French-speaking Triple Entente (United Kingdom, Russia and France). Knowing that this structure of nation-state associated in opposing alliances led to the 1914–1918 and the 1939–1945 wars not only in Europe but world-wide, it might be fruitful to remember that, within the very cycle of destruction from 1904 to 1949, there existed attempts to reverse the trend, such as Aristide Briand's and Count Kalergi's calls:

'I believe that some sort of federal bond should exist between the nations gathered by geography as European countries; these nations should, at any moment, have the possibility of establishing contact, discussing their interests, adopting common resolutions, and of creating among themselves a bond of solidarity that allows them, on suitable occasions, to face up serious circumstances.' (A. Briand from France address to the League of Nations General Assembly, 5 September 1929).

'Europe as a political concept does not exist. This part of the world includes nations and states installed in the chaos, in a barrel of gunpowder of international conflicts. This is the European question: the mutual hate between Europeans that poisons the atmosphere.' (Count Kalergi, from Austria, Pan-Europa Manifest, 1923)

The contribution of Julien Benda is an original blend of skepticism, mixing hard realism with soft-idealism. Highly realistic, Benda has seen in his lifetime the collapse of the Empires and the difficulties of democracies in Germany, Spain, Italy and France; his analysis interprets, from Hitler to power, the future despots to come (Franco, Mussolini, Salazar, Pétain) and from circumstances adverse to stability like the Sarajevo assassination of Archduke Franz-Ferdinand (1914), the dark events to come such as Marseilles assassination of the King of Yugoslavia (1934), German-Austrian Anschluss (1938) or Poland's invasion (1939). For him, the whole series of European conflicts with its dramatic worldly cascade of consequences, with treaties of capitulation such as Versailles-Trianon (1919), Compiègne (1940), Berlin (1945), or Yokohama (1945), can be seen as an appeal to more reason in political affairs. The essential message of Julien Benda was a call at reverting the destructive trend into a constructive approach between nation-states. His main proposal was to replace 'individual nation-states' with a collective European Nation: such European entity would subsume each and every tiny sovereignty with a larger European sovereign authority, precluding future wars by its very existence.

A few years after Benda's intuition, three conferences between the 'Big Three' — Stalin, Churchill, and Roosevelt and later Truman — held in Teheran (1943), Yalta (February 1945) and Postdam (August 1945) shaped a route between 'old Europe of wars' and 'new Europe of peace'.

This top agreement was also a dividing line between Western Europe and Eastern Europe as respective spheres of influence of the Soviet Union and the United States of America. From 1949 to 2007, the history of Europe presents a unity, — the coming up of the European Union, — but also a dividing line and a shift to be organized in order to answer the question raised by Julien Benda: Is it possible to say that the European Union represents a European Nation?

The unity between 27 Member States in 2007 is not different from the European project that was based on the will to find peaceful ways to cooperate in economic matters, so that the reasons for wars be forever banned from the European landscape. There is no super-concept of a European nation here, but ab origino the desire to prevent the re-armament of Germany and France: we must remember that to stop preparing wars, the first European endeavour was to pool together the very industries that manufacture weapons from coal and steel.

This is why on May 9th 1950, Robert Schuman, French minister of foreign affairs, declared solemnly with Chancellor Adenauer's full approval: 'Europe will be built through concrete achievements which create de facto solidarity. The coming together of the nations of Europe requires the elimination of the age-old opposition of France and Germany.. With this aim in view, the French government proposes that action be taken immediately on one limited but decisive point: that the Franco-German production of coal and steel be placed as a whole under a common High Authority within the framework of an organization open to the participation of the other countries of Europe. The pooling of the Coal and Steel production should immediately provide for the setting of common foundations for economic development as a first step in federating Europe.'

The fact that six European countries decided to join the French-German initiative by signing the 1951 Treaty on the European Coal and Steel Community, and later to go on the 1957 Treaties of Rome (on European Economic Community and on Euratom) created de facto 'a strong concept of Community' and gave it a legal status, as shown in the present Treaty establishing the European Community (TEC):

'Article 1 — By this Treaty, the high contracting parties establish among themselves a European Community. Article 281 — The Community shall have legal personality.'

The fact that the European Community was extended from 6 countries in 1951 to 27 Member States in 2007 did not change its legal status as a common market area, the definition of which is very precise:

'Article 2 — The Community shall have as its task, by establishing a common market and an economic and monetary union, and by implementing common policies, to promote.. a harmonious, balanced and sustainable development of economic activities.' This encompasses the so-called five liberties:

- article 23 — freedom of circulation of goods and products;
- article 39 — freedom of circulation of workers;
- article 43 — freedom of establishment of nationals of a Member State A in the territory of another Member State B;
- article 49 — freedom to provide services within the Community as a whole;
- article 56 — all restrictions on the movement of financial capital between Member States shall be prohibited.

If we compare this approach of 'economic community' in Western Europe with Tocqueville's description of democracy in America (1832), and with Speransky's schema of a parliamentary system in Russia (1830), it is quite evident that the European Union does not rest on a political vision of national unity. In America's democracy, Tocqueville observes that national unity is obtained politically through the majority of ballots supporting the Congress (House of representatives and Senate) and electing the US President. Tocqueville writes that the greater risk in the American democracy lies in the 'dictatorship of the majority', which happens when both the Congress and the President are of the same political hue, in which case, there is 'no restraint on the will of the dominant party'. In Russia, Speransky advocates the establishment of a parliamentary system of Dumas arching from primary districts to the federal level, with a system of elections en cascade; and a State Council at the top level to ensure the national coherency between the executive and the legislative powers within the nation-state of Russia and its empire. This model has been partly implemented in the 19th century Russia, and later the Soviet Union organized a system whereby the Soviet identity would take precedence over the coexistent underlying nationalities or minorities. Even the present day Russian Federation seems to decline several layers of nationalities, all encompassed into the Russian one.

From 6 originally countries in 1957 (Belgium, Netherlands, Luxembourg, Germany, Italy, France), the community extended to EC-9 by adding Denmark, UK and Ireland in 1973, EC-10 by adding Greece in 1981, EC-12 by adding Portugal and Spain in 1986; then it changed its name to European Union and became EU-15 in 1995 by enlarging to Finland, Austria and Sweden, EU-25 in 2004 by enlarging to Poland, Hungary, Czech, Slovakia, Slovenia, Lithuania, Latvia, Estonia, Cyprus and Malta; and EU-27 in 2007 by enlarging to Bulgaria and Romania. Does this imply belonging to a 'European Nation'?

There are 52 American States in the USA, some 80 republics or autonomous entities in the Federation of Russia, and 27 Member states in the European union. But the comparison stops here since neither the Russian nationality model, nor the American majority framework holds for Europe. If the American nation is a fact, and the Russian nation a key factor, nowhere in the European treaties can it be found any definition of a 'European nation', and not even the preliminaries of a European nationality. This is particularly visible when it comes to defining an European citizenship, where one could expect some sort of unique 'national' identity. Quite the contrary the TEC defines European citizenship as a complement to national citizenship, with explicitly no ambition at replacing the national over prevalent identity:

'Article 17 — Citizenship in the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.'

So that Julien Benda's expectations in his Discourse to the European Nation do not find any suitable answer in the present European definition. In other words, the European Union is not the basis for a would-be European nation. There is no European nation as such, but a Europe of 27 nation-states that is very well alive in peoples' minds.

2. Is there some flavour of a Federal State in the European 'Union'?

The second level of inquiry is directed toward questioning the existence of a European State: classically one defines a State by looking over two aspects, firstly the institutions that make exist the legislative, the executive and the judiciary functions; and secondly the balance of powers between those functions that put a stamp — such as presidential or parliamentary regimes and give a 'style' to the workings of a particular State.

Regarding the European institutions, one finds in appearance the three traditional functions of a State in the Treaty establishing the European Community (TEC):

— article 189 to 201 define a legislative body, the European Parliament, that 'shall consist of representatives of the peoples of the States brought together in the Community'; these representatives are elected by the peoples, each Member State having a quota of MEP (members of the European parliament) that is fixed approximately in proportion to its population;

— articles 202 to 210 fixes up the Council as the institution 'that has power to take decisions'; the members of the Council are the ministers and presidents of the governments (from the 27 Member States); in fact the Council has a building in Brussels, called the Concilium, where 5,000 agents of the 27 governments work together to prepare the decisions of the Council, under the authority of a Secretary General.

— articles 220 to 245 gives judicial authority to the European Court of Justice (ECJ) that 'review the legality of the acts adopted by the Parliament, acts of the Council, acts of the Commission'.

But there is a big difference with the classical scheme and its three separate functions, due to a fourth institution, the European Commission, that comes in with articles 211 to 219 'in order to ensure the proper functioning and development of the common market' and has its tasks defined to 'formulate recommendations or deliver opinions on matters dealt with in this Treaty' as well as 'have its own power of decision and participate in the shaping of measures taken by the Council and by the European parliament'. The members of the Commission, called Commissioners, are designated by the governments of Member States (one commissioner per Member State), while the directors general and employees of the Commission form a corps of 20,000 civil servants recruited by the Commission in Brussels.

What is happening here? The European Parliament is not a full body with all legislative powers; the European Council has also legislative powers and it is much more than an executive body, to the point where some observer call it a 'high chamber like a Senate' above the Parliament; and the European Commission has some executive functions and holds also some judiciary functions. The actual system of government in the European Union is so complex that sometimes it is referred to as a 'multi-level governance' associating a triangle and a balance:

— the triangle refers to the needed intimate association between the ‘head’ (Council), the ‘bureaucracy’ (Commission) and the ‘deputies’ (Parliament). In order to ensure the preparation of projects of laws and of technical decisions, a decentralized system of Committees associates national experts in each and every field of legislation; this is called Comitology and it is estimated that 200,000 nationals ‘at home in their countries’ help the Committees function as assistants to the Council and the Commission.

— the balance refers to the role of the European Court of Justice, that is unanimously recognized as sound and positive for the clarification and coherency in the application of European directives and regulations.

Why such a complex system of governance? Where does it come from? Could it be the result of the debates on the format that Europe should take as an entity?

When one read the lines of the Federalist movement driven by such leaders as the European Commissioner Altiero Spinelli (Italy, 1907–1986) and the European parliamentary Alexander Marc (Russia, France, Lipiansky; 1904–2000), it is striking to observe a strong activism for the promotion of an ‘integral federalism’ in Europe, that would lead to the United States of Europe. This idea has acted like a spur against the opposed ‘Europe of nations’ dear to most of national leaders governments, from De Gaulle to Thatcher, and from Kohl to Blair — pushing toward inter-governmental cooperation. The notion of inter-governmentalism means that Member States preserve all their sovereign rights at any moment, and that each agreement is attached to a negotiation between governments, so that there is no leeway given to a supra-national body that would fix up an overall policy valid over and above Member States heads.

Underneath the surface of institutions, there exists a war of ideas between the Commission which is fundamentally pushing to some form of supra-national authority, and the Council which acts always to keep the intra-governmental approach take precedence over any other consideration. One detail that is revealing is the very name of the ‘Commission’, since it was adopted by the Council to replace its original designation in the 1950s as the ‘High Authority’ in Europe, and thus to tightly enclose its initiative into a strictly delimited ‘commissio’ controlled by the inter-governmental Council. The European Parliament itself suffers from wallowing into insignificance, and it has been its constant claim, since its first Assembly in 1957, to ask for more effective legislative powers. In other words, the political model underlying the European Union has been torn between a federal vision with no means, and a national approach with no vision: whatever its composition — even with pro-European leaders — the European Council has always acted as an inter-governmental body. Remember that when Europe was not even created, Churchill¹ — while advocating the need ‘to re-create the European family and to provide it with a structure under which it can dwell in peace, in safety and freedom’ — was hostile to the European federalists. Federalism was a difficult notion to use in 1949, still more difficult in 1961 when DeGaulle had France leave an empty chair in Brussels, the more so when the number of Member States jumps to 27 in 2007...

To give but one example of the dialogue of the death between the militants for a European Federal state and the inter-governmental trend of the Council, there was in 1981–1983 one of the most difficult crisis when the Community was managed by a Council where Mitterrand and Thatcher would play the Euro-skeptic divas among the then ten Member States. Tired of seeing the European project loose grounds, Altiero Spinelli prepared with his friend Alexander Marc an appeal to the Parliament² attacking national governments for their mediocre handling of the European governance, and requiring the Council to appeal for the European Parliament to sit into a Constitutional Assembly:

‘You must have heard the proverb which says that even the most beautiful girl in the world can give only what she has got. Your diplomatic maneuver cannot offer any more.. The inter-governmental cooperation is all that you have. Do not come here at the Parliament and tell us that, in five years, in the light of experience, the Council will, if necessary, propose a Treaty to consolidate the union. It would be much better if you would say that we do not need any more experience, and that we know all we need to know.. If you did, the European Parliament would

¹ W.Churchill, University of Zurich, Switzerland, Address to the Masters Students, 19th September 1949.

² A.Spinelli, Address to the European Parliament, Strasbourg, November 1981.

feel prompted to speed up its work as a constituent body.. In this way you would have served Europe well.'

Now the question becomes; how come that in spite of such hard oppositions between the Parliament — more federalist -and the Council — inter-governmental -, still the Commission managed to go forward in its missions? The answer stays with the particular method that was coined by Jean Monnet under the name of 'spill-over' or 'gearing' method, so defined by him³:

'We believe in starting with limited achievements from which a federation would gradually emerge. I have never believed that one fine day Europe would be created by some great political mutation.. The pragmatic method lead to a federation validated by the peoples' vote, but that federation would be the culmination of an existing economic and political reality, already put to the test... Only when the force of necessity will made it seem natural in the eyes of Europeans, a qualitative change will occur in the constitutional relations between States and Peoples.'

This method is now called functionalism, as it prefers to proceed empirically by increasing the functions of Europe; as such it stands at mid road between federalism and inter-governmentalism.

There is no federal dreaming in Monnet,s words, just the anticipation that, depending on the necessity of some future time to come, and only eventually, could a real federation come forward as a qualitative move. But the time not coming soon, better be pragmatic and pay attention to small immediate steps. This is why some important progress in the European construction have being made when the spill-over method was combined with 'anchoring points'. An anchor is a definite statement that gives Europe a solid point of fixation for its ambition and its endeavours.

One such instance is the Single European Act of 1986 realized by Jacques Delors, then president of the Commission, working in full federal mindset with the British Commissioner Sir Arthur Cockfield and the Dutch Max Kohnstamm at specifying the Single European Market (SEM) objectives. This was somewhat of a challenge to reverse the low tide of coexisting national policies and bring forward a notion of a great space without borders:

'The Single European Act means the commitment of 12 Member States to implement simultaneously the great market without frontiers with more economic and social cohesion, a European research policy, the strengthening of the European monetary system, the beginning of an European social era, and significant actions for the environment.'

Before the 1986 Single European Act, the European entity was nothing precise, and it was dubbed by analysts to be a 'NIFPO' or non-identified flying political object. After the unanimous adoption of the Single Act perspective by the Council, the European object became a 'single entity', that is somewhat of a federal endeavour — if not a federal state as such.

Among other aspects, it is significant that the European Commission was able to hastily work on a major 'federal' issue: the notion of an EMU (economic and monetary union), itself leading to the project of a common currency, the Euro, as it has been standing from 2002 onwards..

Again here it would be presumptuous to pretend at full federal status of the Euro for two diverging facts are very clearly established: firstly the common currency is managed by an emission institute, the European Central Bank (Frankfurt) that is legally independent from both the Commission and the Council. Secondly, some Member States have opted-out definitively from the Euro, namely Denmark, Sweden and the United Kingdom.

To conclude this inquiry, it is thus impossible to assert that the European Union is a federal state or even that it is an actual forerunner for a future Federal State of Europe. But it is possible to identify some federal aspect into the European union, more as the anticipation with dotted lines of an impressionist touch than as a determinate construction. To be more specific, Europe is federal to the extent it receives from its Member States some 'conferral of sovereignty', i.e 'competencies conferred to it voluntarily by Member States'. It is federal due to the federal attitude of some of its institutions, especially the Commission when it fights for its unitary role in decision-making facing the diversity of multi-governance at the Council's level. It is also

³ J.Monnet, in: M.Burgess, Federalism and federation, in: M.Cini, European Union Politics, Oxford University press, 2003, p.73.

federal to the role of the European Court of Justice (ECJ) when it gives full interpretations of the European laws to be used over Europe as a whole.

But controls are carefully put in the institutional working of the European governance, so as to restrain strictly to the essential its federative aspects, and to prevent any federal bend in the European Union; this is proven by the weight given to decentralization principles in the balance that sets for the powers of institutions to organize their executive missions in an explicitly non-federative framework:

— principle of subsidiarity, so that decisions be taken the closer possible to the citizen (only by exception at a central level);

— rule of proportionality, which stands that the Union may act only to the limit of the exact extent which is necessary to achieve a given objective;

— both pondering the principle of conditionality which requires that Accession and Membership be subject to the acceptance by the candidate country of the *Acquis Communautaire* (31 chapters of European laws).

3. What is really at stake: a European Union or a European Community?

The Maastricht European Council led to the Treaty on European Union (1992) which enunciates after its Preamble listing the Heads of States (from 'His Majesty the King of the Belgians.. to her Majesty the Queen of the United Kingdom') as 'resolved to achieve the convergence of their economies.., resolved to establish a citizenship common to nationals of their countries.., resolved to continue the process of creating an ever closer union', starts with a strong affirmation:

'article I — By this Treaty the High Contracting Parties establish among themselves a European Union as.. a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.'

But what disaster for a federal Europe was actually Maastricht can be deciphered thanks to Jacques Delors⁴, who explains, being the then-president of the European Commission, how a shift occurred between 1986 and 1992, pushing ahead the inter-governmental current and letting the supra-national ideas in a vacuum. The hope raised by the 'single European act' was totally discredited by the Treaty on European Union (TEU), as a system of divided governance between three 'pillars':

— the first pillar was the European Community as it existed before, focused on economic matters;

— Pillar II was called CFSP — for common foreign and security policy (TEU articles 11 to 16), dealing with issues of external representation and defence;

— Pillar III was called JHA — for Justice and Home affairs, dealing with issues of police, immigration, visas, and justice (TEU, article K1).

Moreover there were specified articles to deal with the sovereign national interests of Member States, with culture (article 151), Public Health (article 152) and National Security (article 296) been explicitly made sectors where any Member State 'may take such measures it considers necessary for the protection of its essential interests'.

Turning point or a rather failed bend, the Treaty did not give the notion of European Union any legal definition, and the system of existing institutions was maintained for the sole First Pillar, the two other pillars being managed at will by the Council, with no say from the Parliament, and outside the Commission's realm. In other words, the European system of governance was not extended to Foreign affairs nor to Home affairs, it was just an excuse to make believe into some progress and to encourage hopes in a Union-to-be. What was hidden behind the lines was a cruel reality: the 12 heads of States not being perfectly in tune between themselves, had decided that it was too early for a 'federal Europe' and thus preferable to design a concept that would preserve national sovereignties, while appealing to the public as a 'new idea'. In fact the 'unionism' in

⁴ J.Delors, *Mémoires*, Paris, Plon, 2004.

Europe was suggested by Winston Churchill as a word less committing than 'federalism' and in this context, the vague concept of European Union satisfied the British government, provided no legal definition would be given to it.

Back to a Europe-of-nations framework, the word Union used in 1992 was no more than an appearance, the real thing that remained solid was the only notion of a European Community. Because the TEU was not able to actually stimulate a political union, the years between 1992 and 1999 were sad years, the more so because Central & Eastern European Countries (CEEC) that asked to join the European Union were politely referred to assistance program, not political ones. Here the prediction of Joseph Proudhon regarding the system of economical contradictions was absolutely right: by putting together a framework of internal economic competition between Member States, and by not analysing the subversive and divisive effects of competition, the European community was losing ground, and its apparent efforts to promote a political 'Union' were doomed to failure.

This failure was harshly resented by Eastern European countries who did not find in their Western neighbours the quality spiritual renewal they were expecting to encourage the social mobility within Europe. All that happened on the Western side was a fear to lose advantages, and as a consequence, the only piece of agreement was to put fences and brakes to prevent Eastern countries as entering too soon into the single internal market. Pitirim Sorokin would have made a case study of such fears, the egotism and social prudence — or Malthusianism — of the 12-EU members being a spectacle at odds with the generosity of the founders of the European Communities, Monnet, Adenauer, Schuman or Spinelli. While Lenin could in his time (1918) appreciate the 'valuable admissions of P.Sorokin', we, as Western Europeans, were not able to find in him a source for behaving well with the Central and Eastern European Countries. With the entry of Sweden, Austria and Finland in 1995, things began to move again, since those were the countries with tight links with Central and Eastern Europe.

In 1997 the Treaty of Amsterdam attempted to address the question of the CEE countries, but it only succeeded in specifying some more community mechanisms and transferring parts of the Foreign policy (Pillar II) and Home police affairs (Pillar III) into Pillar I. At the Amsterdam meeting, the 15 member states failed to put together on the table of negotiations an offer open up the Union to the CEEC; this led to the so-called 'Amsterdam leftovers', again a deplorable but significant expression. Then in December 2000, the Council met in Nice at an inter-governmental conference that decided upon the procedures of enlargement enabling CEEC to enter the European Union. What happened there were dirty politics of counting weights in the Parliament and Council of the future. Heated debates occurred on the number of votes and it went up to a tight dealing seat by seat to know if Poland would accept having the same weight as Spain (and reciprocally), or to see if France (60 millions population) would accept to have less weight than the re-unified Germany (80 million population). By a play of words, if one could say that 'Nice was not nice', one would add that the hosting country for the Council, France did not do so bad a job by accepting to lose a lot herself in order to save the future of the Union as a whole.

In 2000, Joscha Fisher⁵, then minister of foreign affairs of Germany, raised the question:

'Quo Vadis, Europa?.. The task ahead of us will be anything but easy, and it will require all our strength; in the coming decade we will have to enlarge the European Union to the East and South-East, and this will mean doubling the number of its members. And at the same time, if we are able to meet this historical challenge and integrate member States without denting substantially the EU's capacity for action, we must put into place the last brick in the building of European integration, namely Political integration. Enlargement will render imperative a fundamental reform of the European institutions.

In December 2001, after the terrorist attacks on the World-Trade-Center, the European Council in Laeken gave a systematic analysis of the questions to be answered in order to go on some form of political union; these were three types of issues;

1) issues of competences to be exclusive to the Union, competences to be shared between Member states and the Union, and competences exclusive to Member States;

⁵ J.Fisher, The task ahead of us, Speech at Humbolt University, Germany, 12 may 2000.

- 2) issues of institutions and instruments to make Europe at work in an integration perspective;
- 3) issues of decision-making and how to manage the Union so as it be an efficient whole;

In Laeken it was decided to establish an inter-governmental conference that would support an assembly called the Convention which would prepare the text of a Treaty on a Constitution for Europe (TCE).

In 2002, the European Convention was set up and organized, then it met in 2003 and 2004 in Brussels, and did an important work of clarification and classification. Its president, Giscard d'Estaing, if presumptuous at defining what he called his 'historical task', was nonetheless working hard with the nearly 300 representatives of Member States and the European Parliament in order to define the following framework:

- a) the Union would receive a legal status as an international organization of its own kind;
- b) any Member State is allowed to leave the Union provided it notifies the Council, and a settlement is agreed upon. If negotiations fail for 2 years, the MS leaves anyway;
- c) Membership would be open to any European country asking for it, provided the acceptance of three clauses: the flexibility clause allowing the EU to act in areas not made explicit in the Treaties provided all Member States agree; the secularism article on 'the cultural, religious and humanist inheritance of Europe'; and the solidarity clause 'any Member State which falls victim of disaster or terrorist attack receives immediate assistance from the other Member States...';

The project of a Constitution did not suppress the system of the 3 pillars, but increased substantially the Community (first) pillar, by including new areas of territorial cohesion, energy, and space issues. It also considered the Monetary policy as a major thrust for the future, and it extended to the Foreign and defence policy the notion of dedicated European Agencies along a federal model. But the major institutional features of the TCE did concern the governance structure that was supposed to be stabilized by 4 different notions of 'presidency';

- 1) the president of the European Parliament would gain in weight;
- 2) the president of the Commission would be elected by the Parliament;
- 3) There would be a turning presidency of the Council based upon a 18-months 'triplet' of Member States (this measure has been put at work in 2007 with Germany, Portugal and Slovenia being the first triplet.
- 4) The European Council would elect a president of the Council for a period of 2,5 years possibly renewed once. This would place the Council in a parliamentary position as a 'higher chamber'.

Constitutionally, the proposed approach was to give Europe a basis for managing more easily its political and its external side; one of the major innovation consisted in creating the post of Minister of foreign Affairs of Europe, with a double-hat as being also the Commissioner for foreign relations. This post would succeed the present High Representative position held by Javier Solana, and it would have given the Union a top-structure of political authority. However it seems that the framework was more inter-governmental than federal, giving not enough room to the Commission and not enough respect for past experiences. Jacques Delors, former EU Commission president, and Romano Prodi, actual EU Commission president in 2000–2004, felt obliged to express publicly some discrepancy between their views and Giscard's will.

Delors (op.cité, 2006) was insisting on the need to replace what he called the 'paralyzed triangle of European governance unanimity-exclusivity-immobility' by another management triangle that he described as 'majority-inclusivity-dynamism' so as to promote a common political vision for Europe since 'necessity as well as ideals impose us to build a federation of Nation-States never forgetting that where the vision is lacking, peoples suffer.' These ideas were not embedded in the Treaty on a European Constitution (TCE), nor were the protest formulated⁶ by Prodi about the double position of powers for the Council President and for the Ministry of Foreign Affairs:

'If certain sensitive issues are left unsolved, there is no hope the Inter-governmental conference be capable of settling them. It seems now clear that the Union will have a foreign Minister as a

⁶ R.Prodi, The Convention on the home straight, Speech, Bundestag, berlin, 5 June 2003.

member of both the Council and the Commission. I hope this new Minister will work as closely as possible with the College of Commissioners and the president of the Commission. I would suggest that the diplomatic service be part of the Commission, at least administratively. We must not forget the lessons of the Iraq crisis: if Europe does not sort out its divisions, it cannot play its rightful role in the world. What mainly puts the Union's democratic legitimacy in jeopardy is the idea of a standing President of the European Council. Who such a president be accountable to? And above all, what role would the European Parliament have? The result would be lop-sided, a democracy where Parliament would have control — and rightly so — over the Commission, but no control over the Council or — even less — over its president.'

Notwithstanding these objections and many others, the Treaty TCE was signed in Rome by the 25 heads of EU Member States in October 2004, including 15 Western and 10 Eastern and Mediterranean countries. But being an act in politics, the TCE had to be ratified by the Peoples of Europe or by the national parliaments before going into effect in January 2007. The surprise came in May 2005, where French voters by 56 percent No votes to 44 percent Yes votes decided to reject it; they were quickly followed by Dutch citizens who voted No at 60 percent: there after, even if 16 Member States ratified the TCE, 9 Member States did not ratify it. This is probably the biggest blow the European construction has ever suffered since 1950, and its meaning is contained into the contrived wording of a 'union': the European Community holds, but the European Union is not a reliable notion.

When analysing who are the 'refusing nations', one finds countries of much significance in the Western European construction: founders of the common market such as France and Netherlands (1951 Treaty of Paris on Coal & Steel Community and 1957 Treaty of Rome on the Economic Community); all the members of the first enlargement (1973) Ireland, UK, Denmark, as well as Sweden (1995); and then member states from the Eastern enlargement (2004) Poland and Czech Republic. Totalling almost half the population of the Union, such a blend of nine Member States acting to defuse or refuse the Treaty on European Constitution sends a political sign that cannot be disregarded, despite the official discourse still at work on the ideals of European integration. The notion of 'discourse' is borrowed from Michel Foucault's analysis of the blend between knowledge and power that produces social inclusion and political penalties. Here we are interested in the integrative aspects of Europe, and how knowledge and power combine into the capacity to produce something that is called the European Union, an object that was supposed to be gained, promoted and used to en-power as well as dis-en-power the political elite, and that manifests itself as an ambiguous, misleading and contrived wording for European themselves.

We then find that the only stable basis remains the European Community since it is the only one with a legal statute, and with associated institutions that work on the legislative, executive and judicial levels in a rather efficient way. This Community presents a number of features:

1) as a common endeavour, it is remnant of Max Weber's idea on the 'oikos' and the sharing of a community of destiny between neighbouring populations;

2) as a modern form of would-be state, it is restricted only to the economical side of societies, not to their polity, their foreign policies nor their military politics; in the economic realm the Community has devised common policies for agriculture, fisheries, research, and created a common currency;

3) but since 1982, the European Community accepts a 'variable geometry system of decisions' allowing Member States to benefit from exceptions and of some opt-out clauses. This encompasses the British rebate from the Common Budget, the British opt-out of the social charter, the British-Danish-Swedish opt-out from the common currency, and a myriad of articles that allow for exceptions on a number of subjects concerning such or such Member State.

To sum up, what is left after the non ratification of the TCE is a European Community highly dependent on British willing or not to pursue the experience; knowing that Britain is hostile to the Common Agricultural Policy, it is to be seen if the Community will continue its agricultural policy beyond 2012. In fact, pulled out by the Cairn's group of nations and its own Commonwealth, the UK might even be ready to form a coalition inside the EU with Central and Eastern European countries so as to push towards the ending of the C.A.P.

This would then jeopardize the whole effort of coordinated common policies, not only for Agriculture but for the rest of the sectors of the economy. If this were to happen, then it is possible that the European entity regress from a Community to a much simpler Free-Trade area, thus ending the 60 years long tremendous efforts at building Europe. Then one could say that the UK would have obtained what they could not get from their former Free-Trade European Agreement that was dissolved in 1997. Paradoxically, the rejection of the TCE makes the European consensus collapse and reiterates old nationalist schemes and attitudes of opposition between European countries. This result, at the very moment when ten Central and Eastern European countries enter the Union — some of which with highly tight relationships with the USA — raises a fundamental question on the exact nature of the European Union and its to-be sovereignty: how could the Community resist to the pressure exercised by Britain and the USA against a political, diplomatic and military reinforcement of the Community?

Final discussion

Given the preceding analysis, some confirmation is found that the European Union is not what it proclaims to be: it is not a federal state, it is not a nation, and it is not even a real Union. Basically it is an on-going multi-level governance, associating a variety of standpoints between divided nation-states and promoting some sort of con-federal association with variable geometry. Max Weber's framework with the two relevant variables of Dominance and Legitimacy is highly relevant here to find a way to qualify the European Union today.

What about legitimacy? Legitimacy in the European Union is proclaimed in TEU's article 1 which refers to rendering the government of Europe accountable to citizens, and to associate a large number of citizens to its politics (European Parliament), its policies (European Commission) and its polity (European Council): but peoples and citizens are not fully represented in any of those institutions, leading to what is recognized as being 'democratic deficit'. Even if the Brussels' Commission evokes quite desperately its will to prepare legislation with lobbies representing 'the civil society', its efforts lead to an overarching prevalence of business interests over peoples' representation. Regarding Strasbourg's Parliament, it is quite striking to observe that in peoples' minds this European place is always inferior — so to speak — to any national parliament of the 27 Member States. The articulation between national parliaments and the European Parliament does not exist, and one is led to think that what Mikhail Speransky's 1809 Constitutional system based on a series of Duma — namely from the cantonal assemblies (volost) to the district Duma, themselves electing to the oblast Duma, and up to the empire Duma — is not even thought about in the actuality of Europe. So that there exists a deficit of legitimacy in the European Union institutions.

And what about Dominance? Respecting the national identities of Member States as well as giving priority to a community based on market freedoms of movement issues, the Union has become a mirage that helps design a path-dependent process whereby the certainty offered by the five freedoms is tempered out by three major opt-outs:

— on a territorial boundary, the Schengen agreement (1985), incorporated into the Amsterdam (1997) and Nice (2001) Treaties as part of the third pillar on Justice and Home affairs, is opted out by the UK and Ireland, meaning that there is not yet an enforced frontier of 'fortress Europe' notwithstanding what is said here and there. Thus the transfer of sovereignty is not yet fully accomplished in the Union, and this is also visible in the somewhat artificial nature of what is pompously called 'European citizenship' which does not change anything to the 27 different national citizenships.

— on a common currency, the Euro, only 13 over the 27 Member States are 'in' while at least 3 Member States have been agreed to opt-out, namely the UK, Denmark and Sweden. Thus the European Union is not a monetary union.

— regarding the social charter, UK has opted-out as soon as 1992, never to come back within it. The discourse on European 'social market economy' that used to be the German and French Christian-democrats' pride is actually dead, since most of the 12 new Member

States have adopted the British benign neglect of the 'sozial-wirtschaft'. Typical also of the contempt for the original altruistic french-german approach to Europe is Margaret Thatcher's attitude 'I want my money back' (1983) that lead to this heavy fact: the UK has received from then on an annual 'rebate' on its contribution to the Budget of the Community amounting approximately to 4 billions euro, which Prime Minister Tony Blair has fully backed up when presiding over the European Union in December 2005 — even if disguising himself into a pro-European politician.

Here comes the question of the British view on Europe; in this respect, it is interesting to observe how the final blow to the TCE was given by Tony Blair, — who professes to be a pro-Europe politician, but revealed himself as a conservative British with this interpretation of the TCE's failure⁷:

'We (the European governance including the Council, the Convention, and the Commission..) locked ourselves in a room at the top of the tower, and debated things no ordinary citizen could understand. And yet, I remind you that the European Constitution was launched under the title 'bringing Europe closer to its citizens'. The evening of the French result, I remember being in Italy with friends and someone saying in despair at the vote: 'What is wrong with them?' meaning those who voted NO.

I said: 'I am afraid the question is What is wrong with us, meaning 'us' = the collective leadership of Europe.' This sheds some light on Tony Blair's duplicity: not only was he one of the master commanders of the whole process of Convention, not only did he insisted at being fully heard by the Convention's president, he did personally fight into obtaining for the sake of Britain a lot of substantial modifications to the details of the TCE text till the last minute in October 2004 Rome. In spite of all this visible engagement, Tony Blair plays, only 15 months later, the comedy of the chameleon who forgot all these episodes he took part into, and now plays the tune of the perfect democrat that aspires at a sound consultation of the peoples.

This Blair's attitude looks like dressing oneself up to prepare for the next step: the refusal to hold any engagement on British ratification of the European Constitution. Here Jacques Delors has a personal interpretation of the British position that may give a clue as to why the future of the Union might be an object of a conflictual debate within the EU between the UK and other Member States: 'Since its 1215 Magna carta, the UK has fought any possible single power over the Continent. According to the English view, there is no need to have any centre of power in Brussels, a costly bureaucracy with no legitimacy whatsoever. Legitimacy for the British belongs to national parliaments: accordingly, we, as Europeans, do not need any more Treaties, just some help to do business and sell more in Europe and outside. The two English Ministers who really helped the Commission while I was its president were Sir Geoffrey Howe and Nigel Lawson: both have been fired by London.'

Behind the scene the old devils of divided Europe remain active, and it is quite clear that there is not a homogeneous design of Europe possible if no common vision is shared between governments. Still more significant for concrete steps, the inability of Europe to unite in the two key areas of defence and police reveals that the political superstructure of 'European integration' is not yet ready to use.

The main actors that is behind the scene are Britain and the USA: these two powers play a very important role over Europe, due to their extraordinary status with Central and Eastern European countries. Seen as paragons of freedom, they maintain a sui generis Pro-American-Europe within the larger framework of the Community. In order to escape the danger of implosion, the Community could consider itself along the lines of another model, which Max Weber calls a 'con-sociation'. This involves considering Europe as a free association of Nations-States, giving themselves a common government based upon group representation by elites, and advancing towards their liberty as opposed to any subjection to external powers such as the United States.

Europe would rely only on itself, and decide upon a system of multi-national power-sharing, as opposed to the pressure from outside. Such a con-sociation should encompass the

⁷ T.Blair, Declaration on the TCE failure, Oxford University, February 2006.

military dimension, and thus differentiate itself from the NATO system as soon as possible to prevent any ambiguity on its prospects. It should give as much preference to Russia as to America as both valid partners but not as powers that play an insider's partition to the detriment of the Community.

Such a European con-sociation would possibly be stable over time, as long as the elites of each major social group (here nation-states) are able to negotiate, form coalitions, and share power according to some form of constitution. The result would not be pre-determined as the quasi-saint model of some utopia called the United States of Europe (U.S.E), since even the name USE sounds quite significant of a pale and tired copy of the United States of America (U.S.A). Then considering that political outcomes result from the combination of Preferences of actors and Institutional structures, what could be the future of the Union from now on? It looks as if three scenarios would be possible.

The first scenario would be a Realistic Divided Europe; based upon Joseph Proudhon's distrust of the market as a dominant value and upon the deep divergences of Member States' attitudes towards the USA — aggravated by the wars in the Middle-East, European countries would divorce from one another, possibly by full 'blocks'. No more sovereign rights would be given up to community levels, and even it maybe the case that some community policies retract (such as common agricultural policy; monetary policy), leading to a crisis of the institutions (respectively the European Commission and the European Central Bank).

The second scenario would be a Fortress United Europe perspective; based upon Alexandre Marc's design of an integral federation, a dominant set of three powers (legislative, executive and judicial) would be installed in Brussels, built into federative institutions over-arching national sovereignties. Formerly reserved sovereign areas such as the second pillar's Foreign policy and Department representations over the world and at the United nations, as well as the third pillar's pooling of means and peoples in Defence and European Army issues, and the first pillar's generalization of the Euro as a common currency, would be joined unanimously, including by euro-skeptic countries like the UK, Sweden and Denmark. This would radically transform Europe into the United States of Europe, a positively activist entity acceding to Federal State recognition.

A third scenario looks more likely than the other two, even to the price of turmoil in the years to come: this would be a European Federative Core, made up on a voluntary basis by a subset of Member States hollowing out their sovereign rights to put together a 'core' which would fit Julien Benda's notion of the necessity to share a spiritual benevolent relinquishing of sovereignty as well to accept an altruistic political life with other countries, such as a merging of France and Germany in direct line with the Franco-German 1962 pact. In order to do so, some 3 to 10 nation-states would first use the closer or enhanced cooperation clauses in the Treaty on European Union (TEU, article K7) and the Treaty establishing a European Community (TEC, article 155). They would promote the approximation of laws between them (extending from article 94 of the TEC), a merging of foreign and security policy (extending from articles 11 to 16 of the TEU), common police and home affairs institutions (extending from articles 61 to 65 of the TEC) and possibly integration in transportation networks, ocean management, energy services and education, research & development.

Which of those scenarios could actually develop will depend on internal decisions as well as external events. By contrast with the political idealism which dominates the discourse on Europe as an integrated whole, we must give preference to skepticism, noting that Europe is not a new invention, while Union is still a play of words. Real-politics impose their law here and we would consider that a probable 'core' will proceed from the following threats that Europe may encounter on its path:

1) terrorism, defined (2002) by the European Council as 'offences intentionally committed by a group against one or more countries, their institutions and/or their people with the aim of intimidating them and seriously altering or destroying their political, economic or social balance' might be create dramatic events;

2) the American policy, if driven for long by a will to submit the whole of Middle-East, and by the systematic use of CEEC as recipients of NATO observation platforms, would also be initiating a reaction within Europe of a core set of Member States refusing to play the role of hostages of the US policy;

3) the Russian position regarding energy resources and dissemination might also crystallize some form of European core that would encourage the pooling of sovereign rights between a subset of European nation-states, thus becoming a de facto federal state.

Integration or dis-integration of Europe?

We have tried to show here that there exists a merry-go-round of European politics that is turning around the conflictual positions between the UK, continental Western founders (Germany, Italy, France and the Benelux), new Members from Eastern Europe, and the more peripheral states.

Will the European Community merry-go-round go federal?

It is important to be cold and to stay skeptical at such a perspective, but among the several scenarios that are possible for the European future, the most likely is the 'core scenario' that would give a federal stature to Europe even at the expense of not comprising the United Kingdom.

This is why old nations like Belgium, France, Italy, Portugal, Greece, and Germany must be ready to 'hollow out' more of their sovereign rights, and to go forward fast enough to prevent the wishy washy sycophants of a lost Union continue destroying a 60 years endeavour.

This is why Joseph Proudhon, Alexandre Marc (Lipiansky) and Julien Benda's writings stand as reference lights for the future of Europe together with Max Weber and Pitirim Sorokin, and why we would recommend them for any program of education on the European Union.

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Аннотация

Вслед за включением в ЕС новых государств (12 восточных и средиземноморских стран), а также неудачной попыткой ратификации Соглашения о Европейской конституции 2004 г. (СЕК), возникла необходимость переоценки статуса союза и существования определенного федерального государства в рамках европейских национальных государств.

В данной статье рассматривается период с 1950 по 2007 г. в попытке определить долгосрочные исторические тенденции в Европе. В работе с критической точки зрения исследуется понятие «Союз», оценивается его истинная природа, выходящая за пределы привычного дискурса европейской интеграции. Кроме того, в исследовании проводится анализ Европейского союза на трех уровнях: как государства, как федеративного Союза и как рыночного сообщества.

Европейские изыскания являлись предметом интеллектуальных споров, охватывающих период от Пьера Жозефа Прудона (1846) до Александра Марка (1948), при участии Жульена Бенда (1933), поэтому автор позаимствовал их оригинальные идеи о федерализме, государстве и европейских нациях. Кроме того, были позаимствованы сравнительные исследования о политических структурах и конституциях, созданные учеными, объясняющими возникновение Европы и ее исключительность на протяжении двух веков, в частности Макса Вебера (1912), Михаила Сперанского (1830) и Питирима Сорокина (1959).

Данная статья сосредоточена на анализе Евросоюза как нации, а не как объединения, не как государства — так как ни одно из последних двух определений не описывает его природу. Скорее истинную суть ЕС отражает идея «сотоварищества», высказанная Вебером, говорившим о сообществе национальных государств, разделяющих общую политику с существенными оговорками о неприсоединении. В заключение предлагаются три сценария, предопределяющих, какое будущее может ожидать Евросоюз: драматические события вынудят страны-участницы объединиться в союз.