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The Puzzle of the Compound Republic.
The EU, US and Implications of Federalization

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ABSTRACT

The comparison of EU with US furnishes important analytical indications. Although the complexity of the EU's development is much greater than the one historically registered in America, the development of the US does show the opportunities and constraints of a compound republic in the conditions of a continental size democracy. Protected by the constitution, that mixture (in this case) of *federal/confederal* arrangements could find changing institutional equilibria, but always within the irreducible constraints of a fragmented and separated sovereignty. There are no reasons to suppose that the EU compound republic cannot experiment a similar internal adaptation and change. The (in this case) *confederal/federal* arrangements of the EU continue to be the necessary and indispensable institutional tools of the integration process. If something basic can be learned from America is that this process needs to be democratically protected. America derived this protection from its formal constitution and the liberal democratic culture developed on its basis. EU is relying more on the liberal democratic culture diffused in its member states, but not yet in a formal supranational constitution. Nevertheless, compound republics have an internal working which contrast with pressures for more coherent and accountable decision-making processes. Especially after the II World War, with its growing global role, America faced formidable pressures to adapt its compounding nature to a more effective decision-making process. These pressures were not satisfactorily met, although its constitutional structure made possible to preserve its compounding nature. Also the EU is going to be pressured to have a more effective and accountable decision-making process, given its growing interventionist role in world arena and the increased internal complexity of its market system. How will the EU react to those pressures? Does it need or not the guidelines of a formal constitution? Here resides the puzzle of EU compound republic.

INTRODUCTION*

The formation and development of the European Union (EU) has brought back in the scientific debate, especially in Europe, the issue of *federalism*. For historical reasons (the two World Wars fought in the continent) and for contemporary structural reasons (the process of globalization), Europe has moved away from the nation state in direction of a larger supranational organization. In this process, federalism both as an idea and a variable combination of institutions became a yardstick to measure past achievements and to prospect future developments. Inevitably so, for some scholars. For example, Hueglin (1995: 203) asserted that "federalism and the nation state are contradictions in terms. The latter is an historical construct of centralized power monopolization, initiated by small groups of power-hungry men (...) The former is nothing less than its opposite, a form of decentralized political organization designed to prevent power-hungry men from assuming monopolized power". Thus, in this view, in order to go beyond the nation state one has to rely necessarily on federalism. Although I am not convinced that federalism and nation state are contradiction in terms (we have many nation states which are effectively federal systems), I do agree nevertheless that the federal vision (Nicolaidis and Howse 2001) appears to be a better tested solution for post national experiments like the EU.

But, what kind of *federal vision*? And which are the implications of federalization? In this paper I will proceed as follows. First, I will discuss the causes, which strengthened the process of federalization, in Europe as elsewhere. I will show that federalization may take different institutional forms, like the confederal/federal one experienced by the EU in the 1990s. Second, I will discuss whether the EU's mixed institutional form is really as "unique" as people think. Contrary to a widespread opinion, I will try to show that the idea of European uniqueness does not stand the test of comparison. EU is unique *vis à vis* the European nation states, but not by comparison with other continental size federal experiences, like the American one. I will thus compare the US and the single European nation states in order to show that there has been historically an alternative road to the democratic nation state building pursued in Europe. Third, I will go back to the EU asking whether its mixed regime of organization of territorial sovereignty will be able to resist the new challenges of change and transformation. My answer will rely again on the American experience. This experience, in fact, shows that mixed territorial regimes are more persistent than traditionally thought, although dramatic challenges may pressure them in direction, which contrasts with their logic of functioning.

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FEDERALIZATION AND GLOBALIZATION

The 1990s has been the decade of full development of the processes of economic and technological globalization. In the same decade, the world witnessed the birth and the growth of numerous institutional successful experiments of regional integration and sub-national plurification. Nothing similar had happened before. These processes were driven by a formidable pressure to create confederal and federal arrangements at both the supranational and national levels. In many cases, the two processes appeared to reinforce each other: confederal or federal aggregation of diverse national states has tended to foster equivalent strategies for the sub-national decentralization of public authority. These processes might be called *federalization*, meaning the ongoing dynamic formation of a polity constituted by territorial units which strive to remain distinct and nevertheless search for a common decision-making framework, at both supranational or regional level and sub-national level (on the concept of *federalization* see Elazar 1987a). A federalization process may imply multiple institutional exits, or better different and changing equilibria among the institutions of *shared-rule* and *self-rule*. We have a *compound republic* when, either for constitutional impositions or for institutional practices, the two kinds of institutions have but to coexist. Following the classical definition of Ostrom (1987), a compound republic is a polity constituted by “concurrent and overlapping units of government” (ibidem: 106) or better is “a system of government with multiple centers of authority reflecting opposite and rival interests (...) accountable to enforceable rules of constitutional law” (Ibidem: 21). In this sense, a compound republic is a *generic* federal political system.

The process of supranational and sub-national federalization seem to have seriously challenged the internal cohesion and external autonomy of the nation state, especially in its traditional West European version, represented by the French arch-typical model. In fact, that process has etched both the *nation* and *state* sides of that model. At the domestic level, pre-national identities reappeared from a long freezing period, showing that the formation of national identities, although supported by formidable institutional and ideological resources, was historically able to overwhelm regional identities, but not to neutralize them. At the international level, post-statist configurations emerged from another long freezing period, showing that the formation of state boundaries, although successful in governing the economic and social transaction of the industrial era, is no longer a viable solution for the management of the activities proper of a globalized era. This is particularly true in Western Europe. As Kirsch (1995: 59) wrote: "Western Europe is evolving in two opposite directions. On the one hand, the traditional nation states are losing at least part of their sovereignty and competency to the European Union. On the other hand, we are witnessing the renaissance of regional sentiment and loyalty.

At a time when Western Europe strives to impose its new-found supranational identity on future history, it is rediscovering its own plurality, as infranational identities from past history are reborn".

This why some scholars (Ruggie 1998; Held 1995) began to wonder whether the long story of the nation state, started at the end of XVIII century, has taken the road of decline. It seems implausible to challenge the argument that dramatic transformations took place in the structure framing the interplay between the international and national systems in the last two centuries. Nevertheless, it seems implausible as well to confound a contradictory process with a linear tendency. Thus, probably, more than the sunset of the nation state, its radical redefinition is taking place. A redefinition happening within larger inter-state and infra-states coordination mechanisms, through which authoritative decision-making processes are in operation. On the basis of these new institutional configurations, other scholars (Elazar 1998) have talked of a fragmented strategy of "constitutionalization" of the globalization process. Be that as it may, it is unquestionable that we are witnessing innovative attempts at the *institutional regulation* of complex processes of supra- and sub-national interactions, where the nation state seems to have still important role to perform. Thus, rather than challenging the nation state as such, the process of globalization seems to be challenging one, if not its dominant, institutional form: the *centralized one*. Which was also the more successful in Europe and thus exported in many parts of the world.

The question of non-centralized or federalized forms of political association has been reopened, both at the inter-state and infra-state levels. How to deal with this question? If we may assume that the logical exit of the process of federalization is the formation of a federal (supranational and national) political system, nevertheless it is proper to stress that a federal political system or federalism is a genus to which different empirical species arguably belong (Watts 1998: 120). Although each species has to be connoted by some combination of institutions of *shared rule* and *self rule*, nevertheless this combination may vary significantly. The recent process of federalization asks for a reconsideration of the various federal species to verify whether their traditional distinctions resist the test of empirical analysis. This test concerns primarily the historical distinction between *federation* and *confederation*.

Analytically, a federation has been defined as (Watts 1998: 121) "a compound polity combining constituent units and a general government, each possessing power delegated to it by the people through a constitution, each empowered to deal directly with the citizens in the exercise of a significant portion of its legislative, administrative, and taxing powers, and each directly elected by its citizens". Whereas in a confederation "the institutions of shared rule are dependent on the constituent governments, being composed of delegates

from the constituent governments and therefore having only an indirect electoral and fiscal base. By contrast with federation, in which each government operates directly on the citizens, in confederations the direct relationships lies between the shared institutions and the governments of the member states" (Watts 1998: 121). Is this distinction still appropriate in face of the processes of federalization we are witnessing in Europe as elsewhere? Clear as it is in theoretical terms, empirical reality has made this distinction much more blurred. In fact, the two territorial systems are not impermeable at all to a reciprocal influence, as it is shown by contemporary EU development and by the experience of previously developed federalized systems.

THE EU AND THE PROCESS OF FEDERALIZATION

The European Union is easily the more advanced institutional experiment of regional or supranational integration in the contemporary world (whereas Italy is one of the more interesting case of infra-state federalization). Started as an international organization in the 1950s, on the basis of the dramatic experiences of the two World Wars, the EU has since gradually reduced its original intergovernmental configuration to acquire more the features of a supranational organization, without acquiring nevertheless the features of a full blown federation. As Mény (2001: 30) wrote, "(t)he stratification of powers since 1958 (EEC, Single Act, Maastricht, Amsterdam, utilization of Article 235 to expand the Communities' sphere of action) has transformed an international organization with limited powers into a Union of unique type, with missions and involvements that are almost unlimited". In this sense, the EU is a formidable institutional experiment of political association among distinct nation states, an experiment made more interesting by the fact that it seems endless and ongoing. What appears to be distinctive of the EU institutional experiment, at the end of XX century, is exactly the co-existence of confederal and federal institutions and processes.

If it is true, as Burgess noted (2000: 262) "that, in establishing the European Economic Community (EEC) in 1957, the basic structure of the union resembled more an economic confederation than anything else", it is also true (Ibidem) "that these elements in practice coexisted with distinctly federal features". The main confederal elements of the EU are represented by the intergovernmental conferences of the European Council of heads of state and governments of the various member states¹, whereas the federal elements of the EU are the Commission, the Court of Justice and the European Parliament. The same "uncertain character of the Council of Ministers combined (with the above elements, *n.d.r.*) seriously obscure the Community's status as an economic

¹ I do not mention here the other two pillars of the Community, those dealing with the foreign and military and home and security issues.

confederation" (Ibidem), not to mention the European Central Bank in its capacity to control the common European currency. Moreover, the adoption of qualified majority voting (QMV) in the Council has further obscured the confederal origin of that institution. The prolonged although unstable co-existence of these unlike elements induces a reconsideration of the relationship between confederation and federation. Confederation does not appear to be, as Hamilton thought and wrote in *Federalist n.15*, a recipe for failure, or in any case a remnant of an institutional past². The two systems are not incompatible at all, in the sense that they may combine elements (institutions and practices) in a unexpected way.

In fact, not only there has been a world diffusion of mixed territorial regimes at the regional level (Telò 2001), but also the adoption of confederal elements by previously established federal system (as in Canada for example, with the institutionalization of the Conference of the provincial prime ministers, Simeon 1995). But of course, confederation as such does not appear to be either the institutional formula of the future as Elazar (1998) argued. It has not been demonstrated yet its capacity to deal with the intricacy of two contradictory although systemic needs. That is, to guarantee an effective decision-making process at the regional level, especially in conditions of internal crisis and external threats, while promoting and preserving the separateness of distinct cultural identities at the national and sub-national levels. As Watts observed (2000: 165-166), "Elazar may perhaps have underestimated the extent to which, under certain conditions, multiethnic or multinational federations can be sustained and may be considered preferable to more fragile confederations. Indeed, the sparsity of long-standing multi-ethnic confederations that could serve as examples of effectiveness over the long term suggests that preferability of confederal solution for reconciling sharp ethnic divisions remain yet to be proved".

If the genus of federalism (or federal political system) is connoted by the necessary presence of the two features of shared rule and self rule, then the separateness of distinct identities might be differently organized within a given territorial sovereignty. Because confederation and federation are open systems, some of their institutional tools may be combined and utilized in order to

² He wrote: "The great and radical vice in the construction of the existing Confederation is in the principle of legislation for state or governments (...) as contradistinguished from the individuals of whom they consist". Hamilton's opinion has been so widely shared that the *Federalist* published in the American classics series, edited by Charles A. Beard (1964) omitted to publish the articles (Numbers 15-22) on the defects of the Article of Confederation. Beard (ibidem. 90) comments: "Inasmuch as the Articles of Confederation were discarded by the adoption of the Constitution, (this part of the *Federalist*) is now mainly of historic interest".

compound multiple loyalties and identities within an acceptable (by the members of the latter) decision-making structure. In any case, when we have to combine the preservation of different national identities with the need to offer them a common political space, then we have no alternative but to recur to the genus of federalism. In this sense, the EU experiment is interesting also for other parts of the world, because Europe is connoted by very deep rooted national identities, but also by a perceptive sentiment of a shared future (it could not have been different, after the two civil wars fought in our continent). The EU needs to preserve multiple nationalities while creating an acceptable supranational institutional framework able to promote a common interest through authoritative decision-making capacities.

Although historically the overlapping of state and nation was more a strategy than an accomplished reality in the single European countries, nevertheless, for the first time since the growth of the nation state, in contemporary Europe nation and state do not overlap *as a choice*. Few feel the allurements of a European nation as "primordial community of belonging", or claim a European state as "Weberian institutional structure". To reproduce at the European level the same pattern experienced at the country level seems generally impracticable. In fact, the EU appears to be a polity compounding a collection of nationalities without the support of the traditional (European) state. It is a polity with different levels of authority, with overlapping jurisdictions, with variable membership – and nevertheless in a permanent process of "institutionalization" thanks especially to the action of the European Court of Justice, supported by the interplay of private actors and public institutions (Stone Sweet, Sandholtz and Fligstein 2001). Different definitions have been used in order to describe the European Union emerged from the stratification of power above described by Mény. But also from the sentences of the European Court of Justice, starting from those of the 1960s on the direct effect of Community laws on individual citizens and on their supremacy over national legislation. Some authors (Hueghlin 2000) have talked of a treaty federalism, others (Hooghe and Marks 2001) of a multi-level governance, others (Majone 1996) of a regulatory state, others of a postmodern state. Probably, as Caporaso (1996) showed, the EU contains aspects of all the institutional types, without fitting coherently in one of them. After all, we are trying to describe and conceptualize a polity in a continuous process of transformation and adaptation. In this sense the concept of "compound republic" may be analytically useful, because it conveys a logic of functioning based on a generic structure, rather than suggesting a specific model of institutional organization.

THE EU AND THE AMERICAN FEDERAL EXPERIENCE

The uncertain nature of the EU has obviously brought many observers to talk of its *uniqueness*³. In some cases, this uniqueness has been utilized to advance grim prophecies for its future. The EU has been considered an improper institutional solution to the problem of supranational governance, further weakened by an irresolvable internal democratic deficit. In sum, there is a tendency within the scientific community to assume the EU as a polity without any precedent, for the modalities of both its formation and functioning, in the history of the democratic world. Is this true? In methodological terms, a scholar might always take distance from this view or line of argument. In fact, in the past, the outcome of the exceptionalism approaches, especially in the US but also in Europe, has been the unfortunate parochialism of political analysis. It was the idea of American exceptionalism which obstructed, in the post II World War period, the systematic comparison of the democratic regimes of the two sides of the Atlantic (Fabbrini 1999a). Producing, in both America and Europe, several generations of scholars knowledgeable only of their own system. This reciprocal ignorance helped to nourish a view of American model superiority, in one side, and of anti-Americanism, in the other. Each and every political system is exceptional, the American as well as the French, or the Japanese, not to mention the Italian. This idiosyncratic approach has produced a lot of information on specific countries, but not an effective comprehension of each of them.

In analytical terms, the uniqueness argument is all but convincing. To be sure, the EU has a quite different institutional structure from the model organizing the majority of individual European countries. But this is not the only model of democracy available to the democratic world. And in any case, this difference does not imply that the EU cannot be compared with the individual EU member states. In fact, some scholars (Schmidt 1997) started that comparison quite effectively, especially comparing the EU with federal, not centralized or decentralized European countries. Federal Germany appeared to be the inevitable reference point in this endeavor, to the point that it is argued (by some scholars with satisfaction, by other with fear) that the EU is already modeling (or it should model itself) along the German design⁴. This comparison has its virtues, not only because it contradicts the exceptionalism argument, but also because it makes possible to understand that some specific institutional

³ On this, see the very interesting debate between Jim Caporaso, Gary Marks, Andrew Moravcsik and Mark Pollack hosted by ECSA Review (vov. X, n. 3, fall 1997, pp. 1-5), titled "*Does the European Union Represent an n of 1?*" (also in <http://www.ecsa.org/N1debate.htm>)

⁴ In fact, the recent proposal of the German Foreign minister, Mr. Joschka Fisher, to move towards a "more federal Europe" has been applauded by some, but condemned by others who dread the "Germanization" of Europe. In reality, that proposal had very few similarities with the German model of federalism.

features of the EU –like the Council of Ministers- have functional equivalents in effective federal political systems, like the German *Bundesrat*. But it has its vices as well: namely it underestimate the implications of size in the functioning of a given political system.

Size affects the complexity and density of social and institutional interactions (Dahl and Tufte 1973). In fact, it is plausible to assert that increase in size may meets a critical point in which quantity becomes quality. Thus said, the comparison between a polity of roughly 350 million inhabitants, imbedded in deeply rooted national identities and institutions, with political systems much smaller and thus much less complex and dense has its inevitable limits. This is true also for the comparison with Switzerland. Of course, as Blondel (1998) argued, that country appears to be the more similar to the EU in terms of the nature of its multiple cultural and linguistic identities. Nevertheless, Switzerland is a very small country, with limited social complexity, delimited internal transactions and zero geopolitical exposure. Of course, much can be learned from the Swiss experience, and comparing the EU with it may be fruitful – if one keeps in mind the structural asymmetry of the two cases. And, for that matter, the same is true for the comparison with other consociational countries, like Belgium (Deschouwer 2000)

But the uniqueness's argument is also not convincing because there is a case which is quite similar to the EU: namely the US. The US is the only existing democratic political system whose structural size (demographically and territorially) and political and historical features are comparable with EU. Of course, other few cases might be taken into consideration, Canada among them (Wolinetz 1999). But it seems plausible to argue that the US political system is the most appropriate case for comparison along several dimensions. The US is a continental size federal political system. It has a highly dense and complex economic, technological and social structure. It has a long established democracy, for that matter the longest lived constitutional democracy of the world (if we consider the constitution as a written document). It is made up of a plurality of identities and nationalities. It has an institutional history which has been traditionally alternative to the history of single European nation states. And, above all, it engaged explicitly in the search of a political theory for a compound republic. In this sense, although the US displays significant specific differences *vis à vis* the EU, the comparison with the American system and political theory might be fruitful for an understanding of the EU. As Olstrom (1987: 9) remarked, for Europeans “(t)o find (the American, *ndr*) theory useful for thinking about problems does *not* mean that Europe should copy the American model. That would show intellectual poverty – of doing no more than imitating the American example. The task, rather, is to use conceptions and the associated theoretical apparatus as intellectual tool to think through problems

and make an independent assessment of appropriate ways for addressing the problem of contemporary Europe”.

More precisely, my argument is that the American experience of democratic nation state building is useful for Europeans because it is the most diverse from the experience of the single European countries and the more similar for deriving some indications for our understanding of EU. America and Europe (in the sense of single European countries) followed alternative paths to democratic nation state building. The American path was supported by the fragmentation and separation of state sovereignty, whereas the European path pursued the centralization and fusion of the latter. Moreover, in America, nation-building and democracy-building were coterminous, although they developed first at state level, and then at federal level. In the main European countries, state building anticipated nation-building and thus democracy-building. This is why these multiple processes left different institutional structures in the two sides of the Atlantic. It is worth noticing that, after a century and half of distinction, America and Europe have started to converge. With the 1950s, America needed a state to deal with deep domestic transformations and a dramatic change of its international role, whereas in Europe the process of regional or supranational integration created the need to look for decentralized (or better fragmented and separated) forms of governance. Probably, Americans and Europeans should be wise enough to take notes from the political development of each other's system.

STATE AND NATION IN EUROPE AND AMERICA

In Europe, modern nation states are to be considered the outcome of the long drawn-out transformation of the feudal structure inherited from the disintegration of the Roman empire. Of course, the state-building process happened in different ways because it was influenced by the different nature of the center-periphery structures proper of the countries concerned. That different nature produced different incentive structures for the central élites who wanted to maximize their own power. In fact (Spruyt 1994), the state building process is concerned with the neutralization of free-riding and defection options by those peripheral actors (individual, groups, territorial communities) hurt by the strategies of centralization. Of course, the exit options were much more difficult to circumscribe whereas the territory was organized around a network of economically independent trading cities. As Rokkan remarked (now 1999), the territorial sovereign state first developed in the areas at the periphery of the old Roman empire (France, Britain and Spain). In fact, in the core of the Roman empire the dense network of independent cities created alternative institutional organizations of power arrangements (the city-leagues in the Germany and Holland and the city-states in the Italian center-north) to the territorial state.

If the original pressure for territorial centralization *in the form of state* came from within the territory itself, its consolidation was helped by the outside subsequent development of a competitive interstate system (Tilly 1990). The territorial state won over other institutional alternatives (city-state and city-league) because of its superior capacity to pool and to mobilize societal, fiscal and (above all) military resources. Once the territorial state had won, then the new rulers needed to look for a new cultural legitimacy of their own power. The *nation*, as a community of belonging to a stock of shared experiences and behavioral attitudes, was the outcome of this process. It goes without saying that one has to distinguish between earlier and later state-building in Western Europe (Tilly 1975). In fact, later state-building (as Germany in particular) followed exactly the opposite path than the earlier countries. Here, the state was created in order to give representation to an already defined nation, and not, as in the earlier cases, to give shape to it. Of course, between these two types of nation-state building we had other experiences which escaped from the superimposition of state and nation (like the consociational states of Switzerland, Netherlands and Belgium, see Daalder 1995). With these caveats, it seems plausible to assert that the experience the earlier European nation states indicates the priority of the state and the system of states to the formation of European nations.

The situation in America was significantly different. Here, the élites pursuing the strategy of territorial sovereignty had to operate on the basis of different cultural and economic premises. On the cultural side, in America there was neither the overlapping of the secular and religious realms (which helped the process of state-building in protestant Europe) nor the competition between the secular and religious authorities (which characterized and constrained the process of state building in Catholic Europe). On the economic side, America was more similar to the European trading belt than to those areas which fostered the earlier process of state-building. America's differentiated network of trading cities, with growing areas of land distributed to a free peasantry, operating within traditional distinct state boundaries, proved unfavorable to any attempt of federal centralization.

Moreover, at least till 1865, America was never able to produce a condition of no-exit (for individuals, groups and territorial areas), because neither religious or language barriers nor economic or territorial constraints were operating. Moreover, the continuous enlargement of the polity challenged any attempt to neutralize the exit options. In less than one decade America experienced two distinct roads to the definition of a national public authority: the confederal and the federal. Nevertheless, these two roads continued to compete, and sometimes to overlap, throughout American institutional history, notwithstanding the Civil War. Post-1787 America has been a mixed regime: federal, but with many confederal features. The compact (confederal) theory of

the Union has continued to coexist with (and to challenge) the predominant national (federal) theory of the Republic (Beer 1993). After all, as Elazar (1987b: XVI) remarked, “(t)he federalism of the Constitution was made crystal clear, just as the division and sharing of powers was left ambiguous”. Congressional government of the XIX century was federal government through states' representatives, rather than European-style parliamentary government. Congress was in the same moment the legislature of the nation and the patron of the states' interests.

The Congress played this double role through the internal working of the House of Representatives, largely dominated by state parties leaders. And, of course, through the Senate, whose members were selected by state legislatures till 1913, and thus (thanks to the XVII amendment of that year) elected by popular vote. In sum, through this interlacing of partisan and institutional factors, the federal jurisdiction promoted by Congress was kept within limits, thus overlapping with the states' jurisdictions promoted by state legislatures. This overlapping of jurisdictions was necessary to guarantee the territorial corporate pact at the basis of the federal experiment. Otherwise, how can the constitution's ambiguities about the states' right to secede be explained? Using Rokkan once more, it is plausible to argue that, in America too, there was a pressure toward territorial boundarying in order to limit defection and freeriding and to support the growth of the market economy. Yet, this pressure was wrapped within a matrix of fragmented powers which largely tamed it. This is why, sectional conflict was and continued to be one of the recurrent source of congressional conflict.

Although the 1787 constitution strengthened the capacity of central rulers to foster the territorial sovereignty of the new Republic, the constitution constrained their exercise of the sovereignty in a degree unthinkable in Europe, through the vertical and horizontal separation of institutions sharing the same governmental powers. Moreover, the affirmation (with the celebrated Supreme Court sentence of 1803) of a power of judicial review, by the judges at the various levels of the judicial system, of congressional acts made that separation unassailable. America, thus, through its constitution, had created a form of *fragmented sovereignty with separated government* (Fabbrini 1999b) or better a regime of "Madisonian democracy" (to use Dahl's classic and critical definition of 1956). It was the constitution, and not the existence of a supporting institutionalized center, which legitimized the new republic. America is perhaps a paradigmatic case of a nation developed, at least till the end of the XIX century, without the support of a central state. Nevertheless, for that long period, there has been a unified legal order, but not the Weberian distinction between state and society registered in Europe. The judiciary was crucial in promoting the legal order, as well were crucial the political parties in defining the

legislative content of the latter. But especially crucial was "the meta-legal theory which (...) shaped the way courts, governments, and the voting public understood and construed the law of their Constitution" (Beer 1995: 227).

These features of the American institutional structure may explain why America was unable to face the threat of territorial defection, thus falling into a bloody civil war. And hence why, although the outcome of the Civil War asserted the impossibility of secession, its very conclusion ended up deepening the already profound sectional divide of the country. America has thus been a sectionally divided democracy, in the sense that its geographical cleavages largely conditioned its political development (Bensel 1987). Nevertheless, America survived and grew, thanks to the liberal democratic nature of its political regime. At the end, "in the cultural context of liberal democracy, compact theory as well as national theory can produce a viable federalism" (Beer 1995: 242). In sum, liberal democracy has been the intervening variable of the American survival.

DEMOCRATIZATION IN EUROPE AND AMERICA

America differed from the European countries also in terms of its process of democratization. In the European experience here utilized as the arch-type, the chain of political development starts with the state, passes through the nation and ends up with democracy (Smith 1995). In Europe, democracy is the outcome of the previous identification and mobilization of the nation. Leaving aside the obviously mechanical nature of this chain, what this sequence implies is that the outcome of each stage constrained the nature of the following one. In Europe, democracy was obliged to grow within the conditions imposed by those who controlled already the state and by those who presided over the concept of national identity. One might say that European countries moved from state nationalism to a statist democracy.

In America, the sequence was quite different. Not only did the state arrive after the nation, but the process of nation-building and democratization had a synchronism unknown to the European experience. In America, the national revolution did not pass through the conflict between center and periphery or church and state: but through a struggle against an external power (Lipset 1979). Not having to overcome an internal divide, America could become a nation without the lead or the imposition of a center (Greenfeld 1992). The written constitution of 1787 crystallized an already existent national identity, giving to it however a republican basis. The making of the constitution, it has been argued by Preuss (1996) and others, is the founding act of the nation. Through (and sometimes forcing) the constitution, electoral democracy could develop in the XIX century, thus deepening the democratic shape of the national identity. This is why in America nationalism was a permanent supporter of democracy, while

in the European countries, whose nation state system had preceded the development of electoral democracy, it maintained a suspicious if not an adversarial relation with the latter.

Nation and democracy, in America, thanks to the constitutional act, reinforced each other, long before the consolidation of a federal state. In the XIX century, the institutionalization of the channels of participation, representation and opposition was largely realized in the absence of a central state. Till the growth of presidential government in the 1930s, America did not have national parties. But also after the II World War, congressional and presidential parties continued to be coalition of state, county and local political organizations (Epstein 1986). After all, since the *locus* of power was in the Congress and in the states for a large part of the XIX century, it was there that the parties concentrated their political energy. The same industrial revolution of the second half of that century pitted the commercial interests of the north-east against the land interests of the south, more than capital versus labor. Of course, there was also this latter conflict, but it did not take the European form of socialist and anti-socialist parties.

To use Hirschman's analytical tools (1970), in America the social and economic conflict did not produce the European class parties *not least because* the exit option continued to be available for a long period to those individuals and groups who had most suffered from the industrialization process. "Going west" was the alternative to the voice strategies pursued by European workmen to reduce (through their own unions and parties) the negative effects of the construction of a modern capitalist economy. But of course, the American parties and party system had not chance to develop in a European direction *also because* in America democracy arrived before, not only the state, but a modern capitalist economy as well. Individual (male) workmen were integrated in the political system before they could develop a collective conscience as members of the same class, thanks to a set of political and civil rights they had been entitled to since the first decades of the XIX century. And in any case, the ethnic divisions crossing the social classes further hindered the formation of permanent social identity. More in general, the American way of integrating ethnic, cultural and territorial diversities relied on the "hurly burly" of pressure politics and congressional sectionalism at the center.

Without the pressure of a nationally homogenizing conflict such as the struggle between the classes, and with a social mobilization state-based, America could thus maintained its decentralized nature. That is it could maintain a low level of federal taxation and very limited federal intervention in social and economic relations (notwithstanding the significant federal social policies for the war veterans pursued in the aftermath of the Civil War, Skocpol 1992). The states, to be sure, helped significantly to promote economic growth or

demographic development within their own boundaries. But nothing comparable was pursued at the federal level. For large part of American history, but especially in the XIX century, politics has been mainly a local and state activity, also because it was much easier to overcome the constraints of collective action at the state than at the federal level. The strong state and local roots of democracy had important institutional implications. The coalition of interests which favored the growth of a decentralized electoral democracy constrained the opportunities of actions for the coalition which tried to develop a centralized republic, or better to create and strengthen a federal state. This is why, as path dependency approaches help us to understand (Pierson 1996), America grew, to use Bell's (1991) definition, as a civil society democracy, rather than a state democracy as the European ones. In conclusion, American political development challenges the view (Grimm 1997) that democracy requires a nation state to prosper.

INTERNAL CHANGES AND GEOPOLITICAL TRANSFORMATIONS

Between the end of XIX century and the II World War, America, pressured first by an internal tumultuous industrialization and then by a growing international exposure, started to alter its traditional institutional patterns, creating a proper federal center. America needed a viable federal state both to regulate the economy and (above all) to promote and to preserve its geopolitical interests. Politics became nationalized as it had never been before, thus challenging the equilibrium on which the compound republic rested. The nationalization of American democracy implied a redefinition of the matrix connecting state and federal powers. In particular, this redefinition implied a transfer of competence and resources from the states to the federal center (and, within the latter, from the Congress to the president). The growth of influence of the federal institutions triggered a popular discussion on their democratic deficit. Public opinion and social and political movements pressured for their democratization. That democratization took place but within the constraints of the separation of power governmental system.

From the direct election of the senators to the diffusion of primaries for the selection of presidential candidates, from the popular election of the members of the presidential electoral college to the reform of congressional committee system in order to reduce the influence of the Southern congressmen (or "barons"), XX century America had witnessed a formidable popular pressure for the democratization of its federal institutions. But none of these reforms challenged the basic constitutional structure of the country. In fact, contrary to

some expectations⁵, the redefinition of the institutional matrix did not imply a fundamental restructuring of the basic power relations of the American system. The states continued to retain relevant powers in many fields of public policy and the Congress showed itself to be a formidable institution in constraining the increased presidential power (Polsby 1997). Some argued (Beer 1993) that, with the 1980s, compact theory awoke after a long sleep: America witnessed both the start of a period of "new federalism" (largely supported by the Supreme Court), especially with the transfer of social policy responsibilities to the states, and the resurgence of congressional power, with the "institutionalization" of divided government (with the two parties in control of different governmental institutions).

Nevertheless, in the XX century, and especially in the second part of that century, America has been pressured to move in direction of a more statist democracy (or, in any case, a less civil society democracy). Cold War imperatives had a crucial role in this transformation. They not only accelerated the centralization of foreign and military powers in the presidency (and in the offices of the "personal president", to use Lowi 1985 definition, like the White House Office and the Executive Office of the President), but also they created an opinion in favor of that centralization. This confirmed Tilly's approach, who prized the role of (challenge of) war as the necessary variable in the building of more centralized national decision-making structures. This happened in Europe, but not in America, exactly because the latter centennial isolationism in the XIX century protected it from war challenges (although it might be said that America, more than by its isolationism, was protected by the British Navy)⁶. Thus internal complexity and density and external exposure pressured America to increase its stateness. But this stateness developed within the fragmented and separated nature of American system. Madisonian democracy continued to be so alive that its constraints, regardless of the growing pressure for coherent and accountable federal action, ended up in producing a "new political disorder" (Dahl 1994). The tendency of a federal and separated system to incentive political disaggregation and to confuse governmental responsibility was thus heightened in the late XX century. This disorder did not produce a legitimacy crisis because the institutional structure of the American compound republic had plenty of time to consolidate. And, in any case, the federal institutions were already sufficiently democratized to call them into question.

⁵ Olstrom (1987: 27), for example, writes: "I construe the nationalization of American government in the twentieth century as a basic challenge to the political theory of a compound republic".

⁶ It is without saying that America, in the isolationistic period, was involved in several wars, starting with the war against the native Americans. But, in any case, none of those wars had the institutional implications of the European wars.

This experience is of great interest to Europeans. In fact, the EU seems to have acquired many institutional and policy-making features which reminds America of overlapping jurisdictions and of coexistence of federal and confederal elements. Through the process of European integration, the European sovereign states have become gradually EU member states, to use Sbragia's (1994) definition. Moreover (Coultrap 1999), as the US, the EU is characterized by a diffusion of decision-making power, has multiple modalities of representation, has powerful and judicial review oriented judiciary, has independent regulatory agencies, is based on sub-system of policy-making. In the EU, too, interest groups play a more influential role than political parties, and functional pressures appear to be more effective than electoral mobilization. Not to mention that in the EU institutions (and the in the European Parliament in particular), as in the American federal institutions, the sectional cleavage is showing to be the more mobilizing factor of political competition (Bartolini 1998). In sum, will the EU compound republic be preserved from the challenges America had to face?

The fact is that also the integration of post II World War Europe was made possible by a sort of European isolationism. An isolationism protected by US military forces within NATO, and not by the British Navy as in the American experience. Rigidly delimited by the wall of the Cold War, Western European countries could gradually build their system of sharing rule and self rule, without facing serious external stresses on the working of that system. The liberal democratic culture, constitutionally rooted at the nation states level, contributed to the peaceful solutions of the conflicts expressed within the Community system. But with the change of post Cold War conditions, the keeping of European isolationism appears much less viable than before. Thus, it is true that also the EU compound republic showed to be more stable than supposed, nevertheless this stability may be considered an effect of a very fortunate condition. In fact, how will the EU react to these dramatic external transformations is yet an unanswered question. Also because its institutions do not appear to be as consolidated as the American institutions were when they faced similar challenge. In fact, a democratic deficit is continuing to burden them.

CONCLUSION

The comparison of Europe with America furnishes important indications for the analysis. The development of the EU has made that comparison, if possible, more stringent. Although the complexity of the EU's development is much greater, the development of the US does show the opportunities and constraints of a compound republic in the conditions of a continental size democracy. Protected by the constitution, that mixture (in this case) of *federal/confederal* arrangements could find changing institutional equilibria, but always within the

irreducible constraints of a fragmented and separated sovereignty. There are no reasons to suppose that the EU compound republic cannot experiment a similar internal adaptation and change. The (in this case) *confederal/federal* arrangements of the EU continue to be the necessary and indispensable institutional tools of the integration process. But those arrangements are, *by their own nature*, institutionally open-ended.

To be sure, Europe cannot go back, to the old age of the nation state. Two dramatic civil wars fought in the continent have closed the road of nostalgia. Moreover, the globalization process is asking for a greater organization of public authority than nation states can offer, if the European democratic authorities want to neutralize the negative side effects of that process and to sustain the positive ones. Because the *status quo* is institutionally difficult to preserve, supranational federalization appears to be the only plausible alternative, with its open combination of confederal and federal features. But this process is going to alter the institutional relations of the compound republic, if the latter has to face the challenges coming from the ongoing restructuring of the internal market and from the dramatic transformations of the geopolitical system.

The EU is called to play, more and more, an interventionist role in the world arena (and especially in those international conflicts so closer to it that threaten its internal security). The same EU enlargement and the need to face the challenges of international terrorism are pressuring EU in making its decision-making structures and procedures more coherent and efficient. In the same moment, the regulation of a continental market system in a globalized economy is pressuring for more governance, but also government (Sbragia 2001). If US registered a process of nationalization in the course of XX century, it seems plausible to assert that EU will witness a process of Europeanization (or better its deepening, because it already started) in the course of the XXI century. The American experience suggests that these processes tend to challenge the composite nature of a compound republic. In the American case, nevertheless, those challenges were tamed by a rooted constitutional structure. Which, if it was able to preserve the compound nature of the system, nevertheless it did not help the system to achieve effective and accountable answers to those challenges. How will similar challenges be dealt with in the EU case?

Without the support of a constitution, but within an institutionalization process, the EU has to preserve its inevitable compounding nature, and in the same moment to take effective and accountable decisions for answering to internal changes and external transformations. To many, the EU response to its challenges do not appear satisfactory. If the pressure increases, would its response not be better were it to have clear constitutional guidelines? Yes, for some authors. As Mèny (2000: 151) wrote, a European “*Magna Charta*” could have a formidable symbolic and practical meaning”. Practically, because it

would preserve the compound nature of the EU polity. Symbolically, because it would solicit an emotional attachment of the citizens to its constitutional values. No, for others. As Schmitter (2000) wrote, a formal constitution could jeopardize the constitutionalization process, which is taking place *de facto* within the EU. For these authors, it is wiser to proceed with a gradualist strategy, rather than to call for a European Philadelphia Convention, because a constitution could freeze an ongoing dynamic process, making difficult the necessary pragmatic adaptation of the EU polity in facing the internal and external challenges. Other observers seem even to suggest that the request of a formal constitution might be congruent with the desire of those who wish to put an end to the integration process. Here resides, it seems to me, the puzzle of EU compound republic.

In conclusion, how far American experience is available for Europe? In 1835, Alexis de Tocqueville (now 1969: 18) wrote in the first Introduction of his *Democracie en Amerique*: “I did not study America just to satisfy curiosity, however legitimate; I sought there lessons from which we might profit. Anyone who supposes that I intend to write a panegyric is strangely mistaken (...) for I am one of those who think that there is hardly ever absolute right in any laws”. In 1894, James Bryce (now 1909: 608) in his as much famous *The American Commonwealth*, observed: “America has in some respects anticipated European nations. (...) She carries behind her, to adopt a famous simile of Dante’s, a light which helps those who come after her more than it always does herself”. It is difficult to find better answers to the questions raised in this paper.

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