The Problem of European Identity: Centralization and Decentralization in Modern Europe

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Why has the project for agreeing a single European constitution failed so far? Is the chosen model unviable or do the conditions for its survival not yet exist? Arguments about legal powers and sovereignty began from their origins in the 17th century and continued with struggles over decolonization and national constitutional reform in the late 20th century. Prof. Medushevsky analyses the inherent conflict between the democratic principle, the need for state security and the impulse to protect the rights of individuals and minorities. His conclusion? The European project needs a major re-think.

Europe has an identity crisis. Those visionaries, who have regarded a united Europe as an essential precondition for modern development, have not been able to build it on the foundations of Europe's traditional values. Such values are: Christian morality, a legal tradition based on Roman law, the ideology of the rights of man and the general acceptance of democracy and the legal state. The theorists envisaged replacing national identity with a new community based on the individual, who, as a European, would combine all the best elements of the different national cultures. This was, however, an illusion. This became evident, at least for the present, with the failure of the single European Constitution to gain popular support. Germany refused to hold a referendum. Referenda in France and Holland recorded majorities for rejection of the Constitution.

Doubts about the practicality, even the desirability, of integration have been reinforced by subsequent events. European leaders have admitted the impossibility of finding a united external policy. This was clear in the lead-up to the war in Iraq and the response to the actions of the USA. The budget [*for 2007 to 2013] cannot be agreed. Disputes involve the allocation of subsidies and the interpretation of the right to work and the possibility of its implementation in other countries. There are special problems over immigration and the granting of refugee status. Examples of these latter problems include disagreement over the admission of Turkey into a united Europe the controversy over the French law preventing the wearing of religious symbols in public, and the demonstrations by Muslim youth in France against the existing system.

The European identity crisis shows clearly in the debates about the rights of man. There are declarations about the 'tyranny of the rights of man', and about the double standard [* of governments denying equal rights to certain minorities]. The relationship between the rights of the majority and the rights of the minority has

to be re-examined. Some argue that the rights of man should be differentiated from the rights of the citizen. Others contend that there is a need to speak not only of rights but also of obligations. Finally, there are admonitions on the need for greater political realism instead of ideological posturing

The conclusion of this article is that the chosen model for European integration is unviable. The main problem is how the preservation of the legal and social state that prospered in Western Europe in the post-war period, can be reconciled with an effective response to new challenges, which sometimes require the implementation of unpopular reforms.

1. THE PROBLEM OF SOVEREIGNTY: HISTORICAL AND PRESENT-DAY DISPUTES

In European political thinking, the problems of agreed principles of law and sovereignty are central to the current disputes. Modernization has been the general precondition for social and political transformation in the countries of Central and Eastern Europe. The transition from a society based on a class hierarchy of rigid social structures, to a society based on principles of general equality and personal responsibility could not occur without conflict. In theoretical debates there was a clash between Rousseau's sovereignty of the people and Hobbes's arguments for the sovereignty of royalty, more generally expressed as the will of the people against divine right. Subsequent attempts to reconcile these opposing viewpoints have tended to postulate a citizens' society with the state as the instrument of modernization and reform.

Modern theories about the origin of the state and of political power can be traced to the works of Bodin and the monarchomachs (regicides), the doctrines of Hobbes and Locke in England, Rousseau and Montesquieu in France, and the authors of The Federalist in the USA. The German legal tradition refers back to the political works of Althusius (1557–1638). A number of authors discern in his works the beginning of the theory of the social contract, of federalism and the sovereignty of the people, and even the social state. Grotius (1543–1645) too, who developed the secular theory of natural law, became an inspiration for the reflections of those German thinkers who wanted to find a legal contractual basis for monarchical power and the possibilities for its restriction. If one group of early German theoreticians used Bodin's concept of sovereignty, deriving from it the unrestricted nature of the monarch's power, another group, influenced by Calvinism and the monarchomachs, made use of the contractual theory for the justification of a mixed form of government. This advanced a thesis that separated the state from the monarch (as one of the institutions of the state), and established the right of resistance to tyranny.

Later, the problem of state sovereignty became central to the philosophy of law. Concepts of the citizens' society, the legal state and sovereignty can be traced through the works of Kant and Hegel to Kelsen and Carré de Malberg in the 20th century. A number of questions were posed in the period of transition from

absolute states to representative systems and from unitary states to federal. These included the place of state laws in federal relationships, the concept of state sovereignty, how representative institutions should be formed, the division of powers, the role of judiciary power in the resolution of civil law and administrative conflicts, and the rights and freedoms of the individual. Now, however, doubts are being expressed as to how far the theories of a former time are relevant to a changing reality.

This legacy has become topical in connection with the unification of Europe where it is central to debates concerning the character of the Union. Should it have the status of a union of states, a confederation or a federation, or should it perhaps assume a novel form, as yet unknown to legal theoreticians? Should the norms of international law apply, presupposing the equality of member states irrespective of their size and power? Or should the principles of constitutional law, which allow for the possibility of different representation from the regions in a single supranational centre, prevail? Will this structure assume a symmetrical or asymmetrical character, covering the problems of budgetary federalism, representation from the regions and national minorities? Finally – the overriding question – how should the concept of sovereignty be interpreted? If sovereignty is vested in the people of Europe, then should this be understood to mean the majority of people, or should this majority itself be restricted in its ability to oppress the minority of different faiths and traditions?

Different participants in the discussion propose their own interpretations of sovereignty, either in its traditional guise or in a more flexible form; for example, using concepts of limited, internal sovereignty, or associate membership. Ultimately, this legal uncertainty about the question of sovereignty underlies the lack of clarity about the political form for European integration.

2. WHY WAS THE EUROPEAN CONSTITUTION NOT ACCEPTED?

The idea of European integration rests upon a long historical tradition, dating back to the Roman Empire and its successors. The current foundations of European unity lie in the international treaties of Maastricht (1992), Amsterdam (1997) and Nice (2000). Faced with globalization, the need for a united economic and legal entity provided by a European constitution appeared evident and entirely reasonable.

Very quickly, however, it has become clear that Europe at the start of the 21st century is as far from unity as ever. Public opinion surveys showed that Europe is evenly split into europhiles and eurosceptics. [It is noteworthy that the crisis of integration and acceptance of the Constitution became acute at the time of entry of new members. The preparatory work on the Constitution, which lasted more than a year, was rejected because of the attitude of Poland and Spain [*over voting rights]. The thesis of a two-speed Europe, as an alternative, arose in the minds of

the larger members – Germany, France and the United Kingdom.] Wherein lies the cause of this conflict?

One outward sign of this was the conflict between international law and national public law. The European Constitution had been conceived by its creators as the fullest expression of the democratic principles that are already present in the national legislation of all the countries participating in the integration process. The official commentaries emphasized that the Constitution not only consolidated the achievements of Europe in the field of human rights; it also created an effective mechanism for withstanding global economic challenges, and established the coordinating institutions essential for government under the new conditions.

Critics, however, pointed to the following weaknesses of the project. First, the European Constitution is mainly a German project, seeking to impose the German model of unification on Europe. The history of the German State, from the Middle Ages to the present, does indeed provide rich evidence for this thesis. For the whole of the modern period, the problem of unification has been a central question in German philosophy, art and politics. It became a practical issue from the Congress of Vienna in 1815 and afterwards. The partition of Germany after the Second World War could be seen as a step backwards from the unitary state of the Third Reich. The post-war settlement made federalism an immutable principle of sovereignty, not subject to change in the future (in the founding law of 1949). But this transformation was achieved as a result of pressure from the victors. So the reunification of Germany in 1990 was seen as a natural development in modern German national consciousness. Each of the states had its own constitution and legal system, so the fate of its sovereign rights during the negotiations over re-unification became a live subject of debate. However, the re-unification of East and West Germany was effected without a national referendum and was criticized as being insufficiently democratic. Thus, in the critics' opinion, the German model of integration was not a signpost to European unity.

A second body of criticism of the draft European Constitution focussed on its juridical indeterminacy. It does not clarify the scope of the constitutional powers, nor the forms of unification, or the organization of a unified power, nor does it resolve the problem of sovereignty. The drafting of the Constitution by the European Convention was based on the principles of international law. It stands in opposition to the various national traditions of public law. The framers of the Constitution proposed to overcome this incompatibility by adjustments to the national constitutions of France, Spain and Germany, by using the European Court of Human Rights to develop supranational precedents, and by attempting a theoretical review of the concept of sovereignty.

The vagueness of the interpretation of sovereignty is a central issue in the legal arguments. The theoreticians of the European Union think of United Europe as a new formation. It is not conceived as a federation like the USA, nor a confederation on Swiss lines or an international organization like the United Nations. It is something original with no historical analogues. However, the aim of integration – whether this is a union of states or a united state – has remained unclear. Europe would be, on the one hand, a single legal entity, capable of signing international

treaties with other states, but on the other hand member states would retain their right of veto. The critics noted that this model of unification was not so much a real political formation as a speculative ideological structure. If realized it would lead to the creation of a bureaucratic supranational centre, capable of repressing the culture and interests of individual member states. Comparisons were even drawn with the model of federalism laid down in the constitutions of the USSR. Critics also asserted that such a formation could only exist in the presence of a defined threat from outside, which would cement integration, but which, in the absence of such a threat, would collapse.

The concept of vertical and horizontal division of powers proved to be an especially controversial issue. The draft European Constitution distinguished between fields that were the exclusive competence of a federal structure and fields of mixed competence under the authority of national governments. The former included trade, external policy and security. The latter included justice, transport, economic policy and social policy. Critics found a number of provisions to be unacceptable. For example, a right of secession and, possibly, veto would make the structure unworkable. The provision for dual citizenship would create a problem of identity. The European identity, like the Soviet one, would negate national identity. Other issues involved the rights of minorities and the strengthening of Parliament, the Commission and the Court. The result would be an unwieldy structure, with its functions duplicated between a Parliament and Council of Ministers controlled by national governments and the Commission and Presidents appointed at European level. The consequences were thought to lead to denationalization, loss of identity and bureaucratization.

One conflict related to the nature of representation from member states. Should this be proportionate to population numbers or, following the principles of international law, based on equal representation from states? Behind this could be seen a conflict between donor and recipient states, including Spain and Poland. In particular, the new members of the EU, as net beneficiaries from the EU budget, drew criticism for refusing a rational redistribution of funds, taking account of the prospective enlargement of the EU.

The critics of the integration process were especially severe over its treatment of human rights. They drew attention to the contradictory nature of the documents lying at the heart of the European Constitution – the Human Rights Convention and the European Union Charter of Fundamental Rights (2000). These in turn were contradicted by legal judgments based on precedent. In the UK in particular, the Charter is viewed as an abstract document, suitable as a political declaration, but not as a legal document. It speaks of rights, norms and principles, but these concepts have different meanings. The interpretation of these rights is not clear from the text of the document and, although there are decisions of the Court, there are not enough of them. On a number of points, the Charter contradicts the Convention. The Charter does not make clear whether it is to be implemented at the European level or at the level of individual states. It contains general and untrue statements; for example, that everyone has the right to strike – though this cannot be true if applied to the police and the army. It includes a contradiction between personal rights and social rights. It was found essential to revise the doc-

ument, but to do this quietly and discreetly. The United Kingdom then expressed its conditional support. In this discussion a serious problem for a future integrated Europe emerged: how could the Constitution combine significant social guarantees and the right to strike in relatively more backward countries? What might be natural in the more advanced countries of Europe, given their prolonged tradition of social democracy, is impractical in countries facing the need for economic modernization.

The arguments for the acceptance of the Constitution were taken from the logic of the integration processes in post-war Europe, and the ideology of a social state. The integration process, according to this thesis, promises convenience, security and predictability for Europe, economic advantages and defence of the rights of the individual. The arguments against the Constitution included the exposure of areas of legal uncertainty, and the practical difficulty of realizing the integration project. The opponents of integration raised the serious problem of the curtailment of democracy and the growth of conformism in Europe. In their opinion, the unification of Europe would lead to a loss of liberal values, because national governments would lose control of national identity, social and individual rights, the budget, defence of minorities, the problem of immigration and the provision of refuge and visas. In particular, the acceptance of the European social standard immediately after the shock therapy (of the disintegration of the USSR) aroused protests in Eastern Europe. In their opinion, it led to the restoration of the socialist principles of centralized distribution. The realization of this fact was particularly painful for the small countries, which saw in the integration terms a threat to their national existence.

The European Constitution was conceived as a triumphal conclusion to the Cold War, demonstrating the triumph of the West following the disintegration of the Soviet Empire. In the event, however, this Constitution could resolve neither the problems of European identity, nor the interrelationship of national and European sovereignty, nor the strategy of the integration process. Certain provisions of the draft Constitution were suspiciously reminiscent of the Soviet model. The rejection of the Constitution by the referenda in France and Holland has provided the stimulus for rethinking the integration processes. This reconsideration must have as its slogan not euro-optimism or euro-pessimism, but 'euro-realism'.

3. INTEGRATION AND DISINTEGRATION IN EUROPE

Modern researchers are often puzzled by diametrically opposite trends in the development of Western and Eastern Europe. In the West the forces for integration are gathering strength, but the East has been in a state of disintegration. In our view this is simply a matter of time displacement. Those changes, which took place in Western Europe 50 years ago are to be found in its other half at the present time.

In the West, the history of ideas about integration dates back to the debates of the federalists and anti-federalists over the adoption of the US constitution. To avoid confusion with their current meaning, we should specify how these terms were

interpreted at the time. Federalists were understood to be supporters and ideologists of a strong centralized state, founded on the principles of federalism. They spoke in favour of the Constitution, assigning to Congress and the government of the country the greatest possible powers. The anti-federalists were the opponents of a single state, supporters of a 'confederation'. In the constitutional debates, they spoke either against the creation of a single unified state, or in favour of a constitution which would have retained real power for the member states, while restricting to the maximum the prerogatives of the central Congress and government. Many of the arguments used in this debate appear again in debates about the constitution of a United Europe.

After the Second World War, questions about confederation and federation and their interrelationship became topical during the collapse of the colonial empires. While the British colonial system was transformed into the Commonwealth, the French system was unable to repeat this experience. The Westminster system describes a parliamentary regime of the British type, the model of which has been extremely influential beyond the boundaries of the United Kingdom. Many of its characteristic features were exported into member countries of the British Commonwealth, such as Canada, India, Australia and New Zealand. While the first three have a federal system (*in the modern definition), the latter is a pure example of a unitary state. The majority of English colonies in Asia and West Africa can be included in this category.

In France the subject became live during the adoption of the constitution of the Fifth Republic (1958) and discussions on decolonization. The idea of federalism of the American type was imported into France by the Marquis de Lafayette at the time of the French Revolution, but did not gain support at that time. It reappeared in the course of the preparatory work for the 1958 Constitution and its treatment of the relations between metropolitan France and its overseas territories. At the outset, the representatives of the overseas territories spoke in favour of federation. Felix Houphouet-Boigny, Modido Keïta and Leopold Senghor spoke in favour of it. Later, however, the latter changed his views in favour of confederation. The impossibility of achieving a consensus on this question led to the introduction of a compromise term – Communauté (Community), a pragmatic concept to escape from the impasse into which the idea of a federation had led the discussion. The emergence of this concept of 'community' elicited universal approval and rapidly caused everyone to forget the federation project. As Michel Debré summarised the matter: 'A community is not a federation.'

As to the proposed form of the Franco-African communauté, an argument raged over the choice between a federation and an association. Starting from the federative point of view, the government ended by choosing independence. The right to independence and the possibility of exit from the Communauté were officially proclaimed by de Gaulle in 1958 during the voting on acceptance of the constitution (non-acceptance of this meant exit from the Communauté). At the end of the day, a compromise formula was adopted, which expressed both the ideas of the supporters of federalism, and of independence – 'a union of independent states and autonomous states'. The president of the republic became president of the Communauté, but the power in this was exercised by organs of the republic (while

the organs of the Communauté secured only consultative functions). In the final analysis, the idea of a Communauté, like the federation before it, quietly ceased to exist, and the corresponding section of the constitution was removed.

A third version of the decolonization process is represented by Portugal. Being virtually a copy of the British colonial system, this structure existed for the longest time, until the 1974 revolution, when it was destroyed in a radical (and illegal) manner. The problems relating to the past of the colonial empire were inevitably reflected in the constitution. This reflected the status of such overseas territories as the Azores and Madeira, Macao (until 1999, when it was handed over to the People's Republic of China) and East Timor (which has now gained the status of an independent state), whose right to self-determination Portugal guaranteed. The constitution not only specifies the rights of man, but also acknowledges 'the right of peoples to revolt against any forms of oppression, in particular against colonialism and imperialism'. International law is an integral part of Portuguese law. The fundamental principles enshrined in the constitution of Portugal are national sovereignty and regional autonomy (for the Azores archipelago and Madeira).

Thus, Western Europe gives three basic examples of decolonization: retention of commonwealth (Great Britain), its legal discontinuation in the course of the adoption of a new constitution (France) and, finally, revolutionary demolition (Portugal).

The process of disintegration in Eastern Europe at the end of the 20th century, following the break-up of the USSR, shows analogues to all three models. The first is exemplified by the creation of the Commonwealth of Independent States (CIS), whose creators sought to retain the general contours of geopolitical stability. The second model is represented by the refusal of the Baltic States to take part in the negotiations for the creation of the CIS, and also the subsequent exit of a number of states from the treaty. Finally, the third model is expressed in the collapse of the states of Central and Eastern Europe, and the experience of instability, which, at the extreme, involved the formation of so-called 'unrecognised states'.

Countries that have adopted democratic constitutions, while seeking to establish national identities, have often found the process destructive. In Eastern Europe, this process has affected the timing of transition. In practically all the countries in the region nationalism has gained in strength and brought with it problems of self-determination for national minorities. Czechoslovakia can serve as an example. The legislative institutions were reconstructed on the basis of round-table discussions before the elections in 1990. However, conflict between the differing political orientations of the Czechs and Slovaks within the single parliament led to a split in the new federal republic. Political negotiations in the summer of 1992 ended in the decision to dissolve Czechoslovakia and a formal act establishing the date of dissolution of the federal republic was adopted by the federal assembly in November 1992. The Czech constitution was adopted in December 1992, and came into force on 1 January 1993. The Slovak constitution, creating the sovereign Slovak state, was adopted in September 1992 and came into force on 1 October 1992. The velvet revolution had rapidly ended in a 'velvet divorce'.

The collapse of Yugoslavia became an example of radical and uncontrollable constitutional conflict. In the absence of a homogeneous civic society, and in the presence of historically incompatible ideological and socio-cultural traditions, the process of national self-determination assumed the form of a confrontation between states. This was a conflict between different peoples, sometimes ethnically related, who had lived together for a long period in one state. Here the ethnic community, and not the individual, was the basis of state, property and other forms of law. Thus the movements towards national and state self-determination clashed with the process of change in the nature of property. These changes led to the creation of ethnically based parties. The conflict between Serbia on the one hand, and Slovenia and Croatia on the other, found expression in the war in Croatia (1991), then Bosnia and Herzegovina (1992), military action in Kosovo (1998), the bombings of Serbia and the spread of armed conflict into Macedonia. These events were the result of a combination of constitutional, national and political crises and the attempts to resolve them.

A powerful factor in constitutional development everywhere in Eastern Europe was the revival of nationalism. This, in its extreme form, was connected with aspirations to restore a historical and legal continuity that had been broken. In Poland, for example, the preamble to the current constitution establishes the restoration of state sovereignty only from 1989, and introduces a number of articles that criticize Communism and emphasize the exclusive status of the Catholic church. Conflicts between nationalities occurred in Bulgaria, Rumania, Hungary and the Baltic States.

Nationalism at this time comes into conflict with the concept of the civic society. The national states formed at the start of the 20th century after the disintegration of the great empires of Germany, Austro-Hungary, Russia and the Ottomans came into being in Central and Eastern Europe considerably later than those of Western Europe. For this reason, there is a similarity in the experiences of the countries in the region. In the interwar period, all the countries of Eastern and Southern Europe, from the Balkans to the Baltic, had authoritarian regimes in the form of presidential or monarchical dictatorships. For all the differences in the circumstances of their emergence, they shared common features of nationalism, the negation of liberal democracy, hostility to parliaments, a critical attitude towards political parties and a tendency towards the autocratic power of a single leader. Later, after the Second World War, the Soviet model of nominal constitutionalism (represented by the Stalinist constitution of 1936) was disseminated to all these countries. Their experience after the break-up of the USSR also followed a similar pattern; it took the form of a move from nominal Soviet constitutionalism to a real constitutionalism, albeit tinged with nationalism.

As a result, a sharp conflict between two tendencies is characteristic of all the countries with this (post-Soviet) type of constitution. One is democratization, meaning government by the majority of people in the original territory. The other is liberal constitutionalism – which mainly includes a guarantee for the rights of minorities and of the individual. In the West these two processes were separated in time; the foundations of the civic society and the middle class were formed gradually before the introduction of constitutions. In Eastern Europe they are

practically coterminous. The dash for democracy and constitutionalism also collided with the necessity for unpopular reforms, mostly economic. In the absence of a culture of compromise between ethnic groups and parties, the greatest success has been gained by those countries most prone to demagogy. Furthermore, because of the need to compete at elections, the phenomenon of nationalist populism develops. This involves unjustified promises of a rapid improvement in the situation, often at the expense of other ethnic groups, in conditions that make the promises unachievable.

4. BASIC MODELS OF THE RELATIONSHIP BETWEEN THE CENTRE AND THE REGIONS IN WESTERN EUROPE TODAY (FEDERALISM, AUTONOMY AND DEVOLUTION)

What ideas for overcoming the destructive tendencies can Western Europe propose? A realistic approach involves a search for integration of a kind that would be compatible with the existing asymmetry of the regions, especially those that are striving to preserve their national identity. In modern Europe, a number of examples of that search are represented. One of them – Switzerland – is historically linked with confederation; another – the German Federal Republic – takes the form of a federation; a third – Spain – is a state composed of autonomous regions; a fourth – Great Britain – shows a process of devolution; a fifth – Italy – has various types of regionalization; and a sixth – France – also has an administrative territorial and functional decentralization.

As we have seen, the initial ideas of confederation as a model for European integration have given way to the search for a federation or something similar. However, it cannot be said that federalism is the only workable model for Europe. It may be constructed not on the division of power, as is usual in federalism, but on its allocation. At the same time, for any type of decentralization, there exists the problem of asymmetry of rule. This denotes a system in which certain groups have greater prerogatives of self-rule than others. Asymmetry is more suitable for multinational federations, where different groups of individuals with different cultural and collective identities are seeking constitutional recognition of their distinctive national character. Symmetry assumes a unified federative division, where homogeneous and equal territorial groups exist. Asymmetry characterizes a federation of different peoples, and recognition of their striving towards national self-government. For this reason it is almost inevitable that nationally determined groups will seek other and more serious powers than regionally determined groups.

In states where the problem of the relationship between federalism and multinationality has recently been acute, efforts have been made to absorb asymmetry in a unified territorial division. An example is provided by Spain, where, after the introduction of a symmetrical model of decentralization by the constitution of 1978, three nationally determined autonomies (Catalonia, the Basque Country and Galicia) are demanding greater autonomy than the other 14 regions. Spain is defined as a 'state of autonomies', which in its organization strives to combine the

principles of the inviolability of national unity with recognition of regional autonomies. The combination of the two principles is ensured by a system of rationalized parliamentarianism. The recognition of the regional autonomies and the organization of their relationships with central government are the realization of a moderate federalism, in which the components have their own spheres of action. The Spanish constitution does not allow for the break-up or amalgamation of regions. In this it differs from Italy. Furthermore, while it obliged all citizens to know the official state language (Castilian), the Spanish constitutional power demonstrated its sense of reality by also recognizing the official character of the other languages of Spain in the autonomous communities, and, consequently, the right of their citizens to use them freely.

In Spain the territorial organization of the state and the allocation of power were the most serious problems that had to be resolved in the course of the constitutional debates. Although the constitution referred to a state made up of autonomous regions, it was not precisely defined how these autonomies would be organized. The idea of autonomy was interpreted differently in those regions where it had always existed, compared with the remainder of the country with less of a tradition of autonomy. The constitution had to resolve two different questions. First, it had to define the powers and rights of the autonomous regions. Second, it had to regulate the interaction between the central powers of the state and those communities given effective autonomy

The choice of criteria for deciding between the two levels of autonomy provoked criticism. In the opinion of the critics, it was not so much the cultural and linguistic differences that created the problem; rather it was the choice of procedure for handling them. Regions which had previously been autonomous (such as Catalonia and the Basque Country) or where the initiative of autonomy had been adopted by a quorum (as in Andalusia) were at the highest level (secured by Art. 151). The new autonomous regions had to start from a lower level. They could (and did) attain a higher level after five years subject to revision of their statutes. Given that the procedure for allocating levels of autonomy to different regions and communities was subject to democratic endorsement, this created political tensions. These could again emerge during the debates on transferring autonomies to a higher level. Moreover, it was pointed out that those communities that were already at the highest level would probably demand the delegation to them of even greater power, the granting of which is possible under the constitution (Art. 150). In this connection, the problem of the so-called 'historical rights' of the regions became of central importance. A more orthodox approach to the problem of the regional autonomies was impossible for political reasons. The constitution, as adopted, therefore solved the problem by transferring it to consultative procedures.

How successful can this dialogue be? The answer to this question can be found in the comparative context. In Canada, the English-speaking provinces are firmly opposed to the idea of a multinational federation, in which Quebec would be recognised as a special nationality, since this would lead to a weakening of national unity. This is giving rise to an acute conflict over sovereignty and the threat of potential secession (as the only way of avoiding assimilation). Quebec is opposed

to unification, seeing it as the imposition of the will of the majority on the minority (which could lead to the decline of the culture of Quebec).

In the Russian Federation, according to the 1993 Constitution, a substantial asymmetry exists between those nationally determined entities of the federation determined by nationhood and those decided on a territorial basis. In the development of the federalism of the post-Soviet period, the following main stages can be discerned:

1) The start of the transition from nominal Soviet federalism (in fact unitarism) to a real federalism – this stage begins from the end of the 1980s and culminates in the collapse of the USSR and the proclamation of the state sovereignty of Russia in 1991.

2) The start of destabilization of the Russian Federation and the attainment of an unstable consensus – the adoption of the 1992 federal agreement and the 1993 constitution;

3) The contentious development of federalism from 1993 to 2000;

4) The most recent stage of reform of federalism from 2000 to the present day.

Events have thus followed a pattern of alternating models for relations between the centre and the regions. In the Soviet period, the predominant model was 'strong centre – weak regions'. In the post-Soviet period, the first two stages identified above the model 'weak centre – strong regions' became dominant. Finally, the last two stages show the growth of integrating processes and a gradual return to the 'strong centre – weak regions' model. Federalism in the post-Soviet period has moved through a three-phase cycle: the unitary Soviet model, its collapse, and the return to a strong federal centre.

Spain is facing a similar choice: either to retain symmetry, implying the equality of the regions and the levelling of national cultures, or pursue differentiation and asymmetry, thus granting the national regions greater independence. The opponents of the existing model in Spain want to see it replaced by a devolution model similar to that adopted in the United Kingdom. In that country, national differences are increasingly recognized and expressed in devolution and autonomy. This model appears to offer a means of avoiding secession and preserving the unity of the state on the basis of recognition of multiculturalism.

However, the British model of devolution appears as the exception, rather than the rule, consciously placing the emphasis on asymmetry and the transfer of additional prerogatives to national entities, with the aim of avoiding demands for secession. Devolution can be defined as the delegation of powers from the Westminster parliament at the centre to the regions' territorial assemblies without granting them the status of subjects of a federation. In other words, these delegated powers can be taken back by the centre without any judicial consequences (notwithstanding any political repercussions).

Westminster has retained the full legal capacity to amend or to repeal the Act of Scotland and can do this at any time without any preliminary procedures, not even a referendum of the Scottish electorate. Westminster has retained the full capacity to exert legislative power on any aspect of Scottish affairs even if they lie within the legislative competence of Edinburgh. Of course the will to do this would be dependent on the political conditions. Within the scope of its competence, the Scottish parliament can revoke or make corrections to existing Acts of the Westminster Parliament, and also future Acts of Westminster, infringing on the competence of Edinburgh (under the provisions of the 1998 Act). Again, the political factors influencing the situation are very important, not least the strength of support for the Scottish parliament in Scotland itself.

For the interpretation of these reforms, English writers use a number of concepts: 'quasi-federalism', 'devolution' and 'decentralization'. The first of these can be used because a number of federalism's characteristics are present. These include: a formal division of powers between two levels of government in a devolved regime; reserved and transferred powers; joint jurisdiction in foreign relations (including the EU) between central and regional governments; a new constitutional court in the form of the Judicial Committee of the Privy Council; and a new structure for inter-regional relations, defined by concordats between central government departments and the created assemblies. The structure also includes occasional summits of prime ministers, regular meetings of ministers with the same portfolio and their officials, the introduction of dual citizenship and the unique phenomenon of 'multi-identity'. The concept of 'devolution' means the transfer by the centre of a number of important prerogatives (including a certain measure of legislative power) to the regions. The difference between federalism and devolution is defined by the nature of the state, which continues to be unitary. It differs from decentralization because it concerns the creation of higher status, not of autonomy.

There is a contradiction in the constitutional reforms in the United Kingdom. On the one hand, the ruling party wishes to remain in power, so long as it retains a majority of public support. On the other hand, it sees the need to grant an acceptable level of autonomy to Edinburgh and Cardiff. It wishes to preserve the United Kingdom as a whole, but also, to gain understanding for this approach in Scotland. This explains the key role of the latter's position in relations with Europe as well. The fundamental question, according to opponents of the existing system, is whether constitutional reform is capable of preventing the disintegration of the United Kingdom. If so it would confirm the acknowledged capacity of the British state to renew itself.

The process of devolution can have a paradoxical effect on the internal stability of the country. The greater the success which is achieved in solving the problems of Scotland, Wales, and then, possibly, Northern Ireland (where until very recently this process was frozen), the stronger will be the demands for the solution of the problems of England itself. The main elements of reform – identity, nationality, sovereignty and citizenship – expose the problems of a deficit in democracy at the national level and economic inequality at the regional level. If devolution is successful the United Kingdom could evolve into a novel form of quasi-federalism,

realizing national and regional identities by means of an asymmetrical redistribution of power. If it is a failure, these processes could lead to the disintegration of the Union. A third variant is also possible: continuation, without resolution, of the tension between London and Edinburgh and Cardiff. The solution of the problem of Northern Ireland will to a great extent depend on the success of the devolution project.

The British model of devolution, in the opinion of its supporters, shows a comparatively greater capacity for reaching consensus and avoiding secession. In some respects, in their opinion, the British experience in 'multiculturalism' is in advance of the rest of Europe. It creates the possibility for multiculturalists to make Europe more open and even to construct a bridge between Europe and the rest of the world.

5. ALTERNATIVES TO THE EUROPEAN ROUTE

We have deliberately concentrated our attention on the legal aspects of European integration because these seem to present most problems. So the remarks about the imperfections of the law indicate where the constructive work should continue. For instance, there may be gaps or contradictions in the law, or judicial standards may fail to keep pace with a rapidly changing reality. In this context, we examine alternative routes for future European development.

The search for identity in present-day Europe is proceeding in opposite directions: centralization and decentralization. The former has been gathering strength throughout the post-war period, attaining its zenith with the proposal for a single European Constitution. The latter has only recently become apparent, as a reaction to over-rapid integration. The move for decentralization has gained from the crisis associated with the refusal to adopt the European constitution, and has certain observable characteristics.

First, the problems surrounding European identity take a variety of forms. Multiculturalism has led to uncertainty over cultural and national identity. There are legal questions over the relationship between national and European sovereignty. And political issues occur in the different approaches to the implementation of human rights. These have affected Western and Eastern Europe alike, encouraging centrifugal forces within the European Union.

In a modern context the questions raised in the early theories on federalism, sovereignty and the philosophy of law take on a new look. Thus the current debates raise questions about the character of a future union, defining relations between the centre and the regions. They also ask about the legal status of the subjects of any future political formation. And they invite decisions on how disputes on the scope of sovereignty should be settled.

Second, there is a clear tension between the priority given to human rights and the need to build an effective defence against forces that threaten destruction. Europe

is facing a harsh dilemma – the preservation of the social state or an efficient economy. Should it be faithful to the declaration of human rights or renounce it in favour of double and triple standards? Or should Europe, in its own defence, be closed off from the outside world by protectionist and police measures, or open, creating flexible mechanisms of competition within? One set of choices could mean the removal of democratic institutions. This is already a subject of debate because some political decisions will be unpopular. Alternatively, should governments support these institutions, in spite of the growth in social tension?

Third, classical parliamentary institutions are finding it more difficult to function in the modern mass society. The quality of education and level of culture are declining. At the same time the technical possibilities for manipulation of public consciousness are increasing. These changes are tending to weaken parliamentary power, while the power of the role of political elites is growing. Modern authors are drawing analogies with the Europe of the interwar period and in particular with the experience of the Weimar Republic. The information society and the growth of mass communications widen the possibilities for manipulation of the electorate. This is connected with the phenomenon of media-plebiscite leadership, with media parties and even neo-Bonapartism. The situation is comparable to the start of the 20th century, which was then interpreted as a 'crisis of parliamentarianism'. Modern Europe is reverting to democracy based on plebiscite. This explains the interest of certain thinkers in the search for an acceptable form of democratic authoritarianism or parliamentary government in a new form with strong executive powers.

This article shows that constitutional development in Europe has followed a cyclical path. It invites re-examination of the arguments for change, in particular the relationship between centralization and decentralization. Societies are in transition, even crisis. This calls for political and legal compromise to unite the model of a strong state with legal provisions that circumscribe both central and regional power. Those charged with re-examining the policies for European integration must reanalyse the elements of the crisis and look again at the arguments. They should think again about the identities of partners in a Union, about sovereignty, federalism, and the inter-relations between the centre and the regions. Clearly the search for an effective compromise is the most important problem for all regimes now in transition.