



NOTE DE RECHERCHE  
WORKING PAPER  
**28**

**ROBERT JACKSON**

## **SOLIDARISM OR PLURALISM?**

### **POLITICAL IDEAS OF THE AMERICAN UNION AND THE EUROPEAN UNION**

Project on:  
Globalization and the  
National Security State

GRUPE D'ÉTUDE  
ET DE RECHERCHE  
SUR LA SÉCURITÉ  
INTERNATIONALE



RESEARCH  
GROUP IN  
INTERNATIONAL  
SECURITY

PROGRAMME CONJOINT UNIVERSITÉ DE MONTRÉAL/MCGILL UNIVERSITY

**The Research Group in International Security (REGIS)** is an inter-university consortium that studies international relations, both from a security and an international political economy perspective. The group consists of nine core members based at McGill University and the Université de Montréal, as well as several faculty associates and doctoral student members. REGIS is part of the Canadian network of university centres in the field of defence and security studies, the Security and Defence Forum, which is funded by the Department of National Defence. (<http://www.gersi.umontreal.ca>)

**The Globalization and the National Security State (GNSS)** project is directed by an inter-university, interdisciplinary group of faculty from McGill University, Université de Montréal, and Concordia University, examining questions about the effects of globalization on the traditional security functions of the nation-state. The research program seeks to explore how war and war-making affected the development of the state from 1945-1999; the status of the relationship between war, war making, and the state at the turn of the century; and the effects of globalization on the legitimacy of the state. The project is funded by the Quebec government's FQRSC grant program. (<http://www.gnss.mcgill.ca>)

## **Solidarism or Pluralism?**

### **Political Ideas of the American Union and the European Union**

Robert Jackson

Boston University

February 2008

This paper was presented at the McGill University-Université de Montreal Research Group in International Security (REGIS) on October 10, 2008. I wish to thank T.V Paul for inviting me to deliver this paper at McGill, and members of the seminar for their helpful comments on an earlier draft.

## **Solidarism or Pluralism?**

### **Political Ideas of the American Union and the European Union**

Writing in the late 18<sup>th</sup> century Edmund Burke characterized the British East India Company as "a state disguised as a merchant."<sup>1</sup> What, in these terms, is the United States? Is it an empire disguised as a republic disguised as a democracy? What is Canada? Is it an international system disguised as a confederation disguised as a federation?<sup>2</sup> What, finally, is the European Union? It is somewhat ambiguous. But I shall argue that it is an international organization thinly disguised as a political community.

#### ***Symposium on the European Constitutional Treaty***

An earlier version of this essay (which is a work in progress) was presented at a "Symposium on the European Constitutional Treaty," organized by the Office of the Prime Minister, Luxembourg, February, 17-19, 2005. The organizers of that conference asked David Henrickson (Colorado College) and myself to comment on the similarities and the differences of the European Union as compared to the American Union. This essay is the result. I shall briefly refer to Henrickson's paper

---

<sup>1</sup> Speech on the Impeachment of Warren Hastings.

<sup>2</sup> R. Simeon, *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada* (1972)

below which takes a view that is almost the opposite of my own. At the Luxembourg Conference our papers were delivered as a friendly academic debate of the question.

The 2004 Constitutional Treaty of the European Union failed to be adopted by all member states. It was rejected by France and the Netherlands in national referenda. Member states were subsequently asked to reflect on the treaty and the events and reasons involved in its rejection, and to reconsider the question in preparation for another round of constitutional discussions aimed at a revised treaty. In late 2007 a successor Lisbon Treaty was agreed by EU member states:

"The treaty signed in Lisbon on 13 December 2007... will define what the EU can and cannot do... It will alter the structure of the EU's institutions and how they work.... This new treaty is the result of negotiations between EU member countries in an intergovernmental conference, in which the Commission and Parliament were also involved. The treaty will not apply until and unless it is ratified by each of the EU's 27 members. It is up to each country to choose the procedure for ratification, in line with its own national constitution. The target date for ratification set by member governments is 1 January 2009...."

This paper is based on the 2004 Constitutional Treaty. In essentials if not always in every small detail, the Lisbon Treaty is identical with the 2004 Treaty. My main concern, however, is not with the details or minutiae of those treaties. My concern is to interpret those treaties, and also the early political history and

constitutional experience of the United States, in broader terms exemplified by the classical international society approach to IR scholarship (the so-called "English School" approach). The distinction I employ is basically an international law idea (pluralism or many sovereigns) contrasted to a constitutional law idea (solidarism or one sovereign). I recognize that "the devil is in the details", but I also believe that one can consider the broader issues involved in the aim of trying to make sense of them in more general or theoretical terms.

What are the similarities and what are the differences in the issues and concerns that surrounded the emergence of the American Union and the emergence of the European Union? Here are our two contrasting answers:

David Hendrickson: The historian of the early American federal union recognizes an immediate affinity between America's founding and the contemporary European project. Both are instances of an attempt to create a federative system, to ensure and perpetuate a basis for cooperation among independent republics in a political milieu in which multiple loyalties, identities and interests, and the centrifugal forces they produce, are the commanding political fact...The problem was how to find a basis for common action in a system of states prone to unilateral action, the aspiration to...[establish] a mode of resolving disputes among themselves that would bind them into a system of perpetual peace.

Robert Jackson: This is essentially a solidarist argument: Americans came together to form a more perfect union, and Europeans are coming together under one overarching constitutional authority: the member states are integrating parts of a larger European constitutional whole. I do not agree with that analysis, and I shall present a different and in some respects an opposite interpretation, which is essentially a pluralist international society argument: the European states are contracting into and cooperating under the terms of an international treaty regime. They continue to possess residual sovereignty and power, and there is little if any indication that that is going to change in the foreseeable future. The European project is a world of delegated authority none of which is nonrefundable to its sovereign members. The American union is almost exactly the opposite.

### ***Solidarism and Pluralism***

Where is the European Union heading? Are there any parallels with the American Union? As indicated, my answer in brief is: the European Union and the American Union are very different enterprises rooted in sharply contrasting histories. I can only offer some general remarks on these momentous subjects. The facts involved are well known. However, I shall try to cast my remarks in a way that captures the American experience as compared to the European experience, and vice versa.

Where does the main emphasis of the European experience rest: is it in international pluralism, or in constitutional solidarism? That is the question I shall address.<sup>3</sup>

The United States constitution was arranged by representatives of former British colonies, which had united to wage a successful war of independence against the British Empire. Those colonies subsequently became independent collectively, not separately. After a failed attempt at a loose confederalist association, federalism and the solidarist doctrine of *e pluribus unum* prevailed in postwar constitution debates. Another war—the Civil War—was subsequently fought to preserve the American Union and deny the right of secession.

International solidarism<sup>4</sup> is a political and legal process and condition in which sovereignty is transferred from smaller units to be held by a larger free-standing, independent government jurisdiction.<sup>5</sup> A key idea of solidarism, which is at the heart of my debate with David Hendrickson, is captured in the following quotation by two prominent international legal thinkers: Solidarism is registered

---

<sup>3</sup> This paper is an abridgement of an argument that I shall make at greater length and more completely in a future and final version. The endnotes and references are not complete either.

<sup>4</sup> See R. Jackson, "Solidarism", in M. Griffiths (ed.), *Encyclopedia of International Relations and Global Politics* (New York: Routledge, 2005), pp. 765-8. This can also be termed "monism" in legal theory.

<sup>5</sup> By using the term "solidarism" I am not referring to the solidarity of social classes or similar sociological meanings of the term. It is important to note that the Constitution-Treaty uses the word "solidarity" in this way in speaking of workers "rights". (Art. 6)



“[t]he more closely that international law approximates to national law, the more the individual has a chance to become the direct bearer of legal rights and duties.”<sup>6</sup>

The European Union is adopting a Constitutional Treaty, which was arranged by representatives of independent states. International pluralism<sup>7</sup> is a world of residual power and authority of sovereign states, in the dictionary meaning of "residual power": "power held to remain at the disposal of a government authority after the enumeration or delegation of specified powers to other authorities".<sup>8</sup> For the European Union to be described as "solidarist" in proper constitutional terms, its member states' residual power would have to be permanently transferred—and not merely delegated—to the Union. If that happened, the European Union would indeed resemble the American Union.

Later in the paper I discuss selected elements of the European constitution-treaty to discern whether Europe is moving away from pluralism and toward greater solidarism in its collective life. That clearly happened in the United States—and profoundly so—as disclosed by the assertion of natural rights in the Declaration of Independence (1776) and the installation of civil liberties under the First Amendment of the United States Constitution (1787). Is something like that happening in the European Union?

---

<sup>6</sup> G. Schwarzenberger and E. D. Brown, *A Manual of International Law*, 6<sup>th</sup> ed (London: Professional Books, 1976), p. 65.

<sup>7</sup> See R. Jackson, "Pluralism", in M. Griffiths (ed.), *Encyclopedia of International Relations and Global Politics* (New York: Routledge, 2005), pp. 651-3.

<sup>8</sup> *Webster's Third New International Dictionary*. By using the term "pluralism" I am not referring to plural or pluralistic societies within the framework of the state, or similar sociological meanings of the term.

At first glance, the situation is ambiguous. The Constitutional Treaty could be read as a combination of a constitutional law idea and an international law idea. However, I shall argue that it is far more a “treaty” than it is a “constitution”, if it is that at all. EU Europe and the USA display far more differences than similarities, which suggest that lessons drawn from American history have limited application to the European Union project. I shall also argue that there is a fundamental difference between a union of ex-colonies, without previous historical existence or experience as independent nations, and a union of long-standing sovereign states which are cooperating ever more closely, but still feel constrained to refer to their new basic law not as a “Constitution” but as a “Constitutional Treaty.”

In his paper, David Hendrickson points out “The general [American] government under the federal constitution enjoyed an array of powers over war and peace, and treaties and alliances, that is much more ample than that enjoyed by the contemporary European Union. The former authority was plenary, whereas the latter has been shared [or delegated].” Therein, it seems to me, lies the essential and fundamental difference between the two enterprises, at least to date. The great bulk of the political and military power of EU Europe still resides in its member states. During and after their successful revolution the United States became a credible, although minor political and military power which sent plenipotentiaries

to Paris, London, and elsewhere. The individual States of the American Union never did. The member states of the European Union continue to do exactly that.

### ***Colonial Origins and Solidarist Consolidation of the American Union***

In facing and confronting the outside world, Americans displayed noteworthy, effective solidarity. That was evident from the beginning. Americans also displayed solidarity in facing inward and managing their political unity. On the one occasion when their internal solidarity broke down—during the Civil War—they restored it without equivocation and by massive armed force which produced one of the biggest—if not indeed the biggest—war of the 19<sup>th</sup> century. My main focus in this paper, however, shall be the external solidarity of Americans.

American constitutional thought and international thought is closely related, as David Hendrickson has brilliantly demonstrated in his book *Peace Pact*.<sup>9</sup> If we simplify, we could say that American constitutional thought addressed the issue of maintaining unity and preventing internal division and strife. American international thought addressed the same issue, by seeking to prevent foreign meddling and intervention, not only in American domestic affairs, but also in the North American continent, and even in the Western Hemisphere at large. That dominant stream of political ideas at the founding of the American republic is

---

<sup>9</sup> D. Hendrickson, *Peace Pact :The Lost World of the American Founding* ( Lawrence, Kansas: University Press of Kansas, 2003)

exemplified in the constitutional commentaries of the *Federal Papers*, and those of Alexander Hamilton, in particular.

The North American seaboard colonies comprised a relatively small periphery of the late 18<sup>th</sup> century British Empire populated by English-speaking people most of whom were of British descent (English, Welsh, Scots, and Irish) even if they were also "Americans". Important elements of American unity were present during the colonial era. The colonies—Massachusetts, New York, Pennsylvania, Virginia, etc.—were component parts of one British North America. Prior to independence they already had a collective identity as Americans: they spoke the same language, they shared the same traditions, they operated with similar laws and institutions, and they were legally and politically united under the British Crown.

What they gradually ceased to share, demonstrably after 1775, was their common ancestral identity and solidarity with Great Britain. Their colonial unity was reinforced by their Revolutionary War against the mother country. In the course of that secessionist war against the British Empire, and their subsequent and completely successful efforts to combine into one United States, the American colonies repeatedly demonstrated their own mutual identity and solidarity in the face of daunting adversity and difficulty.

The colonies were internally divided—between United Empire loyalists and republican revolutionists. But they revolted as a group against British rule, and jointly waged a war of independence, under one supreme commander—George Washington—against the British army and navy, which they defeated. The American loyalists either changed sides and became reconciled to the new American Republic or they moved to Canada or some other part of the British Empire.<sup>10</sup> Washington did not lead a military alliance of states consisting of various national armies. He led one army of American republican revolutionaries from the various colonies—the Massachusetts Minute Men writ large. The American revolutionary republicans welcomed the intervention and assistance of France in their war with Britain, which signaled that Paris was prepared to deal with Americans as an emergent sovereign state. For their part, Americans were prepared and able to exploit the historical enmity and rivalry between Paris and London which resulted in significant French military assistance and involvement in the war of independence.

The American colonies gained their independence collectively, not separately. Their independent sovereign existence was extremely short-lived and

---

<sup>10</sup> To be sure, this underemphasizes the significance of the pro-British / pro-monarchist element within the Americas. For example, many of the Southern slave-owning states with close ties to the Caribbean remained pro-British in sympathy during the Revolutionary War and only finally committed to the American project once it was clear who the winners were. But the main point is that the revolutionary war was precisely that – an internal revolution fought between brothers and cousins within a relatively close knit community. It only became internationalized once the independence party had emerged triumphant.

indeed its sole purpose appeared to be to give rise to a United States of America—which is very unlike a Europe with centuries of international pluralism. The American colonies never exercised sovereignty individually to any significant degree. There was no law of nations between Massachusetts, New York, Virginia, etc. There also were no separate diplomatic relations between Massachusetts and London, Pennsylvania and Paris, etc.

Because they never possessed sovereignty, the colonies never had to surrender or even share it in order to create one overarching independent political community, the United States of America. I think that is the way we ought to read the Articles of Capitulation (1781) which signified the defeat of Britain in the war of independence, and the Paris Peace Treaty (1783) between London and Washington in which Britain recognized the sovereignty of the United States of America.

The American experience, in that regard, is in marked contrast with the usual decolonization experience of the 20<sup>th</sup> century—e.g. in Asia and Africa—where colonies become independent on their own, were separately bound by international law, individually joined international organizations such as the United Nations, and participated in the international community on an individual, sovereign basis. Colonial Africa became an international society of states and not a

political union—despite the hopes and efforts of Kwame Nkrumah and a few other first generation African solidarists, who sought to create a United States of Africa.

American political unification was reinforced by the Constitutional Convention of 1787, in which the federalists prevailed in debates with advocates of a looser political arrangement between the former colonies. The federal constitution was understood to provide a solid foundation of peace among its constituent states—so as to avoid the belligerency and warfare that recurrently occurred between European states. When they looked at fratricidal Europe, Americans looked askance. They were determined to act with political solidarity in order to safeguard their union from what they saw as the European disease, namely recurrent warfare. The Americans sought peace and safety in their own continental unity.

The federal powers of the American Union mostly concerned war and peace, treaties and alliances, and external commerce. The federal government of the United States was the sole international actor. According to Alexander Hamilton state governments were “constituent parts of the national sovereignty.”<sup>11</sup> He referred to the American Union as “our bulwark against foreign danger...the conservator of peace among ourselves”.<sup>12</sup> The “our” for Hamilton clearly is a collective notion of America as a single, international agent and actor. The Monroe

---

<sup>11</sup> *The Federalist Papers*, Number 9.

<sup>12</sup> *The Federalist Papers*, Number 14.

Doctrine (1823) was a solidarist assertion of early American foreign policy in which the Western Hemisphere was to be exclusively under the protection of the American imperium and European powers were to keep out. That was an audacious declaration in its time, when the United States was still a relatively small power. But in American eyes, the Western hemisphere was not to become part of the European society of states and its fratricidal wars. In 1845 President James Polk offered the following and very telling remarks on the European Balance of Power:

The American system of government is entirely different from that of Europe. Jealousy among the different sovereigns of Europe, lest any one of them might become too powerful for the rest, has caused them anxiously to desire the establishment of what they term the 'balance of power.' It cannot be permitted to have any application on the North American continent, and especially to the United States. We must ever maintain that the people of this continent alone have the right to decide their own destiny...We can never consent that European powers shall interfere to prevent such a union because it might disturb the 'balance of power' which they may desire to maintain upon this continent."<sup>13</sup>

In the mid-nineteenth century the southern states seceded from the Union, and united into a separate independent state: the Confederacy formed in 1860-61. Secession was an effort to establish pluralism in that part of North America

---

<sup>13</sup> R. Devine (ed.), *American Foreign Policy: A Documentary History* (New York: Meridian Books, 1960), p. 97.



occupied by the United States. It was famously resisted by the American federal government under President Abraham Lincoln. A Civil War ensued, between the North and the South, which the North eventually won, and the union was preserved. Solidarism was reinforced by the outcome of the American Civil War. “These” United States (before the Civil War) became “The” United States (after the Civil War). The Civil War established a fundamental fact: There is no right of secession for constituent states of the United States of America. The states belong to the Union in perpetuity. They cannot revert to sovereignty, for they never separately enjoyed sovereignty previously.

American solidarism may be compared to the more pluralistic situation in Canada, which is a looser federation, seemingly on the verge of disintegration from time to time, where provinces—such as Québec and maybe also Alberta—are almost independent sovereigns and enjoy a right of secession and certain (modest) capacities to participate in international affairs.<sup>14</sup> Canada is a better point of reference, at least in that regard, for comparing the European Union.

### ***International Background and Pluralist Structure of the European Union***

In the Late Middle Ages, “Western Europe” (which was not understood as such at the time) was a theocracy under pope and emperor: Latin Christendom: religious-

---

<sup>14</sup> R. Simeon on interprovincial relations as in Canada as quasi-international relations...

political solidarism.<sup>15</sup> Western Europe, as we know it, enters modern history, in fact creates political modernity, by individual monarchies seceding from *Respublica Christiana*. That act of secession is nowhere more determined and decisive than in England in the 1530s, when King Henry VIII arranged his own divorce from Catherine of Aragon, which the pope had refused to grant. In the course of that revolutionary episode we know as the English Reformation, Henry created the sovereign kingdom of England. He demanded that Parliament pass the Act of Supremacy (1534) in which Henry, and no longer the pope, was made head of the English Church—which ceased being the Church in England and became the Church of England of which Henry was the supreme constitutional ruler. In several other parliamentary acts he established himself as absolute sovereign and England as his independent realm.

Secession from the Christian European Empire in the West thus involved individual kingdoms and kings (the formerly subordinate and never fully independent *regna* of Latin Christendom) gaining sovereignty and going their own way, at first and most importantly in religious matters, in accordance with the doctrines *rex est imperator in regno suo* or the king is emperor in his own realm (the doctrine of state sovereignty) and *cujus regio, ejus religio* or whoever is the ruler determines the religion (the doctrine of non-intervention on religious

---

<sup>15</sup> Latin Christendom in the West was of course separate and distinct from Greek Orthodox Christendom in the East.

grounds). Europe ceased being a Christian theocracy and became, instead, an international system based on state sovereignty. A law of nations was contrived to regulate the now foreign relations of European sovereigns, especially as regards diplomacy and war. It was put into books by Vittoria, Suarez, and especially Grotius and Vattel.<sup>16</sup>

The jealousy with which state sovereignty was held by Europeans (rulers and peoples) and the fear of hegemony and suzerainty by an assertive and aggressive major continental power, is a striking feature of that continent's international history over a period of four centuries. It is witnessed in the pluralist European response to major attempts to impose solidarity on the continent by armed force, and in the military defeat of each one of those attempts: The Thirty Years' War that defeated the Holy Roman Empire and led to the Peace of Westphalia (1648), the late seventeenth century wars of King Louis XIV of France and his final defeat at the hands of Winston Churchill's most famous ancestor, the wars of Napoleon and his final defeat by a coalition of powers in 1815, and the wars of Hitler and the military destruction of Nazism and Fascism by another coalition of powers in 1945.

The Atlantic Charter (1941), agreed between Roosevelt and Churchill, proclaimed the pluralist ideals of a free Europe based on state sovereignty and

---

<sup>16</sup> G. Mattingly, *Renaissance Diplomacy* (New York: Dover, 1988) pp. 245ff.

international comity. They denounced the Nazi conquests of European nations, they proclaimed the right of those conquered states to be free from external dictation and control, and they announced the determination of Great Britain and the United States to wage war in Europe against the Axis powers to bring about liberation of the continent and restoration of pre-existing nation-state sovereignties. The allied victory in 1945 was thus an occasion for restoring and celebrating the pluralist *status quo ante* in Western Europe. In Eastern Europe, of course, the story is very different: Stalin imposed a solidarist totalitarian Communism, enforced by the Red Army, which lasted for forty-five years. International pluralism for the countries of Eastern Europe—full political independence—was not restored until the end of the Cold War.

But in Western Europe, beginning in the 1950s, there was an international movement, initially toward economic cooperation and integration, which has since become known as the European Union. That was also, in very significant part, a reaction against the calamity of the Second World War and a determination never to repeat that disaster by bringing the leading former protagonists, Germany and France, into an international association, hopefully of an enduring nature. The EU expanded its membership over time, and there are now twenty-seven member states. The latest wave of expansion involved East European countries that were formerly under the sway of Moscow. No sooner had they reacquired full national

sovereignty after the Cold War, than they began knocking on the EU door seeking membership. The governments of those states saw it as a safe and sensible move into political stability and economic prosperity underwritten by the EU. They moved into NATO for the same reasons. I think it would be difficult, indeed misleading, to interpret that as a move away from international pluralism into solidarism.

The international financial crisis of 2008 provides the observer with further evidence of the pluralism of the European Union. There is, as we know, a European Central Bank, similar to the US Federal Reserve, which manages the Euro currency regime under a mandate to keep inflation low. There is not, however, any European body equivalent to the United States Treasury Department: no central organization for managing fiscal crises. Instead, the finance ministers of the EU member states must find a way of cooperating and coordinating their various financial policies so that they can gain some joint control of financial crises. That is an awkward business at the best of times, and behind the scenes there is the background fear that some states will "beggar their neighbours" to seek their own advantage.

## *The Constitutional Treaty of EU Europe*

Where is EU Europe heading? Is it away from international pluralism based on state sovereignty, and towards international solidarism based on a common constitutional framework resting on the notion of a "European citizen"? That question shall guide my remarks in the remainder. I shall try to give an answer to the question by presenting some brief reflections on the "Constitutional Treaty of the European Union".<sup>17</sup> The EU is a treaty-based international organization. EU Europe has been constructed, pragmatically, since the 1950s, on the evolving basis of a succession of treaties between its Member States. The latest is the Lisbon Treaty. To repeat an earlier point: that is in sharp contrast to the foundation of the American Union, which was inherently constitutional, and was in no way a treaty between sovereign states.

The EU is subsidiary to its member states which hold residual power and sovereignty, and it can only act in those sectors of European affairs where it is agreed "the objectives of the intended action cannot be sufficiently achieved by the Member States but can...be better achieved at Union level."<sup>18</sup> This is a pragmatic statement of international cooperation, not a statement of political and legal philosophy. The European Union derives its authority and powers from its Member

---

<sup>17</sup> My remarks are based on the following documents: *Summary of the Agreement on the Constitution Treaty* (Brussels: European Commission, 2004): <http://europa.eu.int/futurum> (28 June 2004);

<sup>18</sup> Insert Ref

States. The Constitutional Treaty “does not extend the Union’s competences considerably”.<sup>19</sup> What it does is gather and integrate those competences, which were previously scattered across several treaties, within a single treaty framework. The Constitutional Treaty declares: “The Union only has those competences and powers which are conferred upon it by the present Constitution and the annexed Treaty.” (Art. 18 (1)) That conferral process is entirely in the hands of its member states. “Those powers that are not assigned to the European Union shall belong to the Member States.” (Art. 18 (2)) I read that as the sign of an international organization, not a political community.

The Constitutional Treaty declares: “The European Union shall undertake...a common foreign policy, including all questions relating to the security and defence of the Union.” (Art. 28 (1)) The main institutional innovation is the creation of a Union Minister of Foreign Affairs, who will be responsible for carrying out the Union’s external policy as a whole.<sup>20</sup> But the foreign minister will only be able to speak for the EU where there is an agreed, common policy endorsed by Member States. The foreign minister, in serving the European Union, cannot act independently of its Member States. The EU foreign minister does not resemble an American Secretary of State or a British Foreign Secretary. EU foreign policy clearly rests on the consent of Member States.

---

<sup>19</sup> *Summary of the Agreement on the Constitution Treaty*, p. 3

<sup>20</sup> *Summary of the Constitution adopted by the European Council in Brussels on 17/18 June 2004* (Brussels: European Parliament Delegation to the Convention, no date), p. 5.

The European Union will be empowered, by its Constitutional Treaty, to conclude international agreements with “states or international organizations” (Art. 73). To some that may suggest the EU is uniquely becoming a single international actor, and is no longer merely an international organization. That capacity is not distinctive to the European Union, however, and is possessed by other international organizations as well. The Constitutional Treaty speaks of a “common strategy” and “joint action” of Member States of the Union who are seen to have “important interests in common”. (Art. 66) It proceeds to declare that “A common position shall define the approach of the Union to a particular matter of geographical or thematic nature”, and that “Member States shall ensure that their national policies conform to the common position.”

Common positions, common strategies and joint actions register a seeming note of solidarism. But common in regard to what? The answer is clear: the common interests of the member states of the Union. The presupposition is the treaty basis of association of Member States of the Union, who in joining the EU commit to these requirements, and who are free to leave the EU if they can no longer accept them. “Any Member State may leave the Union at any time.” (Art. 72) That was the case from the very beginnings of the European project. But in the past, exit merely required that a member state repeal its own legislation that authorized it to join the EU. Now, in addition, there is a formal EU procedure to



the same effect. Either way, the EU is a typical international organization resting on prior state freedom and consent which is not surrendered by member states when they join the EU. One may compare that inherent liberty of EU Member States with the unbreakable constitutional harness of the “states” of the American Union.

The European Parliament’s commentary on the Constitutional Treaty speaks of “a solidarity clause between Member States in the event of a terrorist attack or natural disaster”, and also of “the obligation to aid and assist a Member State subjected to armed aggression on its own territory”. That is the same collective security principle—all for one and one for all—that is to be found in the North Atlantic Treaty (Art. 5). It should be noted in this connection, that EU members of NATO will continue to belong to that international alliance and will secure their national defense from it.

The Constitutional Treaty enumerates an extensive list of fundamental rights of European citizens (Arts. 3-10). Much of that, though not all, reiterates existing international law of human rights. The Treaty notes that “The main responsibility for the implementation of the fundamental rights belongs to Member States.” (Art. 9 (2)) And it adds: “Nothing in this Constitution shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognized...by...international law and by international agreements to which...the

Member States are part and by the Member States' constitutions.” (Art. 10 (2))  
That reads like an unambiguous statement of international pluralism.

Let me repeat an important jurisprudential statement quoted earlier: “The more closely that international law approximates to national law, the more the individual has a chance to become the direct bearer of legal rights and duties.” Arguably the most significant solidarist element of the Constitutional Treaty is its legal elevation and consolidation of individuals and their rights under EU law. According to the European Parliament commentary, “from now on, the Union’s actions are to be explicitly subordinate to fundamental rights”. It makes “provision for a degree of individual access” to the Court of Justice.<sup>21</sup> It should not be forgotten, however, that because all EU members must also be prior signatories of the human rights regime of the Council of Europe, there is already an individual right of petition to the European Court of Human Rights at Strasbourg—although it can only be exercised once all domestic remedies have been exhausted. So in fact, the EU is getting into the protection of individual rights rather late as compared to the Council of Europe, and its involvement should be interpreted as supplementary to that body. Yet nobody thinks of the Council of Europe as a would-be political community.

---

<sup>21</sup> *Summary of the Constitution adopted by the European Council in Brussels on 17/18 June 2004* (Brussels: European Parliament Delegation to the Convention, no date), pp. 6, 11.

The EU's *persona* is not seem fundamentally different than that of other well established international organizations—such as NATO or the UN—both of which have Secretary Generals with a capacity to act internationally—but not independently of Member States. EU Member States will henceforth “cooperate more closely in the field of defence” which “will underpin the credibility of the Union’s foreign policy.”<sup>22</sup> In taking on this characteristic of an alliance, the EU now bears some resemblance to NATO, which is conventionally understood in the same pluralist terms as an international organization.

The foregoing seems relatively clear, but there are areas where the EU is more ambiguous, and where it hints at being a solidarist union in the making. The European Court of Justice (the judicial body of the EU) can and does impose its judgments on the member states. A burgeoning body of EU law is now directly enforceable in the courts of member-states. That is a noticeable difference with both NATO and the UN. Furthermore, EU law tends to be treated more like a quasi-federal law than a part of international law. In a landmark 1963 ruling regarding the EEC Treaty, the European Court of Justice declared:

...this Treaty is more than an agreement which merely creates mutual obligations between the contracting states. This view is confirmed by the preamble to the Treaty which refers not only to governments but to peoples. It is also confirmed more specifically by the establishment

---

<sup>22</sup> *Summary of the Agreement on the Constitution Treaty*, p. 3.

of institutions endowed with sovereign rights, the exercise of which affects the Member States and also their citizens. Furthermore, it must be noted that the nationals of the states brought together in the Community are called upon to cooperate in the functioning of this Community through the intermediary of the European Parliament and the Economic and Social Committee...The conclusion to be drawn from this is not that the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only the Member States but also their nationals. Independently of the legislation of Member States, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage...<sup>23</sup>

If I understand this legalese correctly, there is a definite intimation of autonomous EU constitutionality, as regards European citizens and their rights, separate from their rights as Belgians, Britons, Germans, Danes, Italians, etc. That is the most unambiguously solidarist element of the EU Constitutional Treaty.<sup>24</sup> That, however, is still far from the creation of a European citizen, someone whose liberties and rights would depend on the EU Constitutional Treaty the same way that an American citizen's liberties and rights depend on the First Amendment of the Constitution of the United States. The European citizen can fall back upon the separate liberties and rights of his own country. The American citizen cannot, for the United States is the only country he or she has. More than that, the further

---

<sup>23</sup> ECR [1963] 1, 12.

<sup>24</sup> I am indebted to Steven Preece for clarification of some legal points in this analysis.

rights that an EU citizen enjoys are enjoyed exactly because their own country has made that possible in the first place.

### ***Conclusion***

I shall now throw the political cat among the academic owls, by drawing on and agreeing (for the most part) with the legal interpretation of the EU Constitutional Treaty made by the legal advisers to the Foreign and Commonwealth Office of the United Kingdom.<sup>25</sup> That is not withstanding the well-know skepticism that British governments of all political stripes have shown toward the European Union project. Far from disparaging the EU, however, the legal advisers of the Foreign Office indicate why British politicians have no solid reason for fearing that Britain's continuing membership in that body presents a threat to British sovereignty, and why the British government should have no hesitation in acceding to the Constitutional Treaty. According to their legal analysis, the treaty

...sets out plainly that the EU draws its powers from the Member States, not the other way round. For the first time, it also explicitly states that powers not explicitly conferred upon the Union remain with the Member States...the Charter of Fundamental Rights...creates no new powers for the EU, nor does it alter any of the EU's existing

---

<sup>25</sup> *The Constitution-Treaty of the European Union* (London: United Kingdom Foreign and Commonwealth Office, no date).

powers. It will apply to Member States only when they are implementing EU law....the Common Foreign and Security Policy...is conducted by Member States—in the Council of Ministers and the European Council—and CFCP policy decisions are taken at unanimity....The text...makes clear that for those States which are members of NATO, NATO ‘remains the foundation of their collective defence’...This is the first time an EU Treaty text has stated this so clearly...unanimity remains the rule on all important policy and operational issues....

What appears to be happening, then, is another set of steps towards an increasingly tightly-knit international organization of a multiple sovereign Europe: what we refer to as the European Union. When comparing this landmark development in European international affairs, with the United States of America, it is difficult to see it as a shift from a pluralist Europe to a solidarist Europe. There are some noteworthy solidarist elements in the Constitutional Treaty—particularly European citizenship rights. But it is much easier to conclude that Europe is still, fundamentally, a pluralist society of states which have formed a very successful, enlarging and deepening international organization. EU Europe is a long way from constitutional federalism, which has been the legal and political basis of the United States for well over two centuries. It is unclear to me whether the EU is even heading in that direction. What is clear, however, is the overall success of this remarkable and entirely welcome European international organization.

Probably there are some solidarists among the European political classes but I do not have the impression they occupy the highest offices of EU Member States.

It seems to me that European governments are involved in the EU because they consider it to be in their national interest. If the EU were not in the national interest of its Member States I cannot see how it could exist. As for the people or rather peoples of EU Europe, they still seem to be attached primarily to their own nation-states, to identify with their country and its culture and language, its cheeses, beers and wines, which is to say that they seem to be pluralists at heart. For most of them, it is my impression that the rest of Europe is mainly for enjoyable summer holidays. That would surely be the view of Danes, Britons, Germans and Austrians as they make their annual summer migration into the Mediterranean. And passing in the opposite direction, it would also seem to be the view of Spaniards, Italians, and probably also Portuguese and Greeks.

As I began with Burke, I shall also end with him. Burke identified himself as a "citizen of Europe." He was not implying, and much less advocating the emergence of a European super state. Rather, he was acknowledging the long and rich history of diplomatic relations between European states and the extensive cultural and commercial intercourse between their peoples. Burke could describe himself metaphorically as a "citizen of a Europe", but a Europe that rested on its many diverse national parts, which it accommodated but never attempted to transcend: the "little platoons", as he fondly called them. Perhaps that is ultimately

what the EU is entrenching – a Europe of multiple, diverse peoples and cultures who share in their greater international "commonwealth"?<sup>26</sup>

---

<sup>26</sup> Burke, *Letters on a Regicide Peace*.



**Notes de recherche du GERSI/REGIS Working Papers**  
**Dirigées par/Edited by: T.V. Paul**  
**Éditeur Associé/Associate Editor: Sébastien Mainville**

1. ZARTMAN, I. WILLIAM, *"The Structuralist Dilemma in Negotiation"* (1997).
2. LEBOW, RICHARD NED, *"Transitions and Transformations: Building International Cooperation"* (1997).
3. BUNCE, VALERIE, *"The collapse of Socialism, the Soviet Bloc and Socialist States: An Institutionnal Account"* (1998).
4. ROUSSEL, STÉPHANE, GERVAIS, MYRIAM ET RONALD HATTO, *"Chronologie de la réaction du Canada face aux conflits intraétatiques vol. 1: l'ex-Yougoslavie"* (1998).
5. ROUSSEL, STÉPHANE, GERVAIS, MYRIAM ET RONALD HATTO, *"Chronologie de la réaction du Canada face aux conflits intraétatiques vol. 2 : l'Afrique des Grands Lacs (Rwanda et Est-Zaïre )"* (1998).
6. GAGNON, RÉMY, *"Les théories de l'émancipation et l'étude de la sécurité internationale : entre le rationalisme et le réflexivisme"* (1999).
7. TESSIER, MANON, *"Guide pratique de la recherche sur le maintien de la paix sur Internet"* (2000).
8. JOLICOEUR, PIERRE, *"L'identité civilisationnelle : un concept utile pour l'analyse des conflits caucasiens?"* (2000).
9. KUBALKOVA, VENDULKA, *"The tale of two constructivisms at the cold war's end"* (2001).
10. PAUL, T.V., *"States, Security Function and the New Global Forces"* (2001).
11. KRAUSE, KEITH, *"Norm-Building in Security Spaces: The Emergence of the Light Weapons Problematic"* (2001).
12. LYNN-JONES, SEAN M., *"Does Offense-Defense Theory Have a Future"* (2001).
13. HALL, JOHN A., *"International and Transatlantic Images of Belonging: The United States and Europe in the 21st Century"* (2001).
14. MILLER, BENJAMIN, *"When (and How) Regions Become Peaceful: Explaining Transitions from War to Peace"* (2001).
15. GRIECO, JOSEPH M., *"America Adrift?: Myths and Realities About the United States in the New World"* (November 2004).
16. WAY, CHRISTOPHER, SASIKUMAR, KARTHIKA, *"Leaders and Laggards: When and Why do Countries Sign the NPT?"* (November 2004).
17. THOMPSON, WILLIAM R., *"Explaining Rivalry Termination in Contemporary Eastern Eurasia with Evolutionary Expectancy Theory"* (November 2004).
18. KELLER, WILLIAM W., PAULY, LOUIS W., *"China, Semiconductors, and Security"* (November 2004).
19. POWELL, ROBERT, *"War as a Commitment Problem"* (November 2004).
20. HAQQANI, HUSAIN, *"Dysfunction of an Ideological State: Pakistan's Recurrent Crises in Historic Context"* (October 2006).
21. LAYNE, CHRISTOPHER, *"Debunking the 1930s Analogy: Neville Chamberlain's Grand Strategy"* (November 2006).
22. AVANT, DEBORAH, *"Globalization, Private Security, and Democratic Processes: Implications for the Democratic Peace"* (November 2006).

23. TOFT, MONICA, *"Peace through Security: Making Negotiated Settlements Stick"* (November 2006).
24. DREZNER, DANIEL W., *"Institutional Proliferation and World Order: Is There Viscosity in Global Governance?"* (September 2007).
25. KANG, DAVID C., *"War and Peace in Early Modern East Asia: Hierarchy and Legitimacy in International Systems"* (October 2008).
26. HURD, IAN, *"States and Rules, Norms and Interests"* (November 2008).
27. HART, JEFFREY, *"Globalization and Global Governance in the 21<sup>st</sup> Century"* (January 2008).
28. JACKSON, ROBERT, *"Solidarism or Pluralism? Political Ideas of the American Union and the European Union"* (February 2008).

***PDF versions of these reports can be accessed at  
<http://www.gersi.umontreal.ca>, or  
through Columbia International Affairs Online ([www.ciaonet.org](http://www.ciaonet.org))***