

AN AMERICAN PERSPECTIVE ON EUROPE'S CONSTITUTIONAL OPPORTUNITY

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Lessons of the American Experience for Europe¹

Europe now finds itself historically positioned in a setting analogous to that of the United States in 1787. In 1787, the citizens of the separate states in the American confederation shared the common experience of successful conflict with a colonial ruling government and, also, the failed effort at economic integration by the independent sovereign polities. To James Madison and his compatriots at Philadelphia, the confederation among the separate states was not enough, and the future prospect was one of continuing interstate economic conflict, described by economic autarky in a setting of increasing vulnerability of the separated states to external enemies. What was needed was a *constitution*, a set of rules that would restrict the sovereign authority of the states over citizens, and, at the same time, would establish a *central government* that would also command, directly, the loyalties of citizens.

Madison's grand design for American federalism succeeded in its objective of creating and maintaining an open economy over the whole territory of the several states. The American economy, the effective extent of the market, came to be coextensive with the external boundaries of the central government. Freedom of trade in goods, freedom of migration of persons, freedom of movement for capital, a

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¹For a paper that treats the subject matter of this section at length, see Aranson (1990).

common monetary unit—these characteristics insured that the division of labor would be exploited to an internal maximum. And America, predictably, became rich.

But Madison's grand design for federalism failed in its less recognized but ultimately much more important objective, that of limiting the range and scope of political authority over the liberties of citizens. In 1787, concern was centered on the potential abuses of authority by the separated states; the anti-Federalists were unsuccessful in raising effective concerns about the potential authority of the central or federal government. After all, citizens of the states were creating a new government, the delegated powers of which were to be severely circumscribed. And, further, even as the new government exercised these delegated powers, Montesquieu's separational scheme was expected to provide further checks on overextension. Madison's philosophy of federalism did not allow him even to dream of a federal Leviathan.

To the Founders in 1787, the fact that the citizens of the separate states were involved in creating a central government that would itself commence to share sovereignty with these creating states more or less carried with it the ultimate right of citizens in the separate units to secede from the federal union so established. And, indeed, should the question of secession have been raised at all in the initial debates on the formation of the union, representatives of all the states would have dismissed it since the answer was, to them, self-evident. Without an implicit acceptance of an ultimate right to secede, to opt out, to exercise the exit option, the constitutional agreement hammered out in Philadelphia in the hot summer of 1787 would never have come into being at all.

If the advantages of economic union are so great, why should secession ever come to be in the interests of citizens of particular states in the federal system? The potentiality of a viable secessionist threat could emerge only if the central government, through its internal decision structure, should take action that differentially damages citizens of the separate states or regions within its territory. Should the central authority remain within the limits of actions defined by the "general interest" of all its citizens, an effective argument for secession could never emerge from considerations of economic interest. This relationship may be stated obversely: the threat of secession offers a means of insuring that the central government will, indeed, stay within those boundaries of political action defined by the general interests of all citizens in the inclusive territory.

We may ask the hypothetical question: if the American constitutional agreement of 1787 had included an effective guarantee that

EUROPE'S CONSTITUTIONAL OPPORTUNITY

the economy remain open, *externally* as well as internally, would the secession option have become viable to the coalition of Southern states in 1860? We can agree on the direction of effect. Secession from the federal union would have seemed less desirable to Southerners than, in fact, was the case in the presence of central government restriction on external trade.

I do not neglect the critical importance of the institution of slavery for American constitutional history. The immorality of slavery provided the impetus for the formation and maintenance of regional coalitions, conflict among which generated differentially damaging federal government trade restrictions and created the potential for Southern secession, both of which may well have been counter to the strict economic interests of the supporting citizenry. I emphasize only that this discussion is not an exercise in American history but is, instead, an interpretation of some of that history that seems relevant to the present European position.

In this context, Lincoln's decision to fight to preserve union can be viewed as a breaking of the implicit contract that had established the federal structure. The ultimate victory insured that secession was no longer a viable option for citizens of the separate states, individually or in coalition. In the absence of the threat of the exercise of the exit option, there then existed no effective limit to the expansion of the powers of the central government beyond those embodied in the formalized structure of constitutional rules. It was perhaps inevitable that, sooner or later, these formal limits would be violated, although we may speculate on whether or not the Madisonian structure might have survived in a time when there existed no generalized mind-set like that which described the socialist century. In any case, the history has been written. It is mockery to use "federalism" or "federal union" to describe present-day America, which is, of course, simply a very large nation-state.

The lessons of the American experience for Europe are clear. The citizens of the separated nation-states face an opportunity to enter into a federal union that can be an instrument for achieving the enormous gains of economic integration. In this respect, the parallel with the America of 1787 is direct. In the process of establishing an effective federal union, a central political authority must come into being with some sovereignty over citizens in all of the nation-states. But the ultimate powers of this central union must be reckoned with, and checks must be included in the constitutional contract that defines the federal structure. The formal rules of such a contract will not, however, be sufficient, as the American experience so well demonstrates. There must also be some explicit acknowledgement,

in the contract of establishment, of the rights of citizens in the separate units to secede from union, upon agreement of some designated supra-majority within the seceding jurisdiction.

As the American experience suggests, the advantages of union should be such that secession should never become a meaningful alternative for the citizenry of any unit or set of units. This result emerges, however, only if the central political authority is constitutionally prohibited from enacting policy measures that are unduly discriminatory in their impacts on the separate units. Recognition of this potentiality suggests, in turn, that the initial contract should provide guarantees of freedom for both internal and external trade, that is, for trade among all citizens and firms within the inclusive territory of union *and* for trade among citizens-firms within the territory of union and all parties outside these limits in so far as internal policy makes this possible.

Public Philosophy for Effective Federal Union

If Europe is to seize its opportunity to constitute a genuine federal union, its citizens must arrive at a philosophical understanding of the relationships among themselves, as individuals, and the collectivities in which they participate as members, both those defined as the historically familiar nation-states and the emergent inclusive Europe, a philosophical understanding that is quite different from that which described the public philosophy of the Hegelian-influenced socialist century.

For well over a century, political entrepreneurs found it profitable to exploit the ideological precept that the individual comes to the full realization of human potentiality only as a sharing participant in a collective, the aims for which are objectively determinate, whether by the working of the laws of history or by the light of scientific reason. That which was "good" for the individual was defined externally to any internal calculus of personal interest or reason. From this precept followed two direct consequences. First, the range and scope for the exercise of individual autonomy through free and voluntary contractual interaction independent of collectivized control was progressively narrowed. Second, decision making procedures for the collective were evaluated in terms of their efficacy in identifying the objectively existent "goodness" or "truth" for all participants. In this setting, it is evident that an informed elite may, even if it need not, be superior in its judgment to any majority coalition of the total electorate.

EUROPE'S CONSTITUTIONAL OPPORTUNITY

I have deliberately generalized the capsule description of the prevalent public philosophy of the "Hegelian epoch" to include both Marxian and non-Marxian variants of socialism-cum-collectivism. Central to both was the precept that autonomously derived or originated individual values are superseded by the objectively defined ideal that is potentially attainable only by the collective. The public philosophy of the long socialist century was marked by a dramatic loss of the 18th-century faith in the cooperative-contractual potential released by individual autonomy and by an accompanying acceptance of faith in the working of collective agency. The naive romanticism of 19th- and 20th-century socialism may be difficult for some historians of the 1990s to understand. But the history of ideas is marked by an epoch during which politics, defined as the total working of collectivities, was assumed to be characterized by both benevolence and omniscience.

The presupposed superiority of collective to individual choice and action necessarily required that there exist some well-defined collective unit. Socialist direction and control of the use of resources could be implemented only through a collective unit that could meaningfully define the effective boundaries of "the economy." And it was perhaps historical accident that caused attention to be focused, practically, on the emerging nation-states, and particularly as nationalistic sentiments arose to complement the collectivist attitudinal thrust.

The nation-state, through its political agents, was successful in placing individual citizens in dependency status, to varying degrees. This loss of independence was necessarily accompanied by the emergence of an artificial loyalty to the collective, which granted any and all access to economic value. However, the dependency-induced loyalties to collective agencies were, from the start, artificial. Public attitudes toward collectivist experiments had never matched the romanticized models described by the intellectuals and academicians, as promulgated and elaborated by interest-driven political entrepreneurs. Over the long term, a viable public philosophy for collectivism required a demonstration of tolerably successful performance along with an observation of a tolerably efficient bureaucracy. As we know, neither of these conditions was met, and the second half of the 20th century witnessed an erosion in citizen support, both for highly centralized collectivized regimes and for politicized overreaching in those nation-states that continued to allow considerable scope for individual autonomy.

The failures of the experiments in "democratic socialism" in the 1950s, the Khrushchev revelations of Stalinist terror, the flawed

welfare-state extensions of the 1960s, the inadequacies of Keynesian macromanagement in the 1970s, the woeful performance of collectivized economies in meeting minimal citizens' demands—these events compounded to generate the genuine revolutions of the late 1980s, revolutions that surprised even those who had never been deluded by the Hegelian mythology.

The public philosophy of collectivism now belongs to a historical epoch that is past. Political entrepreneurs can no longer exploit the Hegelian sublimation of the individual to a collective *zeitgeist* or the Marxian dialectic of class conflict. Citizens, in both Western and Eastern nation-states, are skeptical of politicized, collectivized nostrums for alleged societal ills. Political entrepreneurs move now to exploit the rediscovered precepts of liberty and autonomy. Although displaced by two centuries from its origins, the public philosophy that can make European federal union a reality seems well on the way to being in place, giving credence to my claim that Europe does, indeed, have its once-in-history opportunity.

Politicization, Profits, and Rules for a Competitive Constitutional Game

I have suggested that the public philosophy required for European federal union must embody considerable skepticism about the efficacy of collective arrangements to produce economic value, and notably as authority is lodged in nation-states. A socialist ideology could never countenance the genuine diminution of sovereignty that nation-states must experience, a diminution reflected in some transference to a supra-national central unit, to "Europe," and the more important transference to the free play of competitive forces operating across and beyond national boundaries. I have suggested that such a required shift in public philosophy is well on the way to becoming a reality of the 1990s.

The implementation of this public philosophy in the effective establishment of a federal union faces the formidable task of superseding the institutional history. Much more is required here than the shift in ideas. Full recovery of the 18th-century mind-set concerning the proclivity and prospects for politics and politicians to "do good" would not suffice to erase two centuries of experience, during which persons came to seek out private profits or rents through manipulation of the political-governmental-bureaucratic structure, and, in the process, learned tools of a trade unheard of in earlier times. For well over a century, and throughout the world, private profits have been

EUROPE'S CONSTITUTIONAL OPPORTUNITY

made at public (citizens') expense. We should hardly expect the rent-seekers to be deterred by any shift in the ideological currents.

As I have stated in a summary title for a different lecture, "Socialism is dead, but Leviathan lives on." The attempts by well-organized interest or pressure groups to use political means to secure differential gains at the expense of the general polity-economy will not disappear in the post-socialist epoch. Public skepticism of politics and politicians has not been accompanied by a reacquisition of faith in *laissez faire*, in the efficacy of markets when left alone within a framework of law.

We seem to have come full circle to the setting confronted by Adam Smith in 1776, when he felt it necessary to demonstrate the fallacies in the arguments that wealth is enhanced by particularized political intervention into the workings of markets. But, for citizens of Europe, there is a difference worthy of notice.

The "European difference" here lies, of course, in the juxtaposition of the historically familiar exercises of rent-seeking pressures *within* nation-states and the prospect for a constitution of federal union that will insure *competition* among producers and consumers of goods and resources across the territory that encompasses the several nation-states. This juxtaposition makes possible the achievement of economic integration, and the promise of substantial wealth enhancement, without any necessity of direct political confrontation with those groups *inside* the separate national units that seek to remain inside the protection of mercantilist restriction. The independent efforts of interest groups, as they operate on and through the political processes within separate national economies, need not be explicitly prohibited by the constitution of the federal union. Nor need the responses of majority legislative coalitions to such efforts be expressly limited. So long as individuals are protected by the constitution of the federal union in their liberties to purchase and to sell both producers' and consumers' goods freely throughout the territory of the union, particularized interferences with internal economic relationships within any single national unit will be policed with reasonable effectiveness by the forces of cross-national competition. Politically orchestrated regulatory activity will tend to be restricted to that which increases overall efficiency.

The "European difference" at this stage of history also remains important in that it facilitates a relatively painless transition for the institutionally relevant public bureaucracy. Existing agencies of nationally separate bureaucratic authority can be kept in place without nominal removal of their specific function to regulate specific sectors. There need be no overt shift of bureaucratic oversight

authority from Bonn, London, Paris, or Rome to Brussels. The separate national bureaucracies can continue to exist and to operate, but their genuine authority to exploit the citizenry will be forestalled, again by the competitive forces imposed by the constitutional guarantees of open markets across the federal system.

European Federalism, German Unity, and the Opening of Eastern Europe

To this point, the momentous events of 1989 have not entered directly into my discussion and no change in the argument would have been dictated had 1989 simply not happened. But the revolutions in Eastern Europe did take place in 1989, and any treatment of a prospective European federal union must, at a minimum, attempt to assess the influence of these changes. I shall examine separately the effects of two related issues, as these may bear on prospects for Europe's seizure of its once-in-history opportunity. I shall, first, discuss briefly questions of German reunification. I shall then discuss, more generally, the predicted effects of the opening of Eastern European economies to increased economic interaction with Western Europe and other parts of the world.

In a Europe historically described by the existence of autonomous, *fully sovereign* nation-states, whether or not these units are observed to cooperate in economic, environmental, political, social, and military matters, the lesson of history is surely one that prompts concern about the potential imbalance that might be created by a straightforward merger of the two Germanys. Self-determination, as an extension of the liberal principle of voluntary agreement among the parties directly involved, is acceptable only to the extent that significant spillover effects on other parties are absent. But it is important to recognize that the potential harms that a unified Germany could impose on other Europeans emerge largely, if not totally, from the maintenance of the Hegelian mind-set that presumes nation-states to exert full and undivided sovereignty over resident citizens.

The federalized alternative, in which sovereignty is genuinely shared, did not enter into the political consciousness in the socialist-collectivist century, a consciousness that accepted the necessity of a monolithic, centralized control over economic and social relationships. In the post-socialist mind-set that seems ready to emerge, in Europe as elsewhere, federal union for Europe becomes a real prospect. And with a genuine federal structure of governance, the bases for the fears of a dominant Germany are substantially reduced. If the constitution for Europe that establishes the federal union effec-

tively insures that any national unit, be it large or small, must remain open to the competitive forces that operate over all the inclusive territory of the union, why should, say, the citizen of Portugal be concerned much about the size of his nation-state relative to that of Germany?

It should be recognized, however, that the generalized German thrust for reunification stems, in part, from the collectivist mindset imposed by the Hegelian mythology. In the public philosophy attuned to the realities of European federal union, the political dimension of the nation-state matters relatively little. If the nation-state, as organized, is to possess much less authority than that assumed by the collectivist-socialist model, there need be, on the one hand, less fear of dominance by large units, and, on the other hand, less demand for inclusion in the large units by those peoples historically associated territorially, culturally, or linguistically.

The opening of Eastern Europe to increased marketlike relationships with other parts of the world, and notably with Western Europe, enhances the prospect that a European federal union, as established, will itself remain more open to trade with citizens of nonmember states than might otherwise have been the case. A closed European union, post-1992, which has been predicted by some critics, seems less likely to be realized, subsequent to the revolutionary events of 1989.

As noted earlier, there is a persuasive argument in support of constitutional guarantees for free trade both internally and externally, that is, both among the nation-states of the federal union and between the union and other countries of the world. The internal free-trade area may be sufficiently large to capture most if not all of the scale advantages of an extended market. But freedom for external trade serves the equally important function of insuring that internal political coalitions among majorities of the separate member nation-states will not successfully exploit minorities, and especially as concentrated in particular member units. A federal union made up of Western European member states that would have confronted a closed Eastern Europe, as seemed to be the prospect prior to 1989, might have succumbed to the protectionist temptations to discriminate against trade with America and the Pacific. But, post-1989, with Eastern European prospects for trade in goods, migration of labor, and outlets for investment open, the internal political incentives should have shifted substantially in favor of leaving the European market open externally. Citizens of Western Europe, when considering themselves as participants in the grand design for effective federalism, do not seem likely to support the formation of a closed trading

area that would, itself, provide incentives for Eastern European economic and political isolation, especially when there may exist prospects for including new members of the federal union drawn from the nation-states of Eastern Europe.

Will an Effective European Federal Union Become Reality?

I have predicted that citizens of the several nation-states of Western Europe, acting through their existing political agents and processes, will take advantage of the constitutional opportunity that this moment in history offers to them. A European federal union will be established in the 1990s with constitutional guarantees that will prevent any emergence of a monolithic "Europe," as a central political unit, that will take on control and regulatory functions characteristic of the socialist-collectivist regimes during the historical epoch that is ending. Existing national units will not be reduced to the status of provincial administrative districts or to subordinate positions resembling those occupied by the American states in post-Lincoln United States.

Those who have predicted that, upon any movement toward federal union, the central state, "Europe," must assume critical dominance, and that Brussels, or the Brussels bureaucracy, will reduce national political agencies to submission are, I think, wrong. I base my contrary prediction on the particular convergence of ideas and events at the end of this century. As noted, the romanticized myth of the benevolent and omniscient state came to influence public perception of politics in application to the existence of the separately sovereign nation-states of modern Europe. The romantic myth has been substantially displaced in the public consciousness of the 1990s, and there are no longer philosophers around who promote its revival. Nowhere in the world, East or West, do we find, in the 1990s, the naive faith in collectivist nostrums that characterized both intellectual and public attitudes for most of the 19th and 20th centuries.

A central European state that would come to share sovereignty with the separate national member units in a federal system could not, therefore, be expected to capture and to command loyalties even remotely akin to those exploited so tragically by the nation-states of the last two centuries. The central polity of Europe, in a federal structure, would be required to emerge, grow, and survive in an attitudinal climate that embodies generalized skepticism about both the motives of political agents and the workings of political institu-

EUROPE'S CONSTITUTIONAL OPPORTUNITY

tions, at all levels. An additional difficulty that would be faced by a central European state in seeking to take on powers reserved to member polities in a constitutional federal union lies in the continued residues of sentiment defined by shared historical experience, by cultural, linguistic, and ethnic homogeneity. Citizens of a European federation will, indeed, come to think of themselves as "Europeans," but they will scarcely stop thinking of themselves as British, French, German, or Italian. Brussels, as the capital city of the federation, would be expected to be more like Bern, in the Swiss confederation, than like Paris, in post-Napoleonic France.

My prediction may, of course, be proven wrong. If the proponents of federal union have not, themselves, fully escaped residual socialist failures to understand the efficiency-generating forces of competition, both in markets for goods and among separately existing units in a federal system, they may advance nightmare versions of a regulatory "Brusselsization" that would prove totally unacceptable to those who are reluctant to surrender any shares in national sovereignty. And the power of the incentives offered to prospective rent-seekers by any prospective establishment of a Europeanized bureaucracy should never be underestimated. Excessive Europe-wide regulations, controls, fiscal harmonization, and fiat-issue monopoly would destroy much of the gain that economic integration might promise.

The task of designing, in detail, the *constitution* for an effective federal union for Europe is formidable, and this task has scarcely been commenced. But I emphasize again that the opportunity is in place; the time is ripe. Europe waits for its own James Madison, who understands the constitutional economics of competition, and who, at the same time, appreciates the nuances of persuasive argument, bargaining, and compromise required to generate agreement among apparently divergent interests.

Europeans, generally, must be convinced that establishment of a constitutionally defined federal union is a positive-sum movement for all parties. Finally, to end this paper where it started, Europeans generally, including the James Madison of the 1990s, must recognize the propitiousness of this moment in the world's history.

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