The Intergovernmental Method

Both Europe’s impotence, and the estrangement of its institutions from the citizens, are rooted in the very essence of the intergovernmental method, in other words, in the fact that the decisions taken in Brussels do not represent the culmination of a democratic debate at European level, but are instead difficult compromises reached between governments of sovereign states, each of which is anxious to pursue (albeit within the framework of a minimum of European cooperation) its own national interests. This is particularly evident each time the question of reforming the Union’s institutions is raised, a problem which the national governments always broach by seeking to adapt the forms of intergovernmental collaboration to the evolving circumstances, careful not to undermine the principle of national sovereignty. This refusal to erode national sovereignty is a flaw that is present even in proposals advanced by some of the most forward-thinking of pro-European politicians, and which currently emerges particularly frequently in the fixed belief that the radical reform so urgently needed by the European Union can be effected merely by improving the mechanism of enhanced cooperation. In truth, the problem that really needs to be solved if the Union is to emerge from this impasse – a grave situation that enlargement can only exacerbate – is that of the overcoming of the method of intergovernmental cooperation per se (enhanced or otherwise) and its replacement with the democratic formation of political will, in other words, the creation of a power which, in the areas for which it has responsibility, is controlled by the citizens and which, with the screen constituted by the member states lifted, acts directly at their level.

Sovereignty

A reasoned opinion on what the outcome of the process of European unification could and should be can only be based on the extent to which the idea of sovereignty is still considered relevant. It is, in this regard, necessary to recall that if sovereignty is taken to mean the power to decide in the last instance – if, therefore, sovereignty is the basis of law, and as such the condition rendering civil cohabitation possible – then its absence implies a situation of anarchy, like the one generated in the course of the Middle Ages when the struggle for supremacy between many powers prevented the formation of the political conditions needed to guarantee the rule of law and social peace. And yet, there are many today who believe that the idea of sovereignty has already been superseded. Those who hold this view believe that we are on the brink of an era in which civil cohabitation will be regulated more by contractual relations than by laws issued by an irresistible power existing above the level of individuals; an era in which, in any case, different legal orders – broader or narrower than the State order – will intersect with one another. In the absence of any established hierarchy, there will be no subordination of some orders to others and a situation will be produced in which every organisation, and even every individual, will have to provide for his or her own security. In such a scenario, humanity would be moving into a new, technological Middle Ages in which the rule of law, citizenship and solidarity are destined to fade and disappear, to be replaced by decidedly uncertain social relations, mid-way between peace and war, and founded on self-defence and on the abuse of the weak by the strong.

Federation and Confederation

In this framework, there are many who maintain, on the basis of a view widely held in certain of Europe’s academic circles, that the objective of European federation has already been superseded as a result of the very evolution of events, since globalisation has already rendered the State, seen as the basis and guarantee of civil cohabitation, obsolete. This is the argument that underlies the mounting refusal to accept the per- tinence of the opposition between federation and confederation – in which the distinguishing criterion is, precisely, the seat of sovereignty – and its relevance to the process of European unification. It is maintained that the European Union constitutes a unique form of political aggregation which can no longer be interpreted according to the traditional canons of political and constitutional thought. It is certainly true that the European Union, when compared with any other union of states model that has emerged in history, embodies novel elements, and that it presents both confederal and federal characteristics. The crucial problem, however, is to understand whether the European Union in its present form constitutes a stable form of political aggregation, or whether it is not, rather, the precarious institutional expression of a stage of transition.

The European Federal State

If, instead, one maintains that the idea of sovereignty, and with it those of the rule of law, of citizenship and of solidarity, have not been superseded, and if, at the same time, one is unwilling to bury one’s head in the sand when faced with the progressive increase in the interdependence of human relations, then the solution to this problem seems clear. The current institutional order of the European Union is a fragile and temporary one, destined either to lead to the creation of a European federal state, which as such will be endowed with the attribute of sovereignty, or alternatively to disintegrate, plunging Europe into the chaos generated by contrasting forces of nationalism. The creation of a European federal state is the only way forward that will allow the primacy of politics and its values to be reaffirmed and control of the process of globalisation to be regained; it is the path that must be followed if we are to be able to envisage the institutions that are needed in order to man-
age civil cohabitation in vaster spaces and
the extension of democracy and democratic
institutions at international level, and to gen-
erate the motivation without which the fed-
eral project could not be pursued. It is
important to emphasise strongly that in fed-
eral states sovereignty is not the prerogative
of the central tier of government, but of the
federation viewed as the aggregate of all of
its territorial parts, and is thus compatible
with the greatest level of decentralisation
and the strictest application of the principle
of subsidiarity.

The European People

Many Eurosceptics maintain that no Eu-
ropean federation can come into being be-
cause there is no European people. Others
maintain, on the contrary, that a European
people can only be born of the political con-
test that would be conducted within the
framework of the institutions of a European
federation. But in truth, people and state are
born simultaneously, on those exceptional
historical occasions when civil society
shakes off its passivity, acquires a new
physiognomy, sets aside the selfish inter-
ests and contrasts which characterise its
normal life, and imposes, through an inex-
orable demonstration of its own will, a new
institutional order and a new idea of the
general good. What is needed in Europe,
therefore, is for many national public opin-
ions to be transformed into a single Euro-
pean people which, by the very act of its
birth, will transfer the sovereignty of the na-
tion-states to a European federal state. It is
worth underlining that the European people,
if its birth is to come about, needs not only
favourable circumstances, but also a guide,
a role that can be fulfilled by a few leaders
occupying positions of the highest political
standing in the countries most deeply in-
volved in the process who are perceptive
enough to understand the gravity of the his-
torical moment, and who have the capacity
to rally support.

The Two-stage Constituent Process

From this perspective, the question
arises of how the adoption and proclama-
tion of a European constitution can be
achieved. Taking for granted the fact that
the exceptional historical moment in which
the constituent phase will begin can neither
be predicted, nor planned, there remains
the need to try and identify the possible pro-
cedures through which, once the conditions
have emerged that will render it possible, the
constituent process might be carried
through. These procedures can be split into
two stages: the first will be the decision, by
some governments, to found a European
federation, and the second the drawing up,
by a body whose legitimacy will be based on
its election by the people, of a constitu-
tional document.

The Federal Core

The transfer of sovereignty will depend,
first of all, on a decision reached by the gov-
ernments. However, the need to relinquish
sovereignty will not be perceived with the
same degree of urgency by all the govern-
ments of the enlarged European Union, and
it is this which will constitute the main prob-
lem destined to arise in this phase. On the
other hand, putting the decision on hold in-
definitely, until the necessary awareness
should develop in all the states of the Union,
is no answer to the problem because the
process of European unification is already
at the crossroads, and the choice is be-
tween federation and disintegration. The
only way to get over this impasse is to form,
within the Union, a federal core that is made
up of the countries that have advanced fur-
thest along the road towards integration and
towards the maturation of a European out-
look among their politicians and citizens –
a core destined progressively to enlarge
until, eventually, it includes all the Union’s
member countries. The formation of a fed-
eral core would allow the countries joining it
to opt for relinquishment of their sovereignty
without being impeded in this course by the
eveto of countries that will not wish, or will
not be able, to be included in it. The core
could be born of negotiations culminating in
an agreement between the Union’s member
states on how the new institutions of the
federal core could be made to coexist with
the old Union institutions, or alternatively it
could be born of a break-away action car-
rried out outside the framework of the
Treaties by the countries that wish to form it.

It can also be hypothesised, in abstract
terms at least, that the mere threat of a split
would allow unanimous support for a federal
design to be generated among all the states
of the Union. In any case, an in-depth analy-
sis of the measures through which the struc-
ture of the federal core might be rendered
compatible with that of the Union would be-
come a vital negotiating tool in this decisive
stage of the process. These measures
should allow the federal core to remain part
of the Union (constituting one of its member
states) and they should allow countries
which wish to join the core, and which ac-
cept its constitution unreservedly, to do so.
Furthermore, provision should be made for
countries not wanting to join the federal core
from the outset to preserve, should they
wish to do so, the *acquis communautaire*.

The Constituent Assembly

As far as the drawing up of the constitu-
tion is concerned, the main problem con-
cerns the nature of the assembly that will be
entrusted with the task. The alternatives
that can, at the present time, be contemplated
are: the European Parliament, an assembly
comprising the European Parliament and
representatives of the national parliaments,
or a constituent assembly, specially elected
for the purpose. This latter option appears to
be the most realistic, bearing in mind both
that the issue will probably be raised within
a narrower framework than that of the cur-
tent Union and that the European Parlia-
ment, being an institution of the Union,
could not legitimately draw up a constitu-
tional document relating to a different group
of states; it must also be recalled that the
European Parliament, in spite of the excep-
tion constituted by the Draft Treaty drawn
up upon the instigation of Spinelli at the start
of the 1980s, is still only a legislative body,
and as such does not have a constituent
role to fulfil. This does not exclude, however,
the possibility that the assignment of the
constituent mandate could be restricted to
MEPs elected in the countries making up
the federal core, on their own or together
with members of the national parliaments.