

The European Constituent Process 3

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 pertinence 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 generate the motivation without which the federal project could not be pursued. It is important to emphasise strongly that in federal 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 European federation can come into being because there is no European people. Others maintain, on the contrary, that a European people can only be born of the political contest 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 interests and contrasts which characterise its normal life, and imposes, through an inexorable 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 opinions to be transformed into a single *European people* which, by the very act of its birth, will transfer the sovereignty of the nation-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 involved in the process who are perceptive enough to understand the gravity of the historical 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 proclamation 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 procedures 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 constitutional document.

The Federal Core

The transfer of sovereignty will depend, first of all, on a decision reached by the governments. However, the need to relinquish sovereignty will not be perceived with the same degree of urgency by all the governments of the enlarged European Union, and it is this which will constitute the main problem destined to arise in this phase. On the other hand, putting the decision on hold indefinitely, 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 between 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 furthest along the road towards integration and towards the maturation of a European outlook 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 federal core would allow the countries joining it to opt for relinquishment of their sovereignty without being impeded in this course by the veto 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 carried 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 analysis of the measures through which the structure of the federal core might be rendered compatible with that of the Union would become 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 accept 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 constitution is concerned, the main problem concerns 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 current Union and that the European Parliament, being an institution of the Union, could not legitimately draw up a constitutional document relating to a different group of states; it must also be recalled that the European Parliament, in spite of the exception 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.