

The European federal constitution **4**

The decision to found a European federal state must necessarily be accompanied by the entrusting to a body democratically representing the European people a mandate to draw up its constitution. It might be useful to examine the most important questions relating to the content of this constitution and to issue a series of proposals. In fact, this will make it possible to highlight both those elements that, being conditions necessary for an effective transfer of sovereignty, will have to be considered mandatory, and others that, more problematical, will demand, at the time of the drawing up of the constitution, an extensive and in-depth debate for which public opinion must be prepared. Some concern the general principles that must underlie the constitution, some the institutions of the federation and their relative powers.

General principles

The Introduction – The introduction to the constitutional document should make reference to the course of history within whose context the foundation of the European federation can be viewed, in other words, the progressive overcoming of the barriers between peoples in pursuit of peace. To this end, it should include an explicit declaration that the European federation is ready to work for the transformation, in a democratic and supranational sense, of the United Nations and, on an equal footing with the other member states, to transfer powers to it.

Rights and Duties – A topic normally dealt with in the introduction to, and in first articles of, the modern constitutions is that of the citizens' rights (and duties). This is an issue that cannot be divorced from the question of the institutions and their powers. Any declaration of rights that is separated from the constitutional document in which the structure of a state is defined is nothing other than a rhetorical artifice that serves only to skirt around the decisive issue of sovereignty. Moreover, the reason why a list of rights must be incorporated into the constitution is not so much the existence of a serious human rights problem within the Union's present member states, as the fact that openness

towards the outside is destined to be one of the distinctive features of the European federation, both because the Union is bound to expand through the addition of new states, and because it will continue to be an area that attracts immigrants. The federation's power of irradiation, like its capacity to spread the values of federalism throughout the world, will depend on its openness. But it must be an openness that is regulated by strict conditions. Some of these must, realistically, be economic, while the nature of others will be political. And these will regard, essentially, respect for the rules of democracy and acknowledgement, both in the legal systems of the states wishing to join the federation, and in the daily reality of cohabitation with immigrant communities, of the fundamental rights (and of the relative duties) that have gradually taken shape in the course of the evolution of law in Europe. The anchoring in the constitution of certain fundamental principles – such as the equality of the sexes and the dignity of women – would clarify beyond doubt what the standards of behaviour demanded of any state or individual wishing to become member or citizen of the European federation would be. Respect for religious pluralism and the secular character of the state need not, in fact, signify neutrality of the same towards basic values of civil cohabitation which, in fact, represent the very condition of its survival.

Citizenship – One issue closely bound up with the question of rights and duties is that of citizenship. There must only be one citizenship for the whole of the federation, in other words, European citizenship must not be, like the form sanctioned by the Maastricht Treaty, a mere adjunct to national citizenship. What this principle will mean is that the rules to which the citizens of Europe shall be subject, as regards the matters falling within the jurisdiction of the national (as well as regional and local) legal systems, will depend exclusively on their place of residence which, in turn, they will be free to choose.

Community service – The constitution should make provision for the introduction of compulsory community service, whose purpose would be, essentially, to contribute to the fulfilment of

tasks linked to the protection of the environment and of European cultural heritage, to the provision of social services, and to collaboration with less developed countries. Community service would play an important part in legitimising the new federal political community, allowing young people to become deeply acquainted with the social reality of regions of the federation other than those of their birth, and to represent the federation beyond its own confines. In this way, loyalty to the European federation would be founded, in the minds and spirits of the young, more on social solidarity and on a readiness to embrace the outside world than on the duty, prevalent in the nation-state, to defend one's country in arms.

The Right of Secession – A final problem that falls within the sphere of the fundamental principles is that of the right of secession. The right of secession is one of the elements that allows a distinction to be drawn between the federation and the confederation. Only an entity that has retained its own sovereignty (and that is thus founded on a distinct people) preserves the right to withdraw from an agreement entered into with other sovereign states. The member states of a federation, on the other hand, renounce their sovereignty definitively, and the new entity that is born of their agreement to unite is no longer founded on distinct peoples, but on a single people. The member states thus lose, definitively, their right to withdraw from the federation. In Europe's case, secession would be a negation of the very identity of the European people, in other words, of the very foundation of the validity of the federation's constitutional order. Thus, such an event would, clearly and intrinsically, go against the constitution.

The Institutions and the division of powers

The Form of Government – A brief analysis of the problem of the institutions must start with the observation that the transfer of sovereignty from the nations to Europe hinges on one essential point: the need to make Europe the fundamental framework within which the political

contest is conducted and political will formed, rather than merely a sphere in which positions already developed at national political level clash. To this end, the main problem to be solved is that of creating the institutional conditions that will allow a European executive to rest upon the democratic consensus of the citizens. This aim could be achieved in different ways – through the institution of an American-style presidential government, the institution of a parliamentary government, or of an executive committee appointed for the whole period of the legislature according to the Swiss model. The latter formula – which betokens a body of a substantially technical nature – would not appear to be applicable to a state of continental dimensions, which will shoulder considerable responsibility internationally, and in which strong internal tensions cannot fail to surface. The choice is thus between the presidential formula and the parliamentary one. It is a choice that must be made bearing in mind the fact that the European federation will constitute a new political community which will bring together, in a single, pluralistic people, national peoples who have different languages, cultures and traditions, and whose loyalty to the federal constitution will, in an initial phase, be weak. The federation's institutions will therefore be faced with the task of attenuating, not accentuating, opposing positions, while at the same time attracting the greatest possible consensus. And these are objectives that would appear to be easier to achieve by means of the parliamentary rather than the presidential formula. The latter, in fact, would set individuals of different nationalities – candidates for the presidency of the federation – against one another, thus encouraging dangerous nationalistic clashes. The opposite effect would, on the contrary, be produced by enhancing the standing of the parliament, and this could be achieved by entrusting it with the power to express confidence in the executive or to withdraw the same (a power that, to ensure its responsible use, would have to be carefully regulated), because in the parliamentary setting, national differences would be tempered by the collective nature of the institution and by the affinities, in terms of political orientation, that would unite the major political families of Europe represented in it. Furthermore, it must not be forgotten that a parliamentary system, since it is already prefigured by the

present institutional structure of the Union, would more readily be accepted.

Legislative Power and Executive Power – Having made this choice, clearer indications could be given as to the form that the legislative power and the executive power must assume within the federal union. In short, the Council of Ministers would need to be relieved of the concentration of legislative and executive powers that it currently holds (and that have come to symbolise the Union's authoritarian character) and the body transformed into a High Chamber of the Union; full legislative powers would need to be transferred to the European Parliament, to be exercised on an equal footing with the High Chamber of the Union; the present Commission would have to become the government of the Union, answerable to the Lower Chamber, and attributed with full executive powers. Decisions reached by the two chambers would have to be simple majority decisions on all matters except that of constitutional reform, where a qualified majority would be needed as well as some form of participation in the process on the part of the legislative bodies of the lower levels of government, or the direct intervention of the electorate through recourse to the referendum mechanism. The High Chamber of the Union should be elected by the parliaments of the member states (in order to avoid transforming the High Chamber of the Union into a duplicate of the Parliament and, at the same time, to make it possible for each member state to be represented not only by its governing parties, but also by its opposition forces, this method would be preferable both to election by universal suffrage and to direct representation of the governments of the member states). Representation of the member states in the High Chamber should make provision for an increased weighting of the votes of the smaller states in relation to the larger ones, without however, in order to avoid over-penalising the larger states, going so far as the equal representation that is in force in the United States. In this framework, the present European Council would assume the role of collective Head of State of the Union, with the power to elect the head of government and to dissolve the Lower Chamber. The institutions of the federation would have to be invested – possibly after a transitory period, whose duration would never-

theless have to be predetermined – with responsibility for foreign policy and security.

The Multiplicity of Tiers of Government – The question of the organisation of the Federation into several tiers of government deserves a particular mention. This multiplicity of tiers, albeit limited to those of its member states which already have a federal, or quasi-federal, structure, such as Germany, Belgium, Austria, Spain and, later on, Italy and Great Britain, would already be realised upon the birth of the federation. On the contrary, it is certainly impossible to imagine states like France being ready immediately to adapt their internal institutions to this model. The constitution must, however, contain a preparatory provision that outlines a subdivision of the entire federal territory into a number of spheres of varying dimensions on whose basis the functions of government would be divided. This subdivision should not end at regional level, as regional centralisation is more dangerous and more suffocating than national centralisation; instead, it should extend to local level, the level at which there can be said to be a true participatory democracy. It must be underlined that it is only in the ambit of an out and out federal state, organised into a number of tiers of government, that any significance can be attributed to the so-called principle of subsidiarity, according to which all decisions must always be taken at the lowest level compatible with effective action: nowadays, this principle is used, surreptitiously, as a pretext for the nation-states' refusal to found a federal state. In this same context, it is important to stress how totally unfounded the claim is that local and regional governments can be represented at European level (the present Committee of Regions is an attempt to do just this). Regional and local bodies need to be given, by the constitution, a broad sphere of responsibilities, whose exercise must be guaranteed not only by the Court of Justice, but also by the presence of these bodies in the higher chambers of the tiers of government immediately superior to them. In fact, the representation of local and regional governments at continental level would (were it anything more than purely symbolic, and thus useless) produce only a shifting towards greater centralisation of decisions of regional and local import, creating confusion over the division of powers and causing the decision-making process to seize up.