

THE CRISIS OF EUROPEAN CONSTITUTIONALISM

Reflections on the Revolution in Europe

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## THE CRISIS OF EUROPEAN CONSTITUTIONALISM

### Reflections on the Revolution in Europe

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Europe is a forest of symbols. It is the name of a place, the name of a past, the name of a subjectivity. For those of us who live within the European symbol-forest, our imagination is hardly powerful enough to see Europe as a totality, to objectify our passionate subjectivity. Those who see us from outside see our extraordinary achievements - all the good we have done, all the evil we have done - and they must wonder what the word Europe symbolises, what possible totality could integrate such a place, such a past, such a subjectivity.

And one of our achievements, for better and for worse, has been our self-exteriorisation. Is there any human life anywhere untouched by Europe, any place untransformed, any history unchanged, any human mind unmodified by whatever it is that the word Europe symbolises? To know its self, Europe must look also into the obscure mirror of all that is not-Europe.

In the Preface to the 1869 edition of his *History of France*, Jules Michelet describes in famous words how and why he undertook that work.

"Elle avait des annales, non point une histoire. Des hommes éminents

l'avaient étudiée surtout au point de vue politique. Nul n'avait pénétré dans l'infini détail des développements divers de son activité... Nul ne l'avait encore embrassée du regard dans l'unité vivante des éléments naturels et géographiques qui l'ont constituée. Le premier je la vis comme une âme et une personne."<sup>1</sup>

"...une grande lumière se fit, et j'aperçus la France."<sup>2</sup>

Were he living at this hour, we would beg Michelet to see, not France now, but Europe, to see Europe as a soul and as a person. Under the great light of all that we have lived through in the twentieth century, we would beg him urgently, desperately to tell us: how should we Europeans imagine our totality? how should we constitute ourselves as practical subjectivity?

And he would certainly have told Europe what he told France, and what will be the theme of my remarks this evening - that we Europeans have made ourselves, we have constituted ourselves, subliminally, as it were, nonchalantly. And now we are called upon to constitute ourselves consciously, purposively. And it may be a task too much for us Europeans, as France's self-constituting seemed, to Michelet in his darker moments, to be almost too big a task for the people of France.

"... je dégagai de l'histoire elle-même un fait moral énorme et trop peu remarqué. C'est le puissant *travail de soi sur soi*, où la France, par son progrès propre, va transformant tous ses éléments bruts."<sup>3</sup>

"Ainsi va chaque peuple se faisant, s'engendrant, broyant, amalgantant des éléments qui y restent sans doute à l'état obscur et confus, mais sont bien peu de chose relativement à ce qui fit le long travail de la grande âme."<sup>4</sup>

"La France a fait la France..... *L'homme est son propre Prométhée*."<sup>5</sup>

It was at a time of extraordinary French *travail de soi sur soi* in 1789-1791 that Edmund Burke was caused to look across the Channel and to reflect on the nature of the self-constituting of nations. He was appalled by the way in which the French nation was destroying its historic self by its own efforts, by what he saw as a sort of rationalistic folly. Like Michelet, Burke was inspired to find eloquent words to express the mysterious, unspeakable essence of nation-making - of nations in general, and of the British nation in particular. In so doing, he would express a deep and perennial aspect of British social psychology - an aspect which the British have brought to their participation in the European Union.

"The science of constructing a commonwealth, or renovating it, or reforming it, is, like every other experimental science, not to be taught *a priori*. Nor is it a short experience that can instruct us in that practical science, because the real effects of moral causes are not always immediate; .... In states there are often some obscure and almost latent causes, things which appear at first view of little moment, on which a very great part of its prosperity or adversity may most essentially depend."<sup>6</sup>

"It is with infinite caution that any man ought to venture upon pulling down an edifice, which has answered in any tolerable degree for ages the common purposes of society, or on building it up again, without having models and patterns of approved utility before his eyes."<sup>7</sup>

"You will observe, that from Magna Charta to the Declaration of Right [he meant the Bill of Rights of 1688/89], it has been the uniform policy of our constitution to claim and assert our liberties, as an *entailed inheritance* derived to us from our forefathers, and to be transmitted to posterity...This policy

appears to me to be the result of profound reflection; or rather the happy effect of following nature, which is wisdom without reflection, and above it..."<sup>8</sup>

With those two phrases you reach the deepest waters of British constitutional psychology. *The happy effect of following nature. Wisdom without reflection.*

"[Our political system] moves on through the varied tenor of perpetual decay, fall, renovation, and progression. Thus, by preservation of nature in the conduct of the state, in what we improve, we are never wholly new; in what we retain, we are never obsolete.... In this choice of inheritance [as our philosophical analogy] we have given to our frame of polity the image of a relation of blood; binding up the constitution of our country with our dearest domestic ties; adopting our fundamental laws into the bosom of our family affections; keeping inseparable, and cherishing with the warmth of all their combined and mutually reflected charities, our state, our hearths, our sepulchres, and our altars."<sup>9</sup>

That was Edmund Burke, somewhat carried away by his own eloquence, in his *Reflections on the Revolution in France* of 1790. I have quoted him at length because I want to begin to establish a deep-structure parallel with what Michelet was saying, and also a great deep-structure contrast. And because I want now to establish a parallel and a contrast with Hegel, and German constitutional psychology.

I will be talking about constitutional psychology, but I could as well echo Montesquieu and speak of "the spirit of the constitutions" of France, Germany and Britain. Our great and urgent task now is to look further, to find *the spirit of the constitution of Europe*.<sup>10</sup>

In an early writing, of 1802, Hegel diagnosed the problem of Germany: "Deutschland ist kein Staat mehr." <sup>11</sup> "Germany is no longer a state."

England, France, Spain, and others, were states, but somehow Germany had disintegrated and had thereby suffered culturally, economically, and politically.

In 1802 Hegel had not yet developed the vast intellectual system which would propose a unified meaning for all human history. But it is significant that the German problem presented itself to him as one of *unification*. How could the centuries-old multiplicity of Germany be surpassed, so as to achieve the unity of the great European monarchies? It was a challenge worthy of the dialectic of World History, a challenge of *Aufhebung*, to create a German unity-in-multiplicity, a unity-in-multiplicity which was of world-historical significance but which was also uniquely German.<sup>12</sup>

I will go so far as to suggest later on that Hegel's 1802 essay, *Die Verfassung Deutschlands*, with its focus on enforced unification - or, rather, *re-unification* - contains not only the seeds of subsequent German history but also the seeds of European re-unification, and the seeds of the present crisis of European re-unification.

Hegel's solution would be the idea of the *rational state*. The state, as a system of rationally organised power, could be an expression of the hidden unity of the German nation and at the same time the means of constituting the German nation. The German state would make the German nation. The German nation would make the German state. The Spirit of the Nation, the *Volksgeist*, would manifest itself in the reality of the rational state. And the rational state was also the culmination of world history, the ultimate manifestation of the *Weltgeist*.

All rational states are the same. Each rational state is unique.

(Such are the advantages of dialectical thinking!)

The natural unity-community of the Greek *polis* was unrealisable in the modern world. The gothic naturalism of the British constitution was deplorable. The revolutionary populism of French republicanism was self-destroying. For Hegel, humanity now had before it the possibility of a form of social organisation which was universal and particular, with the infinite particularity of nations actualised in the universality of the rational state.

I am going to treat these three constitutional perspectives as paradigmatic, and I am going to give them labels. The Michelet perspective I will call *nation*. *Nation* is the central complex of French constitutional psychology. The Burkeian perspective I will call *society*. *Society* is the central complex of British constitutional psychology. The Hegelian perspective I will call *state*. *State* is the central complex of German constitutional psychology.

Society, nation, and state haunt the whole process of European re-unification. The European Union can only be a product of European social subjectivity - and yet the European Union is, subjectively, neither society nor nation nor state.

I am speaking, for the moment, only of Britain, France, and Germany. Those familiar with the social subjectivity of the other peoples participating in Europe's self-reconstituting must diagnose the spirits of their respective constitutions.

Somewhere and somehow we have to begin to solve the Great Mystery of Europe's Ununited Unity.

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What Michelet, Burke, and Hegel had in common was the spirit of the age, the age of revolution, a new state of European consciousness which, we now know, contained in embryo all the *grandeurs et misères* of subsequent European history.

The European 18th century closed not only in revolution, and the spirit of revolution. It closed in an unstable union of rationality and subjectivity. It is as if there had been a child of a most unlikely marriage - of Voltaire and Rousseau. Not such an unlikely marriage, perhaps, as each was himself an uncomfortable union of the cold and the passionate, the rationalising and the prophetic.

Not only in the fine arts and literature, but also in social organisation, Europe had to find new ways of reconciling individuality and universality. The rationalism of post-medieval Europe could not be unlearned. But the inwardness (*Innerlichkeit*) of a more ancient Europe was reasserting itself, and could no longer be suppressed.

The intellectual parents of writers such as Michelet, Burke, and Hegel were Vico and Herder - pioneers of an historiography which sought to resurrect the inward essence of the past, to create retrospective syntheses of significance, finding universality in great particularity, finding objectivity in pure subjectivity, treating with the greatest respect every form of human self-expression, especially those by which we hear most authentically the voice of the people - poetry, song, myth, fable, custom.

"First sympathize [*mitfühlen*] with the nation, go into the era, into the geography, into the entire history, *feel* yourself into it [*einfühlen*]," said Herder.<sup>13</sup>

Vico proposed a form of history which was really the history of the human mind, the human mind discovering itself historically. He spoke of early institutions which embody the wisdom of the human race, "judgment without reflection *felt* by a whole order, a whole people, a whole nation or the entire human race."<sup>14</sup> Decades before Burke, he used words almost identical to those used by Burke in the passage I quoted earlier.

The followers of Vico and Herder laid themselves open to the criticism - which has continued to the present day - that they were mere fantasists, retrospective mythologists,



shameless mystifiers, agents of reaction.

Such was not biographically true in the case of Burke, the supporter of the American rebellious colonists; nor of Michelet, infatuated with the best of the French Revolution; nor even of Hegel, who deplored the *Schwärmerei* of Teutonomania and of the then-fashionable nostalgic medievalism.

Their interest in the past was a necessary part of their concern for the future.

Revolution is always in part also reaction. And the voices of the revolutionary period were telling us that the the future is contained in the past because the future will contain the past.

We have not needed Freud to tell us that you cannot argue with the unconscious mind. *Society, nation, state* are archetypes within the collective constitutional consciousness of Europe, full of Europe's collective past. They have continued to produce dramatic social effects throughout the nineteenth and twentieth centuries, wonderful effects and terrible effects.

The master-builders of today's revolutionary re-constituting of Europe must not be allowed to forget a crucial lesson of experience. To ignore the unconscious roots of human social behaviour is to risk creating social instability, or worse.

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I propose the word *society* to identify the totality within which British people believe that they live. I should stress that this is not the word that the man- or woman-in-the-street would use. The truth is that we do not think about such matters very much in abstract terms. And we do not teach our children anything about such matters in school. We do not have what the Americans call *Civics* classes.

In Britain we think so far as necessary, and no further.

The word *society* is supposed to symbolise the fact that the British people have very imprecise ideas about the formal, legal nature of the nation, but have a strong view that we, those of us who belong to the society - we, the people - are bound by the most profound and the most substantial bonds of social mutuality.

The people in general have uncertain ideas about the changing territorial extent of their country.<sup>15</sup> I would guess that the majority do not even know the official title of the country - a title which is a bureaucratic invention. Our national anthem is addressed to God and asks that the Queen may long reign over *us* - whoever "us" may be. One of our most popular national songs instructs someone or something called "Britannia" to rule the waves, and boasts and warns that "Britons", whoever they may be, never will be slaves.

I will quote Tom Paine, an unreliable witness, the British radical who interfered so vigorously in the American and the French Revolutions.

"Some writers have so confounded society with government, as to leave little or no distinction between them; whereas they are not only different, but have different origins. Society is produced by our wants and government by our wickedness; the former promotes our happiness *positively* by uniting our affections, the latter *negatively* by restraining our vices... Society in every state is a blessing, but government even in its best state is but a necessary evil... Government, like dress, is the badge of lost innocence; the palaces of kings are built on the ruins of the bowers of paradise."<sup>16</sup>

Paine was articulating what is probably the view of very many British people (any, certainly, very many American people) to this day. It is the same idea that lay behind Burke's words which I quoted earlier, when he said that we bind up "the constitution of our country with our dearest domestic ties... keeping inseparable... our state, our hearths, our

sepulchres, and our altars." But Paine's words also contain a sub-text of anarchism or *misarchism* (as Nietzsche called it),<sup>17</sup> which is, and always has been, not far below the surface of British (and American) social consciousness.

It is worth remembering that two British prophets of liberal democracy - Thomas Hobbes and John Locke - proposed theories of *society*, not of the nation or the state. The body politic is one-and-many. It was Rousseau who fused society and government into a single ideal complex, a *corps social*, a one-from-many - a conception of social unity which played a part - a different part - in France's revolutionary self-reconstituting as *nation* and Germany's self-reconstituting as *state*.

A whole series of profound systematic and legal consequences have flowed from the British constitutional prejudices which I have been trying to identify.

(1) We have no written constitution, because we do not wish to establish public power as systematically separate from all other social power.<sup>18</sup>

(2) British society is emotionally, if not formally, a federation. Scotland, Wales, and Northern Ireland have distinct organisational systems.<sup>19</sup> But, more generally, we feel ourselves to be a society of societies; we each have a hundred loyalties in addition to our loyalty to the total society. In Britain, politics and religion are team-sports.

(3) We have tried to believe in the reality of the representative character of parliament. As Sir Thomas Smith, from my own University, said, in a book published in 1589: "And the consent of the parliament is taken to be every man's consent."<sup>20</sup>

(4) Although law has been as important in the making of the English polity as it was in ancient Rome, our language has notoriously confused *ius* and *lex* in the one word *law*. For us law is never merely made; it is also found.<sup>21</sup>

(5) We have resisted the very idea of *public law*. Public power is subject to

the same law, administered by the same courts, as any other social power.<sup>22</sup>

(6) The principle of the *Rule of Law* is, for us, something different from the German *Rechtsstaat* and the French *état de droit*. For us it really means the Rule of Legal Freedom - the idea that our freedom can only be abridged by powers specifically recognised by law. We suppose that our natural legal condition is freedom; the burden of legal proof is on anyone who seeks to interfere with our freedom.<sup>23</sup>

(7) We have no legally enforceable *fundamental rights*. We have what we have called for one thousand years "the ancient rights and liberties" of the people. No one knows quite what they are - but the idea has been used, time and again, to tame over-ambitious monarchs, and to dress revolution in the clothes of reaction.

(8) We have never regarded our monarchs as the embodiment of the nation, and we have repeatedly told them that they are "under the law". This has been made easier by the fact that the English majority of the population have found themselves blessed with monarchs whom they could regard as foreign - Danish, Norman, Welsh, Scottish, Dutch, German.

(9) We have felt no need of an idea of *sovereignty* to express the unity of the nation. We have, or had, the supremacy of the Queen in Parliament - which, until the United Kingdom acceded to membership of the European Communities, meant that there were no legal limits on the power of the Queen in Parliament, and no possibility of judicial review of parliamentary legislation.<sup>24</sup>

(10) So, finally, and very important in the present context, we have no conception of the *state* in the internal sense. There is no "British state", in the internal sense. Public powers are distributed among a vast constellation of institutions, extending from the Queen in person and a notional legal person called the Crown to the powers of

countless forms of indeterminate semi-public agencies.<sup>25</sup>

You might think that it would be difficult to organise a modern society in such a vacuum of legal-constitutional order. What we have done is to generate a fantasy constitution to fill the gap. Our fantasy constitution is a monarchy in which all public powers are vested in the monarch, all government is carried out in the name of the monarch, and the rituals of public power are full of numinous monarchical events.

A cold-eyed commentator on our constitution, writing in 1867, said that the whole system depends ultimately on the ignorance of the mass of the British people. Walter Bagehot said that real power is exercised fairly efficiently behind the splendid facade, the "theatrical show" as he called it, of a monarchical constitution.<sup>26</sup>

In recent years, more than ever, the show-business of monarchy has diverted attention from a vigorously self-presidentialising Executive Branch of government.

But I wonder whether the British people have, in fact, ever been deceived by the show or the game of the British constitution. It may well be that it has only been the governing class which has mesmerised itself into treating the appearance as the reality.

In any event, we are now living through a sort of crisis of constitutional consciousness in Britain. The people have, by and large, ceased to believe, if they ever did believe, in the appearances of the constitution, in the natural authority of those who exercise public power. There is talk of a written constitution, of a bill of rights, even some talk of republicanism.

And, by an extraordinary coincidence which is probably not a coincidence, all this is happening at a time when we have become involved in a European Union whose constitutional order seems to the British people to be an alien thing, a negation of their idea of the essential nature of constitutionalism.

But we must look further into the collective minds of France and Germany before we can face the appearance and the reality of the European Union itself.

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In 1787 the Abbé Sieyès called for the *adunation* of the people of France in the form of France as *nation*.<sup>27</sup> I believe that he invented that word in French; the word *adunation* already existed in English.

"Qu'est-ce qu'une nation? Un corps d'associés vivant sous une loi *commune* et représentés par la même *législature*, etc." "Qu'est-ce que la volonté de la nation? C'est le résultat des volontés individuelles, comme la nation est l'assemblage des individus."<sup>28</sup>

On 17 June 1789 the *Tiers Etat* decided to call itself the *Assemblée Nationale*. The Declaration of the Rights of Man and of the Citizen declared that "the nation is the source of all sovereignty." The Constitution of 1791 declared that "national sovereignty belongs to the people."

At the Battle of Valmy on 20 September 1792, the first engagement of the Revolutionary Wars, the French soldiers rallied to the cry of *Vive la nation!* Already the people were dying for the nation.

The new national anthem was conceived in Strasbourg during the same campaign, and the soldiers from Marseille went to Paris singing in the streets: *Allons enfants de la patrie!*

When the *Chant du départ* was written in 1794 for the anniversary of the taking of the Bastille, a thousand years of monarchy had been terminated: *La république nous appelle.*

*Patrie. Peuple. Nation. République.* A revolution in four words.

We can express the revolutionary essence of the French Revolution in two sentences. France had been a *patrie*, organised as a monarchy. After the Revolution the people of France became a nation organised as a republic. French social consciousness, at its deepest level, had changed.

(One might add that, since 1958, some people have detected a ghost of monarchy in the French constitutional machine.)

As I have already suggested, Britain's permanent revolution can be summarised in a single sentence. Permanent revolution has produced a society of the people organised in the form of a republic masquerading as a monarchy.<sup>29</sup>

Alfred Cobban's provocative phrase - "the myth of the French Revolution"<sup>30</sup> - was intended to draw attention to the question of what actually changed in the social and economic structure of France at the time of the Revolution - and what were the true causes of that change. Torrents of ink have flowed on those questions. They remain passionately controversial to this day.

Cobban's answer, like de Tocqueville's, was that not very much changed that was not changing in any case for other reasons.<sup>31</sup>

His use of the word "myth" is misleading, however, if it is taken as denying that there was a profound change of French political consciousness at the time of the Revolution. The question is: what was the nature of that change?

"The Revolution was many things. It was an attempt to reform the government of France...But it was also .... the embodiment of a great idea, the idea of the sovereignty of the people, or nation."<sup>32</sup>

I would say that this misses the true nature of the revolutionary event. The French Revolution was not merely the embodiment of an idea, but a change of self-identifying consciousness.

The adunation which de Sieyès, and many others, sought and achieved was a psychic unification. It was not, as in Germany in 1871, the problem of unifying distinct geographical and political sub-societies. It was not, as in Britain, the unification through socialisation of an indeterminate set of geographic and ethnic identities, and sub-societies.

In a secret report, Turgot informed Louis XVI of the state of the nation:

"La nation est une société composée de différents ordres mal unis et d'un peuple dont les membres n'ont entre eux que très peu de liens et où, par conséquent, personne n'est occupé que de son propre intérêt." <sup>33</sup>

It was a social unorder which was full of paradox. The peasants were an ubiquitous but socially excluded class, but a class among whom, unusually in Europe, significant numbers owned land. The nobility were much less land-centred than the British or German nobility, more focused on Versailles and Paris, and their peculiar privileges seemed, perhaps for that reason, to be unusually anachronistic and illegitimate. And there was an unsatisfied class in-between, the proto-bourgeoisie, unintegrated, but, as in Britain, beginning to apply their society-transforming energy.

And there was another class, the thinking class - the *philosophes* and all those liberated by the free-thinking of the French Enlightenment. It has been suggested that this informal fourth estate, with its feverish exploration of new ideas in every field, was the major political force in France after 1750, filling a vacuum of deliberative political institutions.<sup>34</sup>

The manoeuvrings of the king, the estates, and the people at Versailles and in Paris were a theatrical representation of the dialectical process of French self-surpassing,



self-transcending.

Turgot's pre-revolutionary pessimism had been answered by France's purposive, self-reconstituting.

It was nobody's fault in particular - not Robespierre's, not Napoleon's - that the course of that self-constituting would not run smoothly thereafter. But the uniting of the French people in the idea of the French nation - the idea of the hypostatic suprasocial nation, uniting in a single idea the cherished soil of France, a thousand years of colourful political history, and the long centuries of sustained high culture - that idea has carried France through two centuries of organisational turbulence (including two empires and five republics), through devastating challenges from outside to her integrity, through her transformation into a modern society based on an exceptionally successful economy.

To mention the Battle of Valmy is to bring to mind the name of Goethe.

Goethe attended the battle at Valmy as a spectator, at considerable physical risk, but in a state of some exaltation. From Valmy he spoke and wrote words which, as he must have guessed, would not be forgotten: "at this place, on this day begins a new era in the history of the world."<sup>35</sup>

If Valmy had been the end of the beginning for the new France, it was the beginning of the end for the old Germany.

Twenty years of war followed, at the end of which there was a new Germany, a new Europe, a new world, and a hundred years of dramatic human social progress.

But Valmy was also the first encounter of the new France with Prussia. It would not be the last.

Valmy led to Vienna in 1815, to Versailles in 1871, to Verdun in 1916, to Versailles in 1919, to Vichy in 1940. For Europe, the *via regia* of human progress has also

been a *via dolorosa* of human suffering.

In 1945, after thirty more years of European civil strife, we had another new Germany, another new Europe, and another new world. And, perhaps - it is a matter for delicate judgment - fifty more years of dramatic human social progress.

And yet - we seem more than every hesitant and confused about what it is we have achieved and what it is that we are creating, in the world and in Europe.

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When the 1000-year-old Holy Roman Empire of the German Nation evaporated in 1806, it was the end of an illusion of German unity which had not deceived anyone for a very long time.

The true unity of Germany was the idea of Germany, or, perhaps more strictly, a certain idea of Germanness, a possible unity in consciousness. The process of German unification in the period up to 1871 would be the joint product of three forms of self-constituting self-consciousness, which I will call: Romantic nationalism, Hellenic nationalism, and Hegelian nationalism. After 1871 there would be a fourth form of unifying self-consciousness, which I will call competitive nationalism.

Romantic nationalism is a social self-consciousness which articulates its identity in terms of nostalgic subjectivity - Vico-Herder nationalism. In the case of Germany we identify it with such people as the brothers Grimm, Savigny and the Historical School of Jurisprudence, Richard Wagner (as poet-dramatist) ..... and countless other such backward-looking social manifestations, some of them much less admirable.

Hellenic nationalism was, in spirit, not really a nationalism so much as a new

humanism. But it was a humanism which had a particularly powerful effect in the German mind. We associate it with such names as Herder (again), Goethe, Wincklemann, Lessing, Schiller, von Humboldt. And, of course, Hegel's work is thoroughly imbued with the Hellenic spirit, haunted by the ghosts of Plato and Aristotle.<sup>36</sup>

The essential idea was that ancient Athens offered an example to a nation, to the human race, of the possibility of purposive self-improvement.

A clue to the nature of a nation's constitutional psychology may be found in its attitude to education. In Britain, at least until recently, we have not sought, or have not achieved, high levels of mass education, and, until recently, tertiary education has been provided to only a very small part of the population. The growing involvement of the government and public finance in education was conducted in a grudging paternalist spirit, more or less keeping in step with the extension down the social hierarchy of the right to vote. At the time of the passing of the bitterly contested Education Act of 1870, reference was made to educational standards in Prussia, but what we remember is another slogan in the debate: "educate your masters."<sup>37</sup> What the mass of the voting population needed to know has turned out to be: not very much.

In Germany at the turn of the 19th century, education was perceived in a different way. Germany's *travail de soi sur soi* would be a work of national self-improvement, which was only one aspect of human self-improvement. *Bildung*.<sup>38</sup> *Erziehung*.<sup>39</sup> *Humanitätsideal*.<sup>40</sup>

For a thousand years different European nations had taken on the task of educators of the European mind. Germany could claim, in a Periclean way, to be Europe's teacher of teachers in the 19th century. Germany set the standards and the ideals of publicly endowed intellectual self-cultivation for Europe and beyond. The character of our universities

today still reflects, for better and for worse, the ideals of that German-inspired European High Culture of the 19th century.

But the Ariadne thread of education can lead us into deeper and more troubling regions of Europe's symbol-forest.

The question of public education inevitably raises the question of the individual's relation to society, and that leads us back to Hegel and statism.

Hegel's depreciation of *society* in relation to *state* reflected a sort of obsessive aversion on his part to the inwardness and subjectivity which had flooded the European mind in his lifetime. The natural self-ordering of society could be, would be, surpassed by the rational self-constituting of the state. And the individual would find a new sort of fulfilment in organic participation in a self-perfecting state-society. Only in this way could modern society approach the ancient Greek ideal of the natural integration of the individual into a social order which was itself a reflection of a transcendent order.

These ideas took social effect in Germany in a way which would delay the coming of parliamentary democracy for a century and more. They would inspire the self-perfecting of society through the self-perfecting of the state. And certain of the German sub-societies, not only Prussia, set about the rational reconstituting of society under the control of what Hegel had called the *universal* class, people specially educated and specially employed to serve the public interest, to universalise society's particularities, to achieve, through the state-machine, through legislation and administration, the amazing dynamic one-in-many of a complex modern society, self-creating and self-regulating from day to day.

These forms of national self-constituting had their intellectual parallels elsewhere in Europe, including in Britain and France. To pluck symbols, more or less at random, out of the British symbol-forest: the *nostalgism* of Ossian and Walter Scott and

Pugin and William Morris; the *hellenism* of Matthew Arnold and Walter Pater; the *social rationalism* of Bentham and J.S. Mill and Herbert Spencer. Over a large part of Europe - not only in Napoleonic France and in Prussia - society was transformed in the 19th century, by rationalistic legislation and administration which was powerfully statist in spirit.<sup>41</sup>

So what about German uniqueness, German exceptionality, the famous German *Sonderweg*? I would like to suggest that there is no such thing, except in the sense that each of our nations is uniquely self-constituting, each of us is a unique manifestation of general European self-constituting, a particular self within the European self.

But I must admit, and I want to argue, that the particular character of Germany's unifying self-constituting, Germany's work on itself, is now of the utmost relevance to Europe's *travail de soi sur soi*, Europe's re-unifying.

The activity of the German mind since 1760 has been prodigious. An English admirer of the German people may be permitted to say - and others before me have said it - that the German mind has thought too much and felt too much, and sometimes it has confused the two. The German mind has been too intelligent and too sensitive.

It is, perhaps, only in the perfection of German music that the German mind has found the ideal resolution of thought and feeling.

The superabundance of the German mind and heart led to certain phenomena which temporarily separated it from other parts of Europe, especially France and Britain. And we must now face the problem of Germany after 1871.

In the turbulent minds of Max Weber and Thomas Mann, to take two representative examples from among so many troubled *mâitre-penseurs* of the German spirit, we can, as fellow Europeans, watch with anguish the playing out of the German existential drama.

In Britain (and, even more, America) we find it difficult to think, let alone approve, Weber's idea that the essence of the state is its monopoly of legitimate violence. And even his ideas of rationalisation, bureaucratisation, religion, authority, and charisma feel deeply alien as elements of structural social analysis. We know of such things in our constitutional history and psychology, but they have a quite different perspective in Anglo-American self-contemplating.

Thomas Mann would notoriously say in 1918: "Ich will nicht die Parlaments- und Parteiwirtschaft, welche die Verpestung des gesamten nationalen Lebens mit Politik bewirkt; ich will nicht die Politik. Ich will Sachlichkeit, Ordnung und Anstand."<sup>42</sup>

"I don't want politics. I want objectivity, order, and decency."

Words which we would all like to echo sometimes, when we have to watch the tiresome games of party-politics, but words which we could not possibly use, let alone advocate, as a basis for understanding our social systems.

And Mann also said in the same lecture: "The Germans are not a people for society"<sup>43</sup> - echoing, in order to deny, the idea of *society* which we found in Burke and Paine.

Above all, in the mental struggle of Weber and Mann with the idea of the German *nation* - the search for Germany as *âme et personne* - we can see the foreshadowing of all that was to follow.

In the period 1871 to 1914, the idea of the nationhood of France and Britain agitated the minds of Germany's ruling class, including the economic ruling class. Bismarck's violently imposed German *power-state* reimagined itself as a great nation, and a world power - in competition with a France and a Britain whose appearance of world-power was already becoming a terminal illusion.

Competitive nationalism was not Germany's invention and was not confined to Germany.<sup>44</sup> It is like a latent virus in the European spirit, waiting to overwhelm, in times of social stress, all normal and healthy forms of social self-constituting. Its effect in Germany was that Germany become a *state-nation* : a *society* organised through its public realm, but now projecting its subjectivity in the form of *nation*. A dynamic, rapidly developing society, which had been organised as a state, was re-energised by passionate national subjectivity.<sup>45</sup>

National Socialism was its natural political manifestation - nationalist and statist. And the madness of the Third Reich was the natural perversion of national socialism.

The confusion of rationality and subjectivity - that hazardous legacy of the late 18th century - had at last produced, at the turn of the 20th century, its most extreme malformation, full of life-threatening contradictions.

Inwardness (*Innerlichkeit*) and social absolutism. National feeling and its dark shadow - xenophobia. Pietism and *Realpolitik*. Feverish creativity and the wish for death. High intelligence and profound irrationality. Alongside the Germany of *Blut und Eisen*, there remained the Germany of *Blut und Boden*, *gemütlich* Germany, *Heimat* Germany, *Gemeinschaft* Germany.

It is my purpose this evening to suggest - and it is a matter of profound importance for the future development of European Union - that a people's *travail de soi sur soi* is never completed. The Third Reich was not the "true" Germany, any more than the Terror of the second phase of the French Revolution was the "true" France, nor Britain's arrogant colonialism the "true" Britain, nor the "Manifest Destiny" policy of the United States the "true" United States.

Helmuth Plessner has called Germany *Die verspätete Nation* - the Delayed

Nation.<sup>46</sup> A main goal of European re-unification must be the wholehearted integration of the German people into the European family. And the same objective must apply to Europe's other "delayed nations" - including the long-suffering peoples of central and eastern Europe who have been, for centuries, the victims of other peoples' games of self-constituting.

But the surpassing of the past is never an annihilation of the past. Self-constituting of a nation, as of a human individual, is always a re-constituting of what has gone before.

A people, like a person, cannot unlive its past.

And what is true of each nation is true of all Europe. Europe's self-reconstituting, since the end of the Roman Empire in the West, has never ceased and will never cease.

In 1949 Germany was reconstituted once again as two *states*, two *non-nation-states*, a violently caused negation of its self-constituting as *state-nation*.

One hundred and forty-seven years after Hegel's essay on the Constitution of Germany, Germany was at last unified rationally, ironically - in the disunity of two *states*.

And the west German state was organised by a written constitution which is the *fine fleur*, the *ne plus ultra*, of democratic rationalism, a pure distillation of long centuries of European constitutionalism.

But it is a constitution which strikes us as a product of the mind rather than of the heart, lacking the lyrical quality of the originating constitutional texts of the United States or France. It is a constitution with a past.

The rigour of the *Grundgesetz* demonstrated its amazing efficacy when the Federal Republic swallowed the Democratic Republic, like Jonah and the Whale, in 1990. Two states became one state, more or less overnight.



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After so much struggle, so much suffering, you might have thought - in 1945 - that Europe deserved a period of constitutional rest and relaxation.

Far from it. Europe's manic *travail de soi sur soi* resumed. Many European countries have legally reconstituted themselves in the period since 1945 - some on several occasions - Austria, Belgium, France, Germany, Greece, Italy, Portugal, Spain, the United Kingdom - not to mention the countries of central and eastern Europe and the successor states of the Soviet Union.

Five years to the day after the end of the War in Europe - five years! - the reconstituting mania, the *furor constituendi*, manifested itself in a surprising new form. Western Europe would seek to re-constitute itself - not as *society, nation, or state* - but as *economy*.

Official Britain's persistent and comprehensible, but tragic, equivocation in relation to Continental Europe is co-ordinate with the equivocal course of U.S. foreign policy. George Washington's admonition to the United States to avoid *foreign entanglements* (leading to spasmodic U.S. involvement and detachment in European and world affairs) echoes British foreign policy (with its one big idea - the Balance of Power) going back at least to Cardinal Wolsey in the 16th century. These equivocations - British and American - have seemed to be a *felix culpa - felix* when it kept us out of wars; *culpa* when it has actually encouraged hegemonism and other undesirable developments on the Continent.<sup>46</sup>

European Community Europe revealed itself soon to be a creature of dynamic organic energy. It would be a protean self-constituting, forever changing shape. As we poor constitutionalists struggle to make sense of it all, it keeps becoming something else - ever richer, ever stranger.

The truth is that the European Union defies conventional legal-constitutional analysis. It is a Europe in Wonderland. If I now suggest three stages of the EU's constitutional development, I am fully conscious of the rather comical character of such an analysis.

(1) In a first phase, the Community constitutional system was a *partially external, partially constitutionalised partial economy*.

Or, using another form of analysis, the Communities, in their original form, were a *dual functionally-limited sub-federal system*. ("Dual" in the sense that functions of law and government were distributed horizontally between the Communities and the member States by reference to what were called, in those days, *the limits of Community competence*.)

(2) In a second phase, the Community constitutional system became an *internal-external economy-state* (using *state* in the Hegelian sense, as an organisation of the public realm). A *Wirtschaftsstaat*, one might call it - inventing a German word, if it does not already exist.

Or, using the other form of analysis, the Communities up to and including the period of the Single European Act, became a *dual-binary functionally-limited pre-federal system*. ("Dual-binary" because it had become clear that the Communities and the member States were now systematically connected, both horizontally and vertically - in particular, because of the development of the principles of the supremacy and direct effect of Community law and because there seemed to be no natural limit to the need to unify or harmonise economic law.)

(3) In a third phase - coincident with, but not wholly caused by, the wretched Maastricht Treaty - the constitutional system seems now to be a *state-of-states* (*Staatensstaat*)

*containing an internal-external constitutionalised partial economy, together with an external partial public realm of public realms.*

Or, using the other form of analysis, it has become a *triple-binary functionally-limited sub-federal and confederal system*. ("Triple-binary" because there are now three corners to the constitutional triangle - the member States, the Communities, and the partially confederal EU.)

Such surreal constitutional discourse is the best that I, who devote my professional life to such matters, can do. Let us say, for the moment, that the European Union is a *statist-capitalist diplomacy-democracy* - whatever that means.

Heaven knows what conceptual structure is present to the mind of the man or woman on the Clapham omnibus! Better not to ask.<sup>7</sup>

For the time being, I am not concerned with the scientific accuracy of this kind of analysis. The question is: what has caused such an exotic manifestation of European self-constituting? How is that the spirit of Europe's constitution has managed, after thirty centuries, to give birth to such a wonder of nature - a *lusus naturae*?

What I want to suggest is that the present form of Europe's self-re-unifying is the product of three profound *technocratic fallacies*.

It is those fallacies which have caused the structural and psychological contradictions which threaten to destroy the whole project of European re-unification. To overcome these fallacies is the measure of the formidable task we face, if we are to try to find a way out of the constitutional jungle which has grown up at the heart of Europe's symbol-forest.

"Technocratic" fallacies. Among the technocrats in question are four groups of people - diplomats, other government officials, economists, lawyers. If we are inclined

to call it the Europe of the Technocrats, we are, of course, not forgetting the politicians who are politically responsible for what has happened.

But politicians are, as we all know, the slaves, as well as the masters, of their so-called civil servants.

The three profound technocratic fallacies which are at the root of the crisis of European constitutionalism are the following.

(1) The idea that a constitution is an arrangement of institutions. Wrong. *A constitution is the socialising of human consciousness.*

(2) The idea of the autonomy of the economy, that *res economica* is separable from *res publica* and even from *res privata*. Wrong. *The economy is the socialising of human energy.*

(3) The idea that democracy can be conducted as diplomacy. Wrong. *Democracy is the socialising of the human will.*

The form which European re-unification has taken - the constitutional actualisation of these technocratic fallacies - has produced deep wounds in the constitutional psychologies of the participating peoples.

Those of us who want to redeem and perfect European re-unification are not in the business of institutional reform. We are in the business of psychic healing.

The Intergovernmental Conference, which begins in two days time, is worse than irrelevant. It is like offering minor surgery to a patient with schizophrenia.

And the metaphor of schizophrenia is more than a metaphor. If one defines psychosis as the domination of the patient by a private reality which is life-threatening, then something very close to that is what has happened in Europe. Official Europe - politicians and technocrats - are locked into a private reality - the so-called European Union - which

threatens the future stability and prosperity of Europe.

European Union is Europe's half-revolution. Half-revolutions are a familiar phenomenon - Britain in 1688, America in 1781, France in 1789, Russia in 1917, Germany in 1919. The problem with half-revolutions is that they tend to be followed by counter-revolution, chaos, or worse.

In the first of the *Federalist Papers* (1787), Alexander Hamilton wrote:

"It has frequently been remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force."<sup>48</sup>

Hamilton was arguing for the completion of America's half-revolution. In Europe today, we may echo his words. It is for us Europeans now to discover whether we are able, through reflection and choice, to complete Europe's revolutionary self-reconstituting, to redeem and perfect what has already been achieved, to take further Europe's own work upon itself, to rediscover and reconstitute European society.

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I have talked about the constitutional psychologies of Britain, France, and Germany. To talk in this way is to talk about the *ideal self-constituting* of those peoples, the way in which a society constitutes itself in consciousness.

A society constitutes itself in three dimensions at once: the *ideal* - the level of theories, values, purposes; the *real* - the level of actual day-to-day political, social, and

economic action; and the *legal constitution* - through which society transforms into law the endless series of outcomes which come from the interaction between its real and ideal self-constituting, and so takes power over its future.

A society constitutes itself through ideas, through social interaction, and through law.<sup>49</sup>

The German people - to cite one example - were organised as a state-nation after 1871, not because the *Zollverein* had, by some natural process, taken on the character of a state.<sup>50</sup> Germany became a state-nation because Bismarck, acting in the real constitution (including the use of threats and force) instigated a new legal constitution (the constitution of the North German Confederation transformed into the Reich Constitution of 1871), and the self-contemplating of the ideal constitution fused the ideas of *German state* and *German nation* (*Staat* and *Volk*). German society had reconstituted itself *really, legally, and ideally*.

The self-constituting of the British and French and German peoples since 1789, which I have tried to outline this evening, was an inextricable interaction of power, ideas, and law. The dialectical products of that process were the powerful theories of social totality which I have referred to as *society, nation, state*.

But, at precisely the same time, another remarkable self-constituting was taking place in western Europe. We discovered a way to imagine and to organise the *real constituting* of society, to imagine and organise the aggregating of human action.

It was no coincidence that Rousseau and Adam Smith both proposed, almost simultaneously, new ways of imagining the constitutional processes which would be idealised in the social theories which came to be known as *democracy* and *capitalism*.

And it was no coincidence that they did so at the very time when our societies had brought to full consciousness such powerful ways of imagining their social totality. The

interaction of the two - democracy-capitalism / society-nation-state - has been the story of the amazing development of our societies over the last two centuries.

Rousseau's *general will* and Smith's *invisible hand* were metaphors of wonderful explanatory power, but they were far more than metaphors - and they were close analogues of each other.<sup>51</sup>

Their hypothesis was that it is possible to aggregate human action, to aggregate the infinite particularity of human willing and human effort, so as to generate the practical universality of *law* and *wealth* - and, most wonderfully of all, such aggregating can produce what we may call *surplus social effect*, an output that is more than the sum of the inputs. They had apparently constructed ideally an engine of unlimited social progress.

It turned out that capitalism needed a wholesale transformation of society to make its engine work. And the nineteenth century produced a torrent of legislation and administration, to accommodate this amazing new system of real self-constituting.

Democracy proved to be an efficient means of providing such law and controlling such administration. But Germany and Japan in the period up to 1914 showed that it was possible for the constitutional needs of capitalism to be served by more statist means. And we see now in various countries of the world another attempt to operate a form of what may be called *state capitalism*.

The increase in the aggregate energy of the new societies gave great force to what I have referred to as competitive nationalism. There was a new way of increasing the relative power of the social totality - not by war, colonisation, or annexation, but by increasing the organisational efficiency of society, and by increasing its aggregate wealth. The pursuit of power through wealth is the continuation of war by other means. The working population was conscripted into a permanent peace-time army.<sup>52</sup>

Europe's social progress was bought at the expense of Europe's social unity.

And the consequence was a twentieth century whose first half was spent in war among the new competing *state-wealth machines*, and whose second half has been spent in a feverish effort to recover some sort of unity - an effort which, I am arguing this evening, was historically unsurprising, but which has been seriously misconceived.

It is at the ideal level that the re-unifying of Europe is grossly deficient. And that deficiency is hopelessly distorting the real and legal self-constituting of European Union and of its participating peoples, condemning Europe to instability and impotence.

A sort of constitutional depression has settled over the peoples of Europe.

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So the time has come when I must say how things should have been and how things might be - Europe's possible future, Europe's possible ideal self-re-constituting.

I have suggested that what we have in the present state of European Union is a mysterious *statist-capitalist diplomacy-democracy* which is in unresolved dialectical tension with the constitutional histories, systems, and psychologies of the participating peoples.

I have suggested also that this situation is Europe's half-revolution - and that that half-revolution may be worse than no revolution at all, depending on what comes next.

What I want to suggest now is that the future of Europe lies not in new institutions but in new ideas. The peoples of Europe must find a new idea of themselves and a new ideal of their self-re-constituting.

And that new idea and new ideal will come, not from any more technocratic imposition. We have had enough of that. It will come by bringing into fruitful conjunction



two great streams of European consciousness: on the one hand, *the spirit of the constitutions* of the peoples of Europe; on the other hand, *the transcendental unity* of European society.

To adopt and adapt a distinction which Walter Ullmann suggested in his consideration of medieval political philosophy, the spirit of Europe's constitution must be found at the intersection of *ascending* and *descending* ideas of social organisation.<sup>53</sup>

The disaggregating of the society of Europe must interact with the super-aggregating of Europe's subordinate social totalities. European re-unifying will be a dialectical process in which Europe's inherent social totality negates, and is negated by, its intermediate social totalities.

Europe's future must be found in, and in the negation of, Europe's past. Europe must become for-itself *a society of societies, a nation of nations, a state of states*.

Giambattista Vico would have called that effort *un ricorso*, a recovering of the past-in-the-future of the European mind.<sup>54</sup>

To put it in Michelet terms, it means a bringing to consciousness of the *soul and person of Europe - la grande âme de l'Europe*, something which has been suppressed for two centuries and more.

It means finding the *formula naturae* of European society - to borrow a splendid idea attributed to that most learned Roman, Varro.<sup>55</sup>

To adopt and adapt three Kantian terms of art - ironically, but not inappropriately - we must seek to form the *idea of reason* of the *possibility* of Europe's *transcendental apperception of its unity*.<sup>56</sup>

In the terms of my own social philosophy, it means that we must now propose to European society a *theory* of European society.<sup>57</sup>

In short, to complete this farrago of epistemological allusions, we shall, in

Aristotelian-Nietzschean terms, be inviting European society to choose to become what it is.<sup>58</sup>

And all this means, first and above all, that European integration must be re-integrated into the mainstream of European history. European integration must become the work of the European mind.

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But - to enable me to end on a cheerful and positive note, I had better first dispose of three imagined futures of Europe which must be rejected as possible theories of the self-re-constituting of European society.

Strangely, and embarrassingly, they are precisely the three possible futures which are on Europe's menu at the moment - the possible futures which will haunt the Intergovernmental Conference.

(1) The first is the *partial prussianisation* of the European Union among those of the peoples of Europe who are willing and able to undertake the rational completion of the European constitution on the basis of the system known as Economic and Monetary Union.

This seems to be the possible future favoured by official Germany.

(2) The second is the solution favoured, at the moment, by official Britain. Its slogan is *Forward to the Nineteenth Century* - economic co-operation plus a Concert of Europe from the Atlantic to the Urals. It is the *quarter-revolution* solution. Or, perhaps, the *entropy* solution.

(3) The third solution is apparently favoured by official France - although official France seems, at the moment, to be in dialectical tension with itself. I will call this

third possible future: *the prolongation of controlled confusion* - that is to say, continuing more or less on the path we are already following. We might call it the *inertia* solution.

The official British and French possible futures are confused reflections of the constitutional psychologies of those two peoples which I have tried to analyse this evening - the psychology of *society* and *nation*.

There is no real possibility of their being adopted by all the participating peoples as the theory of Europe's future. But it has been a main purpose of my remarks this evening to suggest that such psychological attitudes will play a deep-structural role in determining Europe's future. They will exercise the power of the unconscious constitutional mind over the process of completing Europe's revolution.

The official German approach is a much more immediate and difficult problem. It is obviously also a reflection of the constitutional psychology of the German people, as it has developed over the last two centuries, according to the analysis which I have proposed - a powerful mixture of the psychology of *state* and the psychology of *nation*.

And here I must speak, for a few minutes, with complete frankness, if not with brutal frankness - as frankly as we are accustomed to speak in our national constitutional debates. I will refer to three things which are, perhaps, self-explanatory.

(1) At the time of the creation of the *Zollverein* in 1834, Austria found itself in much the same situation as Britain one hundred and twenty years later. It did not want to be inside, but could it remain outside? Metternich wrote a Memorandum for the Emperor, saying that, within the German Confederation, Prussia was creating a sort of *state-within-a-state*.

"In the German Confederation there is arising a smaller subsidiary union, a *status in statu* in the full sense of the term, which only too soon accustoms itself to achieve

its own ends by its own machinery in the first place and will only pay attention to the objects and the machinery of the Confederation in so far as they are compatible with the former."<sup>59</sup>

(2) In 1916, the German Government set up a working-group to consider the necessary conditions for the establishment of a Customs and Economic Community with the countries of Central Europe (a *Zoll- und Wirtschaftsgemeinschaft*), designed to keep those countries out of the grip of Russia, but avoiding their direct annexation by Germany. The German word *Gemeinschaft* is a word with an interesting history, unlike (at least until recently) the corresponding words (*community* and *communauté*) in English and French.<sup>60</sup>

(3) In his new biography of Thomas Mann, the German author Klaus Harpprecht has drawn attention to something which Mann wrote in 1947.

".... in just fifty years... [Germany] will, in spite of everything, have all of non-Russian Europe in its pocket, as Hitler also could have had everything if he had not been so impossible."<sup>61</sup>

Harpprecht himself comments that this is "a prophecy that one reads half a century later with a kind of shiver."

Given the history of the last two centuries, it would be profoundly dishonest not to refer to these matters when one is considering the future which will finally overcome Europe's recent past.

No one supposes that the German Government, still less the German people, have concealed annexationist intentions. But words are heard and not merely spoken.

Anyone is entitled to express the meta-historical judgment that "the days of the nation-state are over."<sup>62</sup> But anyone who does so would do well to remember that those words are of deeply different symbolic significance depending on who is saying the words and who is listening to them.

We must surely pay particular respect to the constitutional psychologies of those peoples of Europe who have only recently recovered their identity and their dignity as nations and states after centuries of abuse and oppression. And there is a much wider consideration. The prussianizing of Economic and Monetary Union will mean the division of Europe, a de-constituting of Europe. Europe will become an incoherent collection of sub-unions lacking any historical, ethnic, psychic - or even geographical - reason to exist.

Their members may not even be geographically contiguous to each other.

The sad unity-in-disunity of the Holy Roman Empire after 1648 will have been negated, but by a disunity-in-unity which could do to Europe the damage which that system did to Germany. A bizarre and tragic outcome of thirty centuries of European self-constituting!

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So - to get back to matters more positive and more cheerful - how can we re-integrate the re-constituting of the *people* of Europe with the self-constituting of the *peoples* of Europe?

If the totality of Europe's symbol-forest is to be symbolised as European society, how can we re-conceive Europe's re-unifying as the self-re-constituting of European society - as a means of our self-identifying, of our mutuality, of our self-perfecting - as the possibility of Europe's transcendental unity?

Where should we start?

A journey of a hundred miles begins with a single step. Our first step must surely be the re-imagining of Europe's past - the re-conceiving of European history - as the history of Europe, a history which is not merely the aggregation of national histories.

To speak of *history* is to speak of our accumulating self-consciousness.<sup>63</sup>

So, a re-formed history of Europe will be a reforming European self-consciousness - an *Umformung*, a transformation of our self-identifying.

European re-unifying requires an historiography of our unity which is as powerful as the historiography of our particularism.<sup>64</sup>

If one looks at European history as the history of Europe, interesting and surprising patterns begin to emerge from the chaotic infinity of detail, patterns which are helpful in understanding Europe's present crisis and its possible futures.

A history of Europe's unity might identify four periods of European history. *Tribal Europe* from the 5th to the 11th centuries. *National Europe* from 1100 to 1500. *Social Europe* from 1500 to 1800. *Statal Europe* from 1800 to the present day.

And because, as I have suggested earlier, the past of a people, like the past of a person, is ever-present, so these pasts of the European people are still present within our collective consciousness today.

*Tribal Europe* (5th - 11th centuries) reminds us of the accidental character of the ethnic composition of each of our supposedly specific nations. And it reminds us of what we Europeans are most like: we are most like an extended family - a large family full of interesting and rather difficult members.

In Britain, for example, when the music stopped in 1066, we found that we were a strange mongrel mixture of Celts, Jutes, Saxons, Angles, and frenchified and non-frenchified Scandinavians. And we found that we spoke a germanic dialect, probably the east Frisian dialect of German.

And if we were cousins of those tribes who would come to identify themselves as Germans, those tribes were cousins, or closer, of the tribes who would come to identify

themselves as French. And the proto-Germans would get rid of the Slav tribes from what would one day become the territory of the German Democratic Republic. And the proto-French would go beyond the Somme and then beyond the Loire and frenchify the survivors of the Romanisation of Gaul, and so link up with the Lombards who had moved from northern Europe to become the proto-Italians in conjunction with the aboriginal Romanised tribes of Italy, including tribes in southern Italy who had been colonised by the Greeks... and so on and on.

And all this - if one may take the Montesquieu view of history - because the Romans did not like the weather in northern Europe. Tacitus said, in *De Agricola*: "The climate of Britain is repulsive because of its rain and continual mists."<sup>65</sup> Not a good way to attract settlers born under southern skies. So, in the year 408, the Romans simply left.

And Tacitus was equally rude about Germany.<sup>66</sup>

*National Europe* (1100 - 1500) reminds us that it took manic efforts on the part of kings and their servants, and the spilling of much blood, to make these motley tribes believe that they were a *nation*, genetically distinct from neighbouring nations - to separate the royal property of one so-called nation from another, to combine highly effective subordinate social systems (feudal estates, the dioceses of bishops, city-states, free towns) into centralised power-systems.

When French kings were kings of England and English kings were also kings of France - depending on which way you looked at the matter - what was England, what was France? British kings continued to bear the title "King of France" long after they had ceased to control any part of France.

When an Elector of the Holy Roman Empire became King of England, as George I in 1720, was England suddenly German or Hannover suddenly English?

National Europe also reminds us that European economic integration is a great deal older than forty years. The international character of trade in the High Middle Ages, the cosmopolitanism of the towns, and the development of an international business consciousness, as one might say, are remarkable.<sup>67</sup>

*Social Europe* (1500 - 1800) reminds us of a very striking thing, the most important pattern of all - that, after 1453 (the sack of Constantinople), the peoples of Europe rediscovered their unity - in the very period which seems also to have been a period of intense political and religious division and conflict.

Social Europe also reminds us that we Europeans have been capable of layered loyalty - loyalty to family, village, town, estate, province, nation, - loyalty to our religion, to Europe, to our God. Each loyalty perfectly compatible with the others. Some of us, from ancient Greece onwards, have even claimed to be cosmopolitans, citizens of the world.<sup>68</sup>

In what seems to be a post-religious European society, we find it difficult to identify with a European people whose primary shared identity was their shared religion, and for whom the City of God and the City of Man were equally real.

But social Europe was, above all, the Europe of a common mind. Our common mind - our inheritance from Greece and Rome - has never stopped thinking. In the darkest days of tribal Europe, when the lamp of civilisation burned low, the light of mind burned steadily in the monasteries, those common organisations of the spirit, and then in their intellectual heirs, the universities.

And we are now so conditioned to seeing the human world in particularist terms that it is difficult to remember that, until so recently, the work of the European mind was a European activity - a single market of consciousness, with free movement of artists and intellectuals, of intellectual capital, of the products of hand and brain.



Europe was a European Union of the Mind - an Internet *avant la lettre*.

And *social Europe* reminds us of another thing.

Even among the controllers of the public realms of the nations there were signs of practical socialising.

We think of Hugo Grotius as the prophet of universal international law. But he - and his great Spanish predecessors - can also be seen in their specifically European context, as voices in a new wilderness, the voice of old Europe recalling the integrity of old Europe's values, values of sociality and rationality, in the face of the terrible challenges of a new world in Europe and a new world outside Europe.

In the period of social Europe, the European public realm was controlled by a Club of Rulers, who regulated their interactive behaviour mutually through war, dynastic marriage and succession, centralisation through annexation, interventionist force, permanent and ad hoc diplomacy, treaties, the systematic strategic theory known as the Balance of Power, colonisation, and also through shared ideas of law, political morality, even personal morality - in other words, through the social processes of real, ideal, and legal self-constituting which I referred to earlier.

At the very end of the period of social Europe, it was possible for the British Prime Minister, William Pitt, to speak of *a general System of Public Law in Europe* which had been threatened by the hegemonic ambitions of Napoleon, and must be restored after his defeat.<sup>69</sup> But the owl of Minerva had spread its wings too late, yet again.<sup>70</sup>

So what changed after 1800, to make *statal Europe*, the Europe of the Public Realms? What made Hegel's essay of 1802 on the re-constituting of Germany so prophetic?

Alexis de Tocqueville's discussions of the American and French Revolutions are among the greatest achievements of human self-contemplating. Among his many

powerful and prophetic insights was the idea that the new kind of democracy had within it the seeds of totalitarianism, to use a modern word which he did not use.

He quotes something said by Thomas Jefferson in a letter to James Madison in 1789.

"The tyranny of the legislature is really the danger most to be feared, and will continue to be so for many years to come. The tyranny of the executive power will come in its turn, but at a more distant period."<sup>71</sup>

De Tocqueville said that, as the number of public officials increases, "they form a nation within each nation" and that governments would come more and more to act "as if they thought themselves responsible for the actions and private condition of their subjects....[while] private individuals grow more and more apt to look upon the supreme power in the same light."<sup>72</sup>

And so it happened: the controllers of the public realm came to be a *nation within each nation*. And the social system of Europe came to be *diplomacy*, a system of the interaction of the public realms of Europe.

And so at last we can see what European Union really is. European Union is the partial integrating *of* the public realms of Europe *by* the public realms of Europe.

And we can see how it happened.

(1) Capitalism (whether democratic or statist in its law-making) acted as the *real* constituting of the new national wealth-machines.

(2) The new national wealth-machines required more and more powerful public realms to manage them.

(3) The new totalities (as they constituted themselves ideally as *society, nation,*

or *state*) came to be exteriorised, in relation to each other, in the form of their public realms - a *status ex statu*, to adapt Metternich's expression.

(4) The exteriorised public realms came to be given the uniform name of *state*. Social Europe was transformed into an unsociety of the so-called states, i.e. the society of the externalised public realms - an unsociety of the nations-within-each-nation.

(5) International law was reconceived as the self-limiting of the interacting public realms. This transformation had been ingeniously prepared by Emmerich de Vattel in 1758.<sup>73</sup>

(6) The two so-called World Wars of the 20th century were wars made by the controllers of the national wealth-machines, by the nations within our nations.

Wars are made by governments, and fought by the people.

(7) The European Communities are the generation of capitalism at the European level, and hence the generation of a European public realm.

And so, at last, we may reach the heart of the darkness of European constitutionalism, the fatal flaw in its ideal reality. In fact, it is a double flaw, two foundational and life-threatening heresies. They are the effect produced in the EU system by the technocratic fallacies which I mentioned earlier.

I will call them the Heresy of the Diplomatic General Will and the Heresy of the Aggregate Economy. Sadly, over recent years, the darkness has been getting darker.

The Heresy of the Diplomatic General Will is the idea that the controllers of the public realms of the member States are able to represent the totality of the national interests of the participating peoples, and hence that the public interest of the EU - which is expressed in the law of the EU - is nothing more than the aggregate of the public interests of the member States, mediated through the collective willing of the public-realm controllers.

One might as well have called it the Holy Roman Empire heresy, since the Reichstag, when it was reconstituted in 1654, also used qualified-majority voting - with votes weighted according to the importance of the member entity.<sup>74</sup>

The Heresy of the Diplomatic General Will is gaining support. It was reinforced substantially by the Maastricht Treaty, and by the German Federal Constitutional Court in its decision of 12 October 1993 concerning the Maastricht Treaty.<sup>75</sup>

All government is conspiracy. *Democratic government* is a conspiracy in favour of the people, legitimated by its systems for finding the public interest and actualising the public interest through law. *Diplomacy* is a conspiracy among the executive branches of government. *Diplomacy-democracy* is counter-revolutionary. It is the reproduction externally of the *ancien régime*. It is the posthumous victory of the kings.

The Heresy of the Aggregate Economy is the idea that the EU economy and market are the legal and administrative co-ordination of the national economies and markets, and hence the idea that the economic public interest of the EU - which is expressed in its economic and monetary policy, and in economic legislation, and in the interpretation and application of economic legislation - is essentially the aggregate of the economic public interests of the member States.

This heresy also has been strongly reinforced by the Maastricht Treaty, and also by certain decisions of the European Court of Justice in recent years.<sup>76</sup>

The Heresy of the Aggregate Economy is also counter-revolutionary. It is the resurrection of mercantilism at the European level - multinational mercantilism.

Democracy and capitalism are the two strands of the constitutional Double Helix of a democratic-capitalist society. The two foundational heresies I have referred to are a life-threatening abnormality in the genetic programme of the EU.

They mean that the EU will never be able to achieve what a *society, nation* or *state* can achieve in engaging the world-transforming wills and energies of the people in the collective enterprise. They mean that the EU will not be able to produce the wonderful surplus social effect of democracy-capitalism at the level of Europe as a whole, and to exteriorise that effect in relation to the rest of the world.

They mean that the EU will not engage the passionate *mutuality* of *society*, the passionate *self-identifying* of *nation*, or the *rational self-perfecting* of *state*.

Instead, the EU will continue to be a crude violation, at the deepest levels, of the constitutional psychologies of the participating peoples, actually undermining their own respective collective capacities and potentialities.

And what is true of Europe is becoming true for the whole of human society, given the globalisation of the state-system and of capitalism, and as the European phenomena are reproduced at the global level - world public interest and world public law determined aggregatively by conspiracy among the executive branches of the world's governments, purporting to represent the totality of the interests of their peoples - rather than the generating - by the people and the peoples of the world - of ideas of the global public interest which may then be disaggregated through international law, and through the capacities and potentialities of all of humanity's infinite variety of subordinate social systems.<sup>77</sup>

The grounds for optimism are small. What emerges from the analysis which I have suggested this evening is that the half-revolution which must be completed is not only the half-revolution of 1950 but also the half-revolution of 1789.

How can we, the people and the peoples of Europe, take power at last over our own self-constituting, over our own self-consciousness?

The answer is very easy to say, very difficult to do.

We, the people - *Prométhée de nous-même* - have to re-imagine Europe ideally - and the human world ideally - as a possible world of our mutuality, our identity, and our self-perfecting.

(1) The people and the peoples of Europe should be encouraged to accept among their identities and their loyalties their membership of European society.

(2) The European Union should be a system for finding the public interest of European society and for disaggregating that public interest through law and public decision-making, and through the action of all of Europe's subordinate societies.

(3) The people and the peoples of Europe should be encouraged to accept among their identities and their loyalties their membership of human society.

(4) The people of Europe, having originated and extended across the world the profoundly totalitarian systems of democracy and capitalism should recognise their responsibility to humanise those systems, to discover a new transcendental dimension of all our self-socialising, so that humanity may better actualise its potentiality through social forms. We must resume the great tradition of European philosophy - which began before Socrates and should have continued after Karl Marx.

(5) Above all, we must not look to governments - the controllers of the public realm - to make these transformations. The healing of society begins in the mind. We should bring to self-consciousness, in each of our countries, a new kind of *universal* social class - of people dedicated to the disinterested search for the public interest of society - of European society and of human society. We should turn our universities into places of permanent enlightenment, rather than places of relentless drudgery.

We should make our universities into branches of a great University of Europe - an invisible, intangible University of Europe, which would nevertheless be the hearth and

home of the European mind.<sup>78</sup>

(6) The days of the nation-state are not over, but the days of diplomacy are over. Europe's governments must be made to understand that the completion of the European Revolution of 1789 means the end of the government of Europe by diplomacy. Not only Europe - but the world in general - cannot now be managed by the methods of the 19th century, by counter-revolutionary diplomacy. We have to find a new way of managing the collective destiny of, first, Europe, then of the whole human world.

*The only power over power is the power of ideas.*

Since the end of the Roman Empire in the West we have had four self-enlightenments of the European mind - the Carolingian renaissance of the 9th century, the 12th century renaissance centred on the University of Paris, the Italian renaissance of the 15th century, the 18th century Enlightenment.

Notice a strange fact. We have re-enlightened ourselves at 3-century intervals - which means that we are due for our fifth enlightenment very soon, in the 21st century.

Since 1945, the European mind has been dead, for whatever reason - exhaustion, grief and shame at the horrors of the preceding fifty years, a sense that the centre of gravity of World History has moved away from Europe, a sense that Europe's successive enlightenments over a period of thirty centuries have produced a great deal of knowledge, and not much wisdom.

And what has so-called European integration contributed to the Next Enlightenment? European integration has been Valium™ to a European mind which is already fast asleep.

It is almost beyond belief that this European revolution - which could have been the latest and the greatest - has inspired no excitement whatsoever in the public mind,

even in the minds of the young, especially in the minds of the young.

Hegel said of the French and German Enlightenments: "All thinking beings shared in the jubilation of the epoch."<sup>79</sup>

The English poet Wordsworth said, of the period of the French Revolution: "Bliss was it in that dawn to be alive. But to be young was very Heaven!"<sup>80</sup>

Who would dream of saying such things about Europe's latest self-reconstituting? *Exciting* is the second last word one would choose to use about European integration. I suppose I should reveal the very last word one would use about European integration - *joyful*.

You couldn't imagine anyone ever proposing Schiller's *Ode to Joy* as the text of Europe's anthem.

How on earth have we managed to make such a world-historical event, so great a turning-point in the three millenia of our self-constituting - how have we managed to make such a thing so undelightful?

One of Edmund Burke's most memorable sayings is: *To make us love our country, our country ought to be lovely.*<sup>81</sup>

Somehow we must awaken *l'âme et la personne de l'Europe* from its sad self-induced sleep. A proud and self-confident Europe - a unique civilization among the great ancient civilizations of the world - must, once more, yet again, energise itself, take a leadership role, in the great re-constituting of all-humanity, a re-constituting which has already begun, and which will dominate the next century.

So - one small modest practical proposal to end with.



In May 1998, let us, the people of Europe, convene a Congress of Europe - to mark the 50th anniversary of the Hague Congress of 1948 - a Congress of the Millenium - a European Congress for the Future.

We would have only one rule governing invitations to the Congress - no government ministers, no civil servants.

We would take stock of the serious crisis into which Europe is drifting. We would consider how we can realise the unlnque potentiality of Europe, how we can contribute as much to the future of humanity as we have contributed to its past.

Let there be light - *fiat lux!* - in the darkness of Europe's symbol-forest.

*Eveillons l'Europe. Eveillons le genre humain. Enfin! Encore!*

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## N.B. NOTES NOT COMPLETE.

1. J. Michelet, *Histoire de la France* (Paris; no date; preface of 1869) tm. I, page i.
2. *loc. cit.*
3. *op. cit.*, p. vii
4. *op. cit.*, p. vii (emphasis in original).
5. *op. cit.*, p. viii (emphasis in original).
6. E. Burke, *Reflections on the Revolution in France* (1790) (London, Dent: Everyman's Library; 1910), p. 58.
7. *op. cit.*, p. 59.
8. *op. cit.*, p. 31.
9. *op. cit.*, p. 32.
10. "Better is it to say that the government most conformable to nature is that which best agrees with the humour and disposition of the people in whose favour it is established." C. de Montesquieu, *The Spirit of the Laws* (1748) (tr., T. Nugent; New York, Hafner Publishing Co.; 1949), (Bk. I.3), p. 6. "Il vaut mieux dire que le gouvernement le plus conforme à la nature est celui dont la disposition particulière se rapporte mieux à la disposition du peuple pour lequel il est établi" (*L'Esprit des Lois*; Paris, Garnier Frères; no date), p. 8.
11. G.F.W. Hegel, *Die Verfassung Deutschlands* (in *Sämtliche Werke* (ed. G. Lasson; Leipzig, Verlag von Felix Meiner; 1923), vol. 5, p.3. The whole essay is written in terms of *Staat*, with minimal references to *Volk* and *Nation*.
12. "It follows, therefore, that the constitution of any given nation depends in general on the character and development of its self-consciousness,....The proposal to give a constitution - even one more or less rational in content - *a priori* to a nation would be a happy thought overlooking precisely that factor in a constitution which makes it more than an *ens rationis*. Hence every nation has the constitution appropriate to it and suitable for it." G.W.F. Hegel, *Philosophy of Right* (1821) (tr. T.M. Knox; London, O.U.P.; 1952), p. 179 (para. 274).
13. English translation in E. Neff, *The Poetry of History: The Contribution of Literature and Literary Scholarship to the Writing of History since Voltaire* (New York; Columbia U.P.; 1947), p. 23. The original is in J.G. Herder, *Auch eine Philosophie der Geschichte zur Bildung der Menschheit; Still Another Philosophy of History for the Education of Mankind* (1774), in *Herders Sämtliche Werke* (ed. B. Suphan; Berlin, 1877-1913), vol. V.
14. G. Vico, *Principi di Scienza Nuova (terza impressione del 1744)* (Milano; 1836), p.97. *The New Science of Giambattista Vico* (3rd ed. 1744) (tr., T.G. Bergin & M.H. Fish; Ithaca, Cornell U.P.; 1970), p 21. "There must in the nature of human institutions be a mental language common to all nations, which uniformly grasps the substance of things feasible in

human social life and expresses it with as many diverse modifications as these same things have diverse aspects." (Bergin & Fish, *op. cit.*, p. 25) The original is in G. Vico, *La Scienza Nuova seconda guista l'Edizione del 1744* (ed., F. Nicolini; Bari, G. Laterza & Figli; 1942), pp. 77, 81-2. "Il senso comune è un giudizio senz'alcuna riflessione, comunemente sentito da tutto un ordine, da tutto un popolo, da tutta una nazione o da tutto il gener umano." "E necessario che vi sia nella natura delle cose umane una lingua mentale comune a tutte le nazioni, la quale uniformemente intenda la sostanza delle cose agibili nell'umana vita socievole, e la spieghi con tante diverse modificazioni per quanti diversi aspetti possan aver esse cose..."

15. There are so-called *British Islands* which are not parts of the United Kingdom (and have a separate status in the European Communities) And the Queen is sovereign of "her other Realms and territories" - some within the British Islands, others elsewhere - in separate right from her title as Queen of the United Kingdom.

16. T. Paine, *Common Sense* (1776), in *Common Sense and Other Political Writings* (ed. N.F. Adkins; New York, Bobbs Merrill Co. (American Heritage Series); 1953), p. 4.

17. F. Nietzsche, *The Genealogy of Morals* (1887) (tr. F. Golffing; Garden City N.Y., Doubleday & Co. (Doubleday Anchor Books); 1956), p. 211 (Second Essay, XII).

18. Jeremy Bentham, eloquent and energetic apostle of social rationalism in Britain in the first decades of the 19th century, drafted a Constitutional Code, codifying what seemed to him the best which could be learned from constitutional experience (especially in England, France, and the United States of America). For the text, see *The Works of Jeremy Bentham* (ed., J. Bowring; Edinburgh, Tait; 1838-43), vol. IX. His lead was not followed. Britain adopted a gradualist approach of piecemeal constitutional reform, beginning with the Reform Act 1832. See E. Halévy, *The Growth of Philosophical Radicalism* (tr., M. Morris; London, Faber & Faber; 1928), Pt. III, ch. II.

19. British institutions could be regarded as a haphazard resultant of an unending tension between centralisation and localism. The balance has constantly changed, over the centuries, almost from decade to decade.

20. T. Smith, *De republica anglorum* (ed., L. Alston; Cambridge, C.U.P.; 1906), Bk. II, c. 1.

21. So-called (and much criticised) Legal Positivism (as expounded by John Austin in his *Province of Jurisprudence Determined* (1832), following Hobbes and Bentham) was, perhaps, unEnglish in its narrowly and rigidly legislative view of law.

22. The classic argument against the idea of "administrative law" is set out in A.V. Dicey, *An Introduction to the Study of the Law of the Constitution* (1885), ch.XII; (10th ed., E.C.S. Wade; London, The Macmillan Press; 1959), pp. 328 ff. Although the terms "public law" and "administrative law" are now being used in Britain to refer to law and procedures applied to public authorities, that law is still conceived as being part of general law administered by the ordinary courts.

23. One of the great landmarks of the coming-to-consciousness of the Rule of Law principle was the case of *Entick v. Carrington* (S.T. XiX, 1045). The agent of the Secretary of State had entered the plaintiff's premises searching for seditious material. The agent was held

liable to pay damages of £300 because he had no legal authority to search. "No man can set foot upon my ground without my licence, but he is liable to an action in trespass... If he admits the fact, he is bound to shew, by way of justification, that some positive law has empowered or excused him." (Lord Camden; in E.N. Williams, *The Eighteenth Century Constitution 1688 - 1815: Documents & Commentary* (Cambridge, C.U.P.; 1970), at p. 395.

It is interesting to compare this with a description of the German *Rechtsstaat* principle: "the state... provides its citizens with a certain area of liberty and commits itself to interfering in this area only under certain, legally regulated preconditions." P. Bockelmann, *Einführung in das Recht* (München, 1963), p. 176, quoted in R. Dahrendorf, *Society and Democracy in Germany* (London, Weidenfeld & Nicolson; 1967), p. 206. Cf. Montesquieu, *op. cit.*, p.150 (Bk. XI.3): "Liberty is a right of doing what the laws permit..."

24. On the supposed sovereignty of the British Parliament, see Ph. Allott, "The courts and parliament - who whom?", 38 *Cambridge Law Journal*, pp. 79 - 117 (1979).

25. In modern administrative law, supposedly public-law remedies may also be applied to non-governmental agencies and persons.

26. W. Bagehot, *The English Constitution* (1867) (Oxford, O.U.P. (World's Classics); 1928), pp. 3ff, 235ff. "... we have whole classes unable to understand the idea of a constitution" (at p. 34). "...of all the nations in the world the English are perhaps the least a nation of pure philosophers" (at p. 41). In an additional chapter added to the 2nd edition of 1872, Bagehot wondered whether the deferential basis of British society could survive the universalisation of the suffrage and the provision of education to the mass of the people. For an analysis of the continuing role of fantasy in the British constitution, see Ph. Allott, "The theory of the British constitution," in *Jurisprudence: Cambridge Essays* (eds., H. Gross & R. Harrison; Oxford, O.U.P.; 1992), pp. 173-206.

27. J-D Bredin, *Sieyès - clé de la Révolution française* (Paris, Editions de Fallois; 1988), p. 112.

28. E. Sieyès, *Qu'est-ce que le Tiers état?* (1789) (ed. R. Zapperi; Genève, Librairie Droz; 1970), pp. 126, 204-5.

29. De Tocqueville makes an interesting comparison between England and pre-1848 Switzerland: "Take it all in all, England seems to be much more republican than the Helvetic Republic." See, A.V. Dicey, *An Introduction to the Study of the Law of the Constitution* (1885) (10th ed., E.C.S. Wade; London, Macmillan; 1959), pp. 184-7. A. de Tocqueville, *Oeuvres complètes* (14th ed., 1864), vol. viii (*Mélanges historiques*), pp. 455-7.

Walter Bagehot referred to Britain as a *disguised republic* (*op. cit.*, p. xx).

30. A. Cobban, "The Myth of the French Revolution", in A. Cobban, *Aspects of the French Revolution* (London, Jonathan Cape; 1968), pp. xxx. Reprinted in ed., E. Schmitt, *Die Französische Revolution : Anlässe und Langfristige Ursachen* (Darmstadt, Wissenschaftliche Buchgesellschaft; 1973), pp.170-194.

31. Cobban expressed the view that de Tocqueville's *Ancien Régime et la Revolution Française* was "one of the best books on the Revolution that has ever been written." A. Cobban, *The Causes of the French Revolution: A Course of Reading* (London, P.S. King & Staples; 1946), p. 12.

32. A. Cobban, *France Since the Revolution and Other Aspects of Modern History* (London, Jonathan Cape; 1970), p. 147.
33. J-D. Bredin, *Sieyès - la clé de la Révolution française* (Paris, Editions de Fallois; 1988), p. 54.
34. H. Peyre, "The influence of eighteenth-century ideas on the French Revolution," in *10 Journal of the History of Ideas*, pp. 63-87. Reprinted in ed., E. Schmitt, *op. cit.*, pp. 124 - 151.
35. R. Friedenthal, *Goethe - His Life and Times* (London, Weidenfeld & Nicolson; 1963), p. 313.
36. H. Plessner discusses a similar phenomenon under the name of Germany's *Römische Komplex*. H. Plessner, *Die Verspätete Nation* (Stuttgart, W. Kohlhammer Verlag; 1959), ch. 3.
37. K. Feiling, *A History of England - from the Coming of the English to 1918* (London, Macmillan & Co.; 1952), p. 939.
38. "Der wahre Zweck des Menschen - nicht der, welchen die wechselnde Neigung, sondern welchen die ewig unveränderliche Vernunft ihm vorschreibt - ist die höchste und proportionierlichste Bildung seiner Kräfte zu einem Ganzen. Zu dieser Bildung ist Freiheit die erste und unerlässliche Bedingung." W. von Humboldt, *Ideen zu einem Versuch, die Grenzen der Wirksamkeit des Staats zu bestimmen* (written 1792, published 1851) (Stuttgart, Ph. Reclam jun.; 1967), p. 22. P.R. Sweet, *Wilhelm von Humboldt: a Biography* (1978).
39. F. Schiller, *Über die ästhetische Erziehung des Menschen* (1795). It is interesting that Goethe, so much a master of the German mind, should have been so little nationalist in spirit, believing in the civilising power of culture in general. "How can I...hate a nation [France] which is among the most cultivated on earth and to which I owe so much of my own cultivation." (1830; quoted in H. Kohn, *The Mind of Germany - the Education of a Nation* (London, Macmillan & Co.; 1961), p. 40. "National literature has now become a meaningless term. The era of world literature is fast approaching and everyone must strive to hasten its progress" (Goethe to Eckermann, 1827; H. Kohn, *op. cit.*, p. 42). See also R. Friedenthal, *Goethe - his Life and Times* (London, Weidenfeld & Nicolson; 1963), ch. 44.
40. The word is particularly associated with G. Herder. See A. Gillies, *Herder* (Oxford Basil Blackwell; 1945), ch. VIII. "That which is divine in our race is, thus, education (*Bildung*) for *Humanität*; all great and good men, lawgivers, inventors, philosophers, poets, artists, every noble-minded man, in his own station, in the education (*Erziehung*) of his children, in the observance of his duties .... has collaborated towards that end." (Gillies, p. 106) The quotation is from J.G. Herder, in *Auch eine Philosophie, op. cit.*, in *Herders Sämtliche Werke, op. cit.*, XVII, p. 138. Goethe and Schiller advised the German people not to seek to be a nation, but to be "free human beings": *Zur Nation euch zu bilden, ihr hoffet es, / Deutsche vergebens; / Bildet, ihr könnt es, dafür freier zu / Menschen euch aus!* : quoted in H. Kohn, *op. cit.*, p. 35.
41. F. Engels described the British parliament as Europe's most revolutionary body in the 19th century.

42. *Betrachtungen eines Unpolitischen*, in *Politische Schriften und Reden*, vol. 1, p. 194, 397, 436. On the background, and his existential dispute with his brother Heinrich, see R. Karst, *Thomas Mann oder der Deutsche Zwiespalt* (Wien-München-Zürich, Verlag Fritz Molden; 1970), pp. 81-2.

43. *loc. cit.*

44. The literature on nationalism is voluminous and growing rapidly. On the Franco-German mutual nationalizing, see P-A. Taguieff, "Le nationalisme des 'nationalistes': un problème de l'histoire des idées politiques en France," in G. Delanoi & P-A. Taguieff, eds., *Théories du Nationalisme* (1991); P. Birnbaum, "Nationalisme à la française," also in Delanoi & Taguieff, *loc. cit.*

45. An interesting comparison is with the purposive making of the "nation" of the United States of America. See S.M. Lipset, *The First New Nation* (Garden City, N.Y., Doubleday & Co. (Anchor Books); 1967), esp. ch. 2; M. Jensen, *The New Nation: A History of the United States during the Confederation 1781-1789* (1950), esp. ch. IV: "It is the business of Americans to select the wisdom of all nations, as the basis of her constitutions, to avoid their errors, to prevent the introduction of foreign vices and corruptions and check the career of her own, to promote virtue and patriotism, to embellish and improve the sciences, to diffuse an uniformity and purity of language, to add superior dignity to this infant Empire and to human nature" (Noah Webster - who would later compile a dictionary - writing in 1783; quoted at p. 105). It has been suggested that the Declaration of Independence did not acquire its status within American self-consciousness until, perhaps, 1812. See G. Wills, *Inventing America - Jefferson's Declaration of Independence* (New York, Random House (Vintage Books); 1979), esp. Pt V. For the thesis that, even before the Declaration, the U.S., existed as a self-conscious nation (at least in the sense of a distinct political consciousness), see N.M. Butler, *Building the American Nation: An Essay in Interpretation* (1926), esp. pp. 35ff.

46. H. Plessner, *Die Verspätete Nation: über die Politische Verführbarkeit bürgerlichen Geistes* (Stuttgart, Kohlhammer Verlag; 1959).

46. British foreign policy has made up in consistency for what it has lacked in imagination. (1) Lord Castlereagh regarded the Holy Alliance as a piece of "sublime mysticism and nonsense" (H. Temperley & L. Penson, *Foundations of British Foreign Policy (1792-1902)* (Cambridge, C.U.P.; 1938), p. 37. (2) "By the late Proceedings at Vienna, which for all purposes of internal tranquillity, bind up the various States of Germany into a single and undivided Power, a great deal of additional simplicity as well as Strength has been given to this Portion of Europe.. In addition to these there remain but few Pieces on the board to complicate the Game of Publick Safety" (Castlereagh, 1820; *op. cit.*, p.59). (3) After some initial agitation at the formation of the Zollverein, Britain (through Lord Palmerston) expressed a more sanguine view in 1841: The British Government had "never looked with a favourable eye upon the Prussian commercial league.... there seems some hope that the effect of the commercial union may not prove so injurious to the trade of this country as had been imagined; and at all events, the political consequences which may possibly result from the League, are by no means such as to give rise to uneasiness and apprehension" : quoted in W.O. Henderson, "Prussia and the founding of the German Zollverein," in eds. O. Büsch & W. Neugebauer, *Moderne Preussische Geschichte 1649 - 1947* (Berlin, W. de Gruyter; 1981). at p. 1096. (4) When Briand proposed, and Stresemann showed interest in, a United States of Europe based on an economic union, a committee of the League of Nations Assembly was set up to consider the idea. Britain opposed the idea and the committee ceased work. For Stresemann's comments to journalists, shortly before his death, see edd. K. Wessel, *Europa - Mutter unserer Welt* (München, Bruckmann; 1970), pp. 265-6.

47. It would also be better not to draw the public's attention to the fact that, in November 1993, the Council of the European Communities decided (without invoking any particular legal authority to do so) to change its name to "Council of the European Union", although the Treaty on European Union (the Maastricht Treaty) of 7 February 1992 does not endow the so-called Union with institutions of its own. The Commission continued to be "of the European Communities", but routinely calls itself (except in legislative acts) "the European Commission". The same Treaty changed the name of the European Economic Community to the European Community, which used to be the informal name for the general system. The informal name for the general system (the EU and the three Communities) is now most commonly "the European Union", although, legally, the European Union is distinct from the three Communities. Europe's long and distinguished theological tradition prepared it for such things.

48. A. Hamilton, J. Madison, J. Jay, *The Federalist Papers* (New York, New American Library of World Literature; 1961), p. 33.

49. On the nature of social self-constituting, see Ph. Allott, *Eunomia - New Order for a New World* (Oxford, O.U.P.; 1990), ch. 9.

50. It is interesting that in 1867 Bismarck caused the creation of a bicameral legislature for the Zollverein - with a directly elected *Zollparlament* with competence for tariff legislation, commercial and navigational negotiations, and the regulation of some indirect taxes and excise duties. G.A. Craig, *Germany 1866-1945* (Oxford, O.U.P.; 1978), p. 15.

51. "...the rulers well know that the General Will is always on the side which is most favourable to the public interest, that is to say, most equitable; so that it is needful only to act justly, to be certain of following the General Will." J-J Rousseau, *Discourse on Political Economy* (ed.), p. 296-7.
52. Including Karl Marx's "reserve army of the unemployed."
53. W. Ullmann, *Growth of Papal Government in the Middle Ages* (2nd ed., 1962), chaps. XII & XIII; *Short History of the Papacy in the Middle Ages* (1972), p. 36; *Medieval Political Thought* (1965), p. 31.
54. G. Vico, *The New Science*, *op. cit.*, bks. IV and V; translators' intro., p. 1.
55. G. Vico, *The New Science*, *op. cit.*, p. 347.
56. Kant uses the concept of the "idea of reason" to explain the practical effect of social contract theory: "It is in fact merely an *idea* of reason, which nonetheless has undoubted practical reality; for it can oblige every legislator to frame his laws in such a way that they could have been produced by the united will of a whole nation, and to regard each subject, in so far as he can claim citizenship, as if he had consented within the general will." I. Kant, "On the common saying: 'This may be true in theory, but it does not apply in practice,'" in (ed., H. Reiss, tr. H.B. Nisbet, *Kant's Political Writings* (Cambridge, C.U.P.; 1970), p. 79.
57. Ph. Allott, *Eunomia - New Order for a New World* (Oxford, O.U.P.; 1990), paras. 2.45, 2.49.
58. See K. Ansell-Pearson, *Nietzsche contra Rousseau - a Study of Nietzsche's Moral and Political Thought* (Cambridge, C.U.P.; 1991), pp. 106ff.
59. Quoted in W.O. Henderson, *op. cit.* (fn. 46 above), at p. 1094.
60. For an account of these discussions, see W.J. Mommsen, *Max Weber und die Deutsche Politik: 1890 - 1920* (1959) (Tübingen, J.C.B. Mohr; 2nd ed., 1974), pp. 223ff. The idea of such a union had been mentioned in the September Programme (of war aims) of 8 September 1914 which had called for "the establishment of a Central European Customs and Economic Union under German leadership" (*loc. cit.*, p. 236). In an aide-mémoire to the Austro-Hungarian Government in November 1915, the German Government proposed a customs union (*Zollbundniss*) for the unification (*Verschmelzung*) of the whole area into an economic unity (*Einheit*) (p. 232). The German Government was trying to reconcile four policy objectives: (1) to free the central European countries from Russian control; (2) to constitute those countries as a buffer between Germany and Russia; (3) to increase Germany's status as a European power; (4) to provide economic opportunities for German business. The economic union idea was considered as a politically more acceptable way of meeting the demands of the German Right and the military for direct annexation (a *Hegemonialstellung des Deutschen Reiches ... primär durch indirekte Methoden*, in the words of K. Riezler, at p. 223).
- The German word *Gemeinschaft* is associated, in particular, with the name of W. Tönnies: *Gemeinschaft und Gesellschaft*; 1867; English tr.: *Fundamental Concepts of Sociology: Gemeinschaft und Gesellschaft* (tr., C.P. Loomis; New York; 1940). The epistemological status of Tönnies's distinction has caused much confusion (to which he



contributed). It is best regarded as not being prescriptive or judgmental, or a rationalisation of empirical phenomena, but as something akin to what Weber would call an ideal-type, a heuristic which helps us to situate and compare empirical phenomena. Broadly speaking, *Gemeinschaft* is the idea of a more natural, instinctive type of community, whereas *Gesellschaft* is the idea of a more artificial negotiated society. But the distinction was caught up in the problem of German national self-consciousness after 1871. Was the German nation the coming-to-consciousness of a natural community or the imposition of an artificial society upon rich and proud German diversity? Thus the distinction came to play a role similar to Hegel's distinction between *state* and *civil society* (a distinction which was, however, clearly capable of having both rationalising and prescriptive significance).

In English, it is only recently that the word *community* has come to have a special significance (apart from its use in the title *European Community*), in connection with a communitarian variant within Liberalism. See generally, F. Dallmayr, *From Contract to Community: Political Theory at the Crossroads* (New York, M. Dekker; 1978); D. Bell, *Communitarianism and its Critics* (Oxford, O.U.P.; 1993).

61. K. Harpprecht *Thomas Mann: Eine Biographie* (Reinbeck, Rowohlt Verlag; 1995). Rev. (Craig) NYRB 29.2.96.

62. Kohl - *The Times* newspaper.

63. BISA

64. For a remarkable initiative in this direction, in a form accessible to the wider public, see F. Delouche and others, *Histoire de l' Europe* (Paris, Hachette; 1992).

65. *De Agricola* 10,12.

66. *De Germania* ii.

67. For a classic survey, see H. Pirenne, *Economic and Social History of Medieval Europe* (tr., I.E. Clegg; London, Routledge & Kegan Paul; 1936), esp. ch. V.

68. refs.

69. Memorandum of 19 January 1805 in reply to a communication made by the Ambassador of Russia. H. Temperley & L.M. Penson, *Foundations of British Foreign Policy from Pitt(1792) to Salisbury (1902)* (Cambridge, C.U.P.; 1938), p 11. In his letter of 31 December 1792 to M. Chauvelin (Louis XVI's Ambassador in London) Lord Grenville had used the expressions "the general system of Europe" (*op. cit.*, p. 4) and "the political system of Europe" (p. 7).

70. "One word more about giving instruction as to what the world ought to be. Philosophy in any case always comes on the scene too late to give it. As the thought of the world, it appears only when actuality is already there cut and dried after its process of formation has been completed....When philosophy paints its grey in grey, then has a shape of life grown old." G.W.F. Hegel, *Philosophy of Right* (tr., T.M. Knox (London, O.U.P.; 1952), pp. 12-13.

71. vol 1, p. 318

72. vol II 323-4, 336-7.

73. Vattel

74. After 1654 the Imperial Diet had become "an international congress of diplomatists". At least the Council of the European Union is unlikely to attract the scornful description which Frederick the Great applied to the Reichstag: "dogs in a yard baying to the moon". J. Bryce, *The Holy Roman Empire* (London, Macmillan & Co.; 1913), pp. 392, 400.

75. Cases nos. 2 BvR 2134/92 and 2159/92; *EuGRZ* 1993, p. 429. An English translation may be found in *xx International Law Reports*, .

76. refs

77. See generally Ph. Allott, *Eunomia - New Order for a New World* (Oxford, O.U.P.; 1990), esp. Pt One. Also, Ph. Allott, "The International Court and the Voice of Justice," in eds. V. Lowe & M. Fitzmaurice, *Fifty Years of the International Court of Justice* (Cambridge, C.U.P.; 1996), pp. 17 - 39.

78. Such a development would take up in a new way Francis Bacon's idea of co-operation among the European universities: F. Bacon, *Advancement of Learning*, in Bacon's *Works*

(eds. Spedding, Ellis & Heath; London, Longmans; 1858), vol. III, pp. 323-4, 327; and the preface to the 2nd book of Bacon's *De augmentis scientiarum*, in *Works, op. cit.*, vol. IV, pp. 285-6.

79. G.W.F. Hegel, *The Philosophy of History* (tr., J. Sibree; New York, Dover Publications; 1956), p. 447.

80. W. Wordsworth, *The Prelude*, bk. XI.

81. E. Burke, *Reflections on the Revolution in France* (1790) (Everyman ed.; London; 1910), p. 75; in *The Works of Edmund Burke* (London, Bohn's Standard Library; London, 1899), vol. II, p. 350.