

EUROPEAN LUNCHEON CLUB

Speech delivered by Professor Dr. Walter Hallstein,
President of the European Movement, to the European
Luncheon Club, at the Café Royal on May 5, 1969 at 2 p. m.

May I say first of all that I am glad on this festive occasion which brings me to London, and I should also like to thank you for your kind invitation to celebrate the 20th anniversary of the foundation of the Council of Europe with you. It is an important day in the history of the work for European unity, and our satisfaction with the progress achieved has not diminished in the past two decades.

The British Council of the European Movement is my home, as it were. Therefore, my first concern is to bring you greetings from the large family of the European Movement. We are all following with great interest and respect the excellent work for our British friends who remain loyal to the European idea without losing faith, and who inspire the great idea of European unity in the minds of their compatriots, and it is for this that we wish you every success.

I am also grateful to you for giving me the opportunity of expressing my opinion on a related venture of the Council of Europe, on European integration. I am sad at the thought that not all of you are citizens of the European Community. We all of us deplore the brutal and un-European veto which made even negotiations on British entry into the Community impossible. But we were always convinced it meant a temporary delay only. Great Britain will become part of the Community. And for that reason the subject under discussion should be of interest also to my British friends.

But do not worry, I shall refrain from adding yet another point to the argument whether the European Community is a federation or a confederation. I do not wish to question the principle behind this distinction, although I suspect that it is no more than heuristic. So I shall simply start from the position that a federation is one state, but a confederation is a league of states.

When we look at the reality of European integration, we see at once that it cannot be "grasped" in terms of either of these concepts. On the one hand there are two ways in which integration may be identified with federation. On the other, it also has a negative feature in common with confederation.

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One federal aspect is that Member States finally hand over some of their responsibilities to the Community. In practice this applies - in varying degrees - to the whole of economic policy and to social policy.

This combination of tasks is accompanied by a corresponding pooling of sovereign powers. From this there is emerging a new economic and social order which has its origins in the Treaty establishing the Community and in the Community's own legislation. This body of law is hardly less extensive than that of the Member States in the fields affected. Its administrative and jurisdictional implementation is vested partly in the Community institutions but mainly in the organs of the Member States. In this the Community's constitution follows the German federal tradition and not the American (according to which federal laws can in principle be implemented only by the federal organs). Only such a federal conception can reconcile the unity and diversity of the states and nations of Europe, for it alone ensures an adequate concentration of political powers while at the same time respecting - in contrast to the centralized unitary state - the proud and vigorous individuality of the Member States.

There is, however, another more important feature of integration, by which it is akin to federation: it is a dynamic concept, that is to say its very implementation constantly creates new reasons for widening the field of integration. Here we have the other side of the empirical method that we have been following since Schuman declared on the ninth of May 1950 that a European state would not be created at one stroke, but step by step, beginning with de facto solidarity. This applies not only in the context of economic and social life; it goes further. The common orientation of the economic and social process also means that the sinews of war must be made a Community matter, and furnishes an important argument in favour of the integration of defence policy. A common commercial policy already represents the integration of an important sector and of one of the chief instruments of foreign policy; it therefore suggests a common foreign policy on non-economic matters also. Of course there is nothing automatic about this, but the development is a logical one and leads constantly to further decisions and activities. Integration is thus a process and not a static thing, and this process is one that tends towards complete federation, that is, to the federal state.

Of course, a European state does not exist until the final position has been attained - and this is in conformity with our concept of a confederation.

The conclusion to be drawn from all this is that there is no hard and fast distinction between federation and confederation that would require us to choose between the two. Perhaps the Swiss were not far wrong when they called their constitution "La constitution fédérale de la Confédération Helvétique".

I have thus made clear the sense in which I am using the word "federal".

First of all - at least today - nobody will deny that public authority, and even executive power, is invested in the Community.

Modern economy is permeated with government intervention of various kinds. It starts with Law and Order which in this century is a state monopoly.

Furthermore, the existence and development of public infrastructures, in the widest sense, are the prerequisite for any economic activity.

And further, ever since our painful experiences of the world economic crisis, together with its unhappy political consequences, governments have taken over the responsibility for a business cycle policy.

Also, economic relations with the national economies of other countries have always been among the most important instruments of economic policy of every state.

In short: a modern, free economy is inconceivable without the public authority in its various forms being present. It is a carefully balanced conglomerate of individual freedom and public order.

Thus, a large-scale European economy comprising the area of the six member countries of the EEC also requires a public authority dealing with the whole of this aspect. Such an economy requires a common law and a common policy; it requires common authorities who will make it their business to evolve a common economy created out of the existing six economies and to administer it.

But what are these authorities, common institutions, and common bodies? The answer will be given by the Constitution of the Community.

The first question to be answered by it is the one concerning the structural type of the Community. The federal type of constitution is not the only one to be considered, there are theoretically, three different types, i. e. the unitary, the international, and the one which we call the "Community type" (type communautaire, gemeinschaftlicher Typ). The unitary type (à la France) inhibits the traditional regional authorities completely, replaces them, and then they perish. The international type does not interfere with them at all. You merely establish an association for the common protection of specific tasks and thus create treaty obligations, rights and duties for the participating countries. The characteristic of this particular type is the unanimity of the decision-making bodies, i. e. the ministerial councils. This solution is advisable for adoption by associations having limited objectives and a large membership (and thus a relatively small common denominator of community of interests). This solution can be found in the large-scale European structures, the Council of Europe and the O. E. C. D.

The third solution goes one step further. We used to call it "supra-national". Nowadays we prefer the word "common" (communautaire, gemeinschaftlich), taken from the terminology of our treaty. In this case, countries give up part of their sovereignty or rather, they pool part of it, merge it and subordinate it to common authorities in which they effectively participate.

We have thus determined the outline of the organisation of the Community. Constitutional bodies are: the European Court of Justice, Parliament, Council, and Commission.

Every action originates in the Commission. It is the most creative part of Community organisation, without a direct model in history. Its function is to personify and to defend the undiluted interests of the Community from within - especially against the individual powers of the Member States - and from without - the Community should speak with one voice, not with six. The Commission is therefore independent of member governments; government instructions may neither be given nor received. Its members are nevertheless appointed by agreement of the governments. They can however - all of them together - be recalled only by the European Parliament.

This Commission has three functions. First it has to submit proposals and projects. This role is obligatory in two ways: the Commission has

fundamentally a monopoly of initiative and is obliged to go into action if the community interest so demands.

The Commission is furthermore the guardian of the Treaty . Its observance is the concern of the Commission.

Lastly, as umpire it has to assist the Council in making decisions, in any case taking part in the meetings of the Council.

Finally, the Treaty empowers the Commission to take independent decisions within certain limits.

The Council is the federal organ of the Community. It consists of members of national governments who in turn make their own choices.

Adjustments, conciliation of individual interests of member countries and of the interest of the Community will take place in the Council. The Council takes all the most important political decisions. It proclaims the statutes ("decrees") of the Community. And thus here is a 'dialogue' between Council and Commission, the nucleus of the organisation of the Community. It is here, primarily, that the Commission fulfils its task of a stimulating and balancing organ.

Voting in the Council is mainly by majority rule. A 'qualified majority' is generally required. This qualified majority ensures that a proposal of the Commission cannot be defeated either by an individual member country or by the Benelux countries, but only by at least two countries. On the other hand, unanimity is required to amend a proposal by the Commission. This system protects the 'small' countries against arbitrary action by the majority: they can only be out-voted if the Commission too is against them, i. e. if the Community interest demands agreement.

The majority principle is a fundamental part of the Community constitution. The demand for unanimity, or the right of an individual country to veto, is the exception. Abolition of the majority principle on questions which, in the opinion of a particular government, touched on its vital national interests, was tried by French diplomacy during the 1965 crisis. The theatrical scene of 'an empty chair' mainly served this purpose. However, thanks to the resistance and determination of the other five members, this attempt was defeated. In Luxembourg, in January 1966, the governments merely agreed to disagree, a statement hardly deserving the name of "compromise".

If we may term the Commission the unitary body and the Council the federal body par excellence, it is only proper to describe the Parliament as the democratic organ. Democracy attributes all national order to the authority of the people, the citizens: "The supreme power stems from the people". Parliament, representing the people, is the instrument for this. Here, the order of the Community leaves a great deal to be desired. The structure does not correspond to the political model of parliamentary democracy in which parliament elects and controls the government and has sovereignty over legislation (especially budgeting). There is a parliament. But it does not elect a government because there is none in the traditional meaning of the word. Rather the government-like functions are seen to by the Council of Ministers and the Commission, working separately in specific fields or sharing in the work. Parliament controls the Commission because the Commission embodies the European Community interest. This control is effected in the same way as in national governments: the Commission is answerable to the Committees of Parliament, it has to report annually to Parliament, it has to support its views in public plenary debates, and it can be forced to resign by a vote of no confidence. But Parliament does not make either laws or the budget. It is merely consulted by the legislative decision-making body, the Council, and this consultation is effective only insofar as the Commission defends its findings vis à vis the Council, and thus prevails. The Council of Ministers as a body is not under parliamentary control, each member being merely subject, as national minister, to the control of his own parliament, and of course only as regards his personal attitude in the discussion and voting, but not as regards resolutions passed by the Council, which may have been a majority decision and against him.

All the variations described of the standard of parliamentary democracy are, naturally, covered and legitimized by the initial treaty and its parliamentary ratification in the six member countries in accordance with their constitutions. Nevertheless, they are in the last analysis, only acceptable because a large majority of public opinion in the Community sees in them only a temporary initial solution.

This applies especially to a further peculiarity as regards election of members of the European Parliament. Usually criticism is to the effect that the European Parliament is 'not directly elected'. All members of the European Parliament are members of national parliaments in their respective countries

and thus directly elected. But this election is not enough for entry into the European Parliament. In order to achieve this, the delegate must be selected by his national parliament.

The anomaly of the procedure is not that the delegate was not directly elected; it is that he was not elected for the European Parliament but for the national one (of which he remains a member after his election to the European Parliament). Therefore an election campaign on European issues does not exist. Only an election campaign which compels the citizens to choose on questions to be decided by the future Parliament will establish the truly representative position of a member of the European Parliament.

The Treaty has not overlooked the need for reform of the parliamentary system of the Community. It lays down that parliament has to work out schemes for general direct elections according to uniform procedures to be adopted by all member countries. Accordingly, the Council must unanimously proclaim relevant regulations to be recommended for adoption by member countries in accordance with their national constitutional regulations. The European Parliament has not failed to work out such schemes, but they have merely been buried in the files of the Council.

Lastly, the rule of law of the Community rests with the Court of Justice.

The Court of Justice symbolizes one idea which characterizes the European Community system perhaps more than any other criteria, namely:

The Community is a phenomenon of the law in three respects: it is a creation of the law, it is the source of law, and it is a system of law.

That the Community is a creation of the law is the decisive new aspect which separates it from all earlier attempts at uniting Europe. Not power, not subjection are the means, but an intellectual and civilized force: law.

Secondly, the Community is the source of law. The union created by the treaty must develop its own dynamic independent life in order to reach its goal, the economic and social Union of Europe. Therefore, the treaty determines in most cases only the aims of the Community, the bodies to give driving force, and the time-table. Therefore, despite the fact that the Community is not a state, it does have legislative, executive and jurisdictional powers like a state.

And finally, the Community is a closed system of legal rules created by the Treaty itself and by Acts made under the Treaty.

Just as Community law cannot be regarded as a mere bundle of international agreements it must also not be thought of as part or appendix of national legal systems. In fact, the member countries have, by establishing the Community, limited their sovereignty and thus created a new independent body of law binding on their citizens and themselves.

There is therefore the question of this law in relation to national law. The answer is: precedence and the prohibitory effect of federal law over national law apply. This precedence has been confirmed by the European Court of Justice.

And according to the correct interpretation, this precedence of the Community Law does not even spare the basic decisions of the member countries.

I should now like to close.

In the historic stream of the evolution of European unity the existence of a reasonable, balanced and harmonious system, as I have broadly described it, is a most important asset. The arguments which produced our European policy have not been discarded nor weakened. On the contrary, they have remained constant, and we can say that they have even been strengthened and increased. European life has become more dangerous. The forces lined up against us - both traditional and dynamic - are still virulent. The forces on our own side need more careful nurturing. And we must not forget that political success does not fall into our lap by means of a mysterious automatic device - it must be fought for.

We must start off from the position which has already been reached. The most important thing here is the European Community. This Community means an unceasing process of construction and consolidation, driven by the motor of political purpose. This process must be secured from within and without.

This means first the strengthening of the European economy by all available means. The customs union must be supplemented by an economic union and a common economic policy. There are still several gaps in our European economic pattern which must be filled, and our experiences in European everyday affairs together with progressive scientific knowledge make us aware of even further gaps. In short, it is up to the Community to breathe life into the Treaty.

The political aspects are of no less importance. We have seen that treaty rules are equivalent to a constitution. By means of law it builds up an organism which speaks with one voice in the name of Europe from within and without. All attempts at watering down, weakening of the structure, which may occur de iure or de facto, must be resisted with all our power. Moreover, the constitution must be developed still further. This mainly means the substantial strengthening of the position of the European Parliament which has been envisaged in the Treaty itself.

All this must be done in order to ensure that the treaties are carried out. However, not for one moment must we forget that these treaties are not an end in themselves but a means of achieving an even higher objective. This is the complete political union of Europe, meaning a community comprising not only the founder members but also other countries wishing to join. The community must also be responsible for defence and non-economic foreign policy based on a federal constitution. In our Community today we have an example, the practicality of which has proved that European unity can be realised. This example contains vital elements for future development: to mention just the exclusion of the veto and the representation of the European Community interest by a special independent organ.

In the treatment of our subject we are once more aware that we are neither at the beginning of the road to Europe nor at the end. We are already half way along our road. We have passed the period of no return. Nothing will stop us.