

Constitutional Development Of The European Communities

(Paper on Constitutional Development of the European Communities by Edward A.C. Goodman, January 1982).

On April 18, 1952 at Paris, the heads of state and foreign ministers of Belgium, France, Italy, the Netherlands and West Germany signed the treaty establishing the European Coal and Steel Community (E.C.S.C.). On March 25, 1957 at Rome, they signed the treaties establishing the European Economic Community (E.E.C. or Euratom). On April 8, 1965 at Brussels, they signed a treaty merging the institutions of the three European Communities. In 1973, Denmark, the Republic of Ireland and the United Kingdom of Great Britain and Northern Ireland joined the European Communities. In 1981, Greece also adhered thereby increasing the number of member states to ten. It is anticipated that another countries, namely Portugal and Spain will join in the near future, and that Turkey will do so in the distant future.

Like all modern constitutions, that of the European Communities provides for an executive, a legislative, and a judiciary. The legislative consists of the Council of Ministers made up of one minister from each member state, each of whom has the right to vote. The chairmanship rotates every six months. The Council has a permanent secretariat at Brussels, but only meets there for nine months of the year, convening at Luxembourg for the remaining three. It holds approximately twenty sessions a year, each lasting about two days. These are held in secret, and no public minutes are published.

The Council of Ministers is assisted in performing its legislative functions by the European Parliament. However, it is a parliament in name only, having very limited powers indeed. These are to oversee the budget of the European Communities, to question and if necessary censure the European Commission, and the right to be consulted on important Community matters. The Parliament convenes at Strasbourg and at Luxembourg, where its secretariat is, and holds some committee meetings at Brussels. Its members are directly elected by the citizens of the countries of the European Communities.

The Executives of the European Communities, like the legislature, consists of two institutions, namely the European Commission, Policy is decided by the European Council and the European Commission. Policy is decided by the European Council which act as the Head of Government of the Communities. It consists of the Heads of Government of each of the member states meeting tri-annually.

The European Commission is the civil service of the European Communities. It is controlled by an executive of 14 members consisting of two members from each of the larger states of the Communities and one from each of the smaller ones. However, once appointed, the members during their terms of office enjoy diplomatic immunity and are completely independent of the countries that appointed them. The European Commission has its headquarters and most of its staff at Brussels, with some offices at Luxembourg. In accordance with the decisions of the Council of Ministers it promulgates the subsidiary legislation of the Communities, just as in each member country secondary legislation is effected by regulations issued by the executive while parliament concerns itself with primary legislation.

The judiciary of the European Communities consists of the European Court of Justice. This is made up of one judge from the European Court of Justice. This is made up of one judge from each member state, and sits at Luxembourg. It adjudicates on cases arising under Community law.

The Communities are financed by customs duties and one percent of the Value Added Tax collected by its constituent states. The legislation of the Communities is restricted by the treaties establishing them to dealing with economic matters. Thus the Communities are purely fiscal institutions. However they were designed as the framework for political federation which the founders hoped would follow economic union. This could be achieved by using the existing institutions. However notifications would have to be made to them before an effective political merger could operate.

The most important change necessary relates to the legislature. The dominant part consists of the Council of Ministers. However, these ministers in their own countries are part of the executive not of the legislature. It is therefore incongruous for them to have legislative power regarding the Communities, whereas the European Parliament merely has the right to advise them in the exercise of that power. To bring the Communities into line with their constituent states, it would be necessary to transfer the legislative function to the European Parliament. The Council of Ministers should then become part of the executive of the Communities acting as the Cabinet.

Thus if the dream of the founding fathers of the Communities is to be realised and they are to become political as well as economic union, a rational framework adopting the existing institutions could be on the following lines. The executive of the European Communities would consist of the European Council, the Council of Ministers, and the European Commission. The European Council would not as head of Government of the Communities, the Council of Ministers as Cabinet and the Commission as Civil Service. The legislature would consist of the European Parliament and the judiciary would remain the European Court of Justice.

In order to make these institutions more efficient and positive, it would be necessary for each of them to have a fixed site, thus ending the present peripatetic future of the European Council, European Commission and European Parliament. It would be logical for all those bodies to be in Brussels, which is at present the main site of the institutions in the Communities. Luxembourg, one of the other two centres of the Communities, would be compensated by the fact that the European Court of Justice would remain there. This leaves the question of Strasbourg, the other existing seat of the Communities. At the moment, the European Parliament holds most of the meetings there, although its secretariat is at Luxembourg. If France continues her policy of refusing to allow Strasbourg to be deprived of its status as one of the three centres of the Communities, then the European Parliament and the secretariat should be sited there.

This would produce a scheme whereby the executive of the Communities was at Brussels, the legislature at Strasbourg, and the judiciary at Luxembourg. This would emphasise that the Communities practise the fundamental precept of democracy, namely the separation of powers. It would also preserve the ideal of the founding fathers that the institutions of the Communities should be situated in the three bilingual towns of Brussels, Luxembourg and Strasbourg. Obviously it would be more efficient if all the institutions were in one town. However, it is not unprecedented for them to be in separate places. Some countries of the world, such as the Netherlands and South Africa have, because of rivalry between their leading cities, dispersed their administrative organs. In addition, other countries are purposely trying to decentralise. A

good example is the United Kingdom. Her executive institutions are situated in many towns in addition to the national capital, eg in Belfast, Cardiff, Edinburgh and Swansea, and her biggest courts of appeal are divided between London and Edinburgh. It will be acceptable for the institutions of politically united European Communities to be similarly scattered.

Thus a blueprint for a "United States of Europe" exists in the European Communities, provided that they can be adapted so that the legislative power is transferred from the Council of Ministers to the European Parliament. So far, the member countries have resisted this, because the Council of Ministers is made up of their delegates, each having the right of veto, whom they appoint and direct, whereas the European Parliament is independent of their control.

The European Parliament is thus the key to political union. Progress has started with the direct election of its members in 1979. The next task will be to find a permanent site for the parliament and thus make it a more effective and respected body. Also it will have to assimilate the additional members from Portugal and Spain when they join the Communities. These tasks should be completed by 1990. Then there will be no excuse for further delay in transferring the legislative powers of the Communities from its constituent states, exercised through the Council of Ministers, to the European Parliament. If the governments of the member countries have the courage to crown the establishment of the European Communities by doing this, the dream of a "United States of Europe" and realised by the end of this century.

By transferring the legislative function to the European Parliament, a solution will be found to the persistent refusal of member countries to give up the veto that each has in the Council of Ministers. As it would become the Cabinet of the Communities, the right of veto could be retained because the Communities would be a loose confederation and thus policies would in any event, have to be agreed to by all member states would in any event, have to be agreed to all by all member states before it was possible to put them into effect. Perhaps, as the political union became stronger, it would be possible to evolve a system whereby it would not be necessary to have the unanimous consent of the constituent states to Community policies. However, as federation can, in the circumstances prevailing at present, only be achieved by a gradual process, initially each member country will have to retain its right of veto on Community policy. This is in accordance with usage in these countries, because leading ministers do in practice have to agree unambiguously before a national policy can be adopted.

Decentralisation Of Government

The key question regarding decentralisation is the unit of administration chose on which to devolve functions from the centre. England and Wales already have two-tier system of local government. If regional assemblies were added to this as a third tier, all that in practice would happen would be the administration would become more inefficient. The extra tier would provide further opportunity for buck-passing and expensive duplication of functions. It would also be contrary to the recommendations of all the responsible bodies that have investigated the system of local government since the War. *

The National Association of Local Government Officers and then the Redcliffe-Maud Royal Commission Report of Local Government Officers came to the conclusion that the most efficient system would be single-tier, with each unit having a population of about 300,000. However, the Conservatives rejected this

and instead opted for a two-tier scheme. Nevertheless, they did accept the recommendation that a unit of about a quarter of a million people was the smallest practical one for local administration.

Therefore, when a new system of local government came into force in Greater London in 1965 and the rest of England and Wales in 1974, each Metropolitan Borough Council and each "shire" (ie non-Metropolitan) County Council was constituted so as to have a population equal to or greater than that figure. However, these units formed only one of two tiers. The "shire" counties were divided into districts, and the metropolitan boroughs were grouped together with the metropolitan counties. It would be easy to convert the present two tiers into a viable one-tier system by abolishing the districts in "shire" counties and abolishing the metropolitan counties (including the Greater London Council).

England and Wales are small in area and densely populated. There is therefore no necessity for a multi-tier system of administration to accommodate large and diverse areas. If it is desired to give home rule to Scotland and Wales, this should be done. The Royal Commission came to the conclusion that there was no desire for regional government in England. Therefore, decentralisation of the United Kingdom could and should only take the form of assemblies for Scotland, Wales and Northern Ireland, but should not mean setting up an undesired and uncalled-for system of regional authorities in England.

Functions which require a regional rather than a local system of administration, such as police forces, hospitals and water supplies, could be carried out by bodies constituted on a similar basis to the present Police Committees and thus consisting of members of the County Councils in the region concerned. Co-ordinating committees to carry out regional functions could be formed in this way thus avoiding the necessity for regional assemblies with separate directly elected members, separate officials and separate powers. The creation of another expensive layer of local government would thereby be avoided.

The existing two-tier system of local government in this country is neither popular nor understood. Often less than a third of the electorate votes in local elections and most of the representations regarding local government functions are mistakenly made to the wrong authorities. For instance, some Members of Parliament have calculated that over 80% of the communications they receive from constituents are nothing to do with central government and therefore have to be passed on to the appropriate local authorities to whom they should have been made in the first place.

Also, most of the electorate do not understand which of the two tiers in their locality deal with which function. This confusion is increased by the fact that the higher tier often delegates some of its functions to the lower one. The Greater London Council for instance allows London boroughs to exercise many of its housing responsibilities.

A one-tier system of local government would mean that there would be no confusion as to the relevant local authority. The population of the units constituting the single tier would be at least two hundred and fifty thousand. These units would therefore be large enough to efficiently carry out functions such as housing and education. Decentralisation could be achieved by transferring to them some of the functions at present performed by central government.

In addition, if it is desired, other functions could be given to assemblies in England and Wales. In fact, the Scottish Nationalist Party has stated that it desires a single-tier system of local government in Scotland to replace the two-tier system introduced there in 1975. Such a system has been established in Northern

Ireland. England, Scotland and Wales have a two tier system which could easily be converted into a single tier one. The danger which must be avoided is the preservation of the existing two tiers with the addition of a third “provincial” tier, thereby creating an horrendous scheme in which there is central government and also three layers of local government, with the electorate having to pay for all of them and not understanding which one deals with what function.

EAC Goodman, circa 1985

The Campidoglio

The Campidoglio is the current home of the Mayor of Rome, on a hillside in the area of the Pat which is the monument to Vittorio Emanuele II.

The Campidoglio (above) is now the office of the Mayor of Rome.

The Campidoglio is the major symbol of the ancient and powerful Rome. Some artefacts were recently found at the side of the capitol hill (*Capitolinum*) where the Campidoglio is placed, which without doubt proved that the first population was established there on the BC. In ancient Rome, the hill was a refuge for “asylum” during the Sabine War at a time when Titus Tatius (circa 750BC) was Joint King. To build the monument to Vittorio Emanuele II known as *Aetare della Patria* it was necessary to destroy some part of the Arx, the most ancient rock which joins the hill to the *Aetare della Patria*.

The Campidoglio is named after the supreme deity, Jupiter Capiolinus, for whom a temple was built by order of King Tarquinius Priscus. It was completed by King Tarquinius Superbus and officially opened after the proclamation of the Roman Republic in 509BC.

It has been destroyed and rebuilt many times during the republican and imperial epochs. It is known for certain that on the summit Vulca, an Etruscan artist had decorated the front gates. The road which leads to the temple was used by victorious soldiers, parading distinguished prisoners-of-war who were afterwards sacrificed (burnt).

Among the triumphs who used to go to the Campidoglio were the famous Lucius Emilius Paulus of 168BC, and Lucius Mummius in 146BC, and four of Caesar, one of Augustus, and one of Titus.

The hill was full of temples: one dedicated to Jupiter and one to the Fides Publica where treaties with other people were signed in the name of the Roman people.

One hill near the Arx is remembered as for a very famous episode which happened to Juno in 390BC during the siege of the Gauls. There is a legend that during the night Juno had some sacred geese which started to squawk. This noise permitted frightened the enemy soldiers into running away to avoid discovery.

For this event in 345BC, a temple was erected dedicated to Juno to commemorate the victorious event under the epithet of *Moneta* which gave its name to money because of the neighbourhood the mint of the Roman State War.

It would be impossible to follow all the historic events which are linked to the Campidoglio because account it would be too long. We remember that in 78BC the consul Q. Lvtzio Catulo erected on hill the Tolsilarium which was the state archive.

Unfortunately, in the second imperial period, part of the complex was destroyed by two disastrous fires which destroyed a great part of the artifacts there of history and culture, which many generations of Romans had collected. The first beaze occurred in 69AD during the war between Vitellio and Vespasean.

Immediately after it had been reconstructed (including the temple of Jupiter) another fire occurred. Titus and Domition organised a second rebuilding.

With the fall of the empire and the barbarian invasion commenced the ruin of the whole complex. The temples began to be abandoned and in their place the Christian religion started to organise their worship. They started to bring animals to market.

Between the Ninth and Tenth Centuries the whole hill changed completely its significance, in the public life. At that line they started to build a church there of Ara Coeli (Altar of the Sky), On the site of the Tabulasium and the shite of the temple of Veoive (old Italian divinity) arose the baronial fortress or the Corsi. They were expelled in 1084 by Henry IV temporarily, and definitely in 1105 by Pope Pasquale II, who demolished all the towers.

At that same period the news appeared about the birth of a local administration communal the more important decisions were taken by the people gathered in the Campidoglio. With the "Revived Senate" in 1143, the birth of this new communal system commenced the hatred between the nobles and the pope. In 1300, the start of the acting, everybody made the effort to found a powerful government.

In 1941, in one of the halls of the palace, Francescopetrarca Petrarca (Putrardi) was solemnly declared a poet; and there in that same hail in 1344, Coladi Rienzp assured the title of Tribune and 1363, the first offices of the state were created with their relative tasks.

At the beginning of the Sixteenth Century, the whole complex took the look a fortress with towers, defensive wals built by popes, particularly Paul III who in 1537 commissioned Michleangelo to decorate and pain the whole complex. He made the statue of Marcus Areulius the centre piece of the place and the Senatorial Palace. He made all the pavements of the square and two palaces on the side of the square.

The whole work took one century to complete. When it was finished, nothing had been added since untol the last years of the 1800s.

In the interior of the Caputoline Palce was placed the first public Roman art gallery called the Capitoline, initiated by popes in the Sixteenth Century and improved by new acquisitions. Precious works of art and sculpture were placed there. At the end of the 1700s during the French occupation they brought their culture and made the Campidoglio a symbol of freedom.

When the restoration came, the repossess of temporal power of the pope, the birth of the Roman republic at the Campidoglio was marked by many historic events of capital importance.

After September 20, 1860, the November 29 in the Salon of the Senatorial Palace, the new communal council of Rome gathered for the first time to elect the new mayor of Rome.

It was a very important moment to remember, more important than the legend of the geese.