

## FEDERAL TRUST JOHN PINDER MEMORIAL CONFERENCE, 22 JUNE 2015

### Making the Moral and Constitutional Case for a Federal Europe

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Reacting to my recent book on Europe's constitution, which argues that the time for a great leap forward will soon be upon us, most critics aver that everything that needs to be done can be done under the existing EU treaties.<sup>2</sup> These commentators do not stop to explain why it is that if indeed everything can be done under the existing treaties, everything is not, in fact, being done. So that seems a good question to put to the European Council which has a more than usually important meeting on 25-26 June. The heads of government would do well to reflect deeply on the present, highly unstable condition of the European Union.

Too much of the EU establishment takes routine comfort in the belief that there is no European crisis whose political dimension defies a technocratic solution and that, therefore, a little bit more temporisation here and procrastination there will do the trick. Taking refuge in the metaphor of Pandora's Box, so the argument goes, radical change is complicated and unpopular. Instead, things will be okay once Mr Tsipras has returned to his senses, once Mr Cameron has won his Brexit referendum, once economic recovery is underway and when, in 2017, elections in France in Germany have determined the future leadership of Europe.

#### *Rediscovering moral purpose*

I differ from that view. This is no routine crisis. The European Union is facing a critical moment of intense gravity, and this moment has both a moral and constitutional dimension.

The moral case for European unification is nowadays seldom heard. Yet rescuing refugees from drowning *en masse* in the Mediterranean only to make them face the iniquities of the EU's failed asylum and immigration system is a moral scandal. Our incapacity to deal with the evident depravities of ISIS and our failure to prevent Mr Putin from going on his manoeuvres remind us of our weakness in foreign and security policy. And it takes a Pope to prompt us that we are neglectful of our moral duty to combat climate change.

There are too many Europeans who do not yet enjoy the rights of EU citizenship and can only yearn to live under a regime where the values and principles of pluralism, democracy, the rule of law and fundamental rights apply. Even inside the EU there are places (not least northern Cyprus) where the beneficial effect of European integration has yet to be felt, and others (notably Greece) where the benefits once imagined have now been abandoned. The rise of anti-European forces up even into the government of several member states gives the lie to any complacency that the EU's work is done, that the ambitious post-War experiment in peaceful European unification has already been or soon will be accomplished.

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<sup>2</sup> *Pandora, Penelope, Polity: How to Change the European Union*, John Harper, 2015

## *Settling the constitution*

This week's European Council is invited to agree to resuscitate proposals for 'Genuine EMU'. The original report, which was drafted mainly by the then President of the European Council Herman Van Rompuy, projected a triptych of banking, fiscal and political union. Consigned to the deep freeze in December 2012, the report is now being defrosted by Jean-Claude Juncker, President of the European Commission. A federalist of long standing, Juncker knows that the crisis management measures taken by the EU since 2008 to correct and stabilise the European banking system are not enough. Some of those hurried measures, moreover, are deserving of review. Others, such as the introduction in secondary legislation of decision making in the Council by 'reverse QMV', need to be recast in terms of primary law.

We have reached the limits of the Treaty of Lisbon. On 16 June the European Court of Justice judged the outright monetary transactions of the European Central Bank to be legal – but only just and under certain very specific conditions. In *Gauweiler*, the Court has followed its earlier *Pringle* (2012) case-law in moving away from a strict rules-based interpretation of Economic and Monetary Union towards a more political appreciation of how the eurozone's single monetary policy should work through to the real economy. Whether or not the Bundesverfassungsgericht, the referring court in *Gauweiler*, accepts the ruling of the European Court in total, it would be unwise for the EU to risk much more constitutional litigation of this type.

If banking union is to have its necessary common deposit insurance scheme, if EU surveillance and supervision is to spread to the non-banking sector, if the ECB is ever to become the properly legitimated lender of last resort, if the European Stability Mechanism is to be brought within the framework of EU law, if eurobonds are to be possible, the treaty has to change. The eurozone will not be safe without deeper fiscal integration, but even a partial mutualisation of sovereign debt is prohibited under the existing constitutional arrangements. Whenever it comes, the sharing of the burden between EU taxpayers cannot be managed by confederal, intergovernmental and technocratic methods but only by a fully legitimate democratic federal government. Genuine commitment to the euro means commitment to fiscal union which means in turn commitment to political union.

The European Council would do well to stop talking obliquely about *governance* based loosely around the European Council and start talking directly about *government* based on the European Commission. Once that gear has shifted, many other reforms of the Union's primary law become viable. Here are only six examples of other necessary adjustments to the Treaties:-

1. The unanimity rule has to go if Mario Monti's proposals for the reform of the revenue system are to fly, introducing a decent dose of fiscal federalism to the EU budget.
2. Likewise a move to QMV is needed with regard to tax harmonisation.
3. A European Parliament voting to levy taxes must be allowed to reform its own electoral procedure, installing a truly transnational element in time for the 2019 elections: this is the logical follow-up to the recent *Spitzenkandidat* experiment.
4. In order to allow the EU to accede to the European Convention on Human Rights, the jurisdiction of the Court of Justice must be widened to embrace the common foreign, security and defence policies of the Union.<sup>3</sup>
5. The next Commission should have fewer members.
6. Competence must be shifted upwards to the federal level in the fields of immigration and energy supply if the Commission's ambitions are to be met.

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<sup>3</sup> One of the consequences I draw from Opinion 2/13 of the CJEU, 18 December 2014.

And as the Queen says at the end of her innumerable Speeches from the Throne, ‘Other measures will be laid before you’.<sup>4</sup>

### *A federal response to Brexit*

As we know, Mr Cameron wants to extricate the United Kingdom from the historic mission of ‘ever closer union’ (Article 1 TEU). Foreign Secretary Philip Hammond told the House of Commons (9 June) that he envisages a reformed EU of two pillars. This British concept is no longer a multi-speed Europe, which we have had for years, but variable geometry on a structural scale. It is not that the UK will take a different path to the same destination, but a different path to a different place. While we remain unsure as to the make-up of the second pillar which the UK will inhabit, the rest of the EU needs to get on with the business of defining their first pillar. The British decision to resign from previous treaty commitments obliges everyone else to review existing constitutional arrangements and offers the chance to consider afresh the *finalité politique* of the European Union.

Mr Van Rompuy likes to quote approvingly Jean-Luc Dehaene to the effect that it is not necessary to agree on the ultimate goal of integration before taking ‘intermediate steps in the federal direction’.<sup>5</sup> But the long lack of clarity of definition about the goals of the EU has contributed indirectly to the rise of nationalism. Ambiguity about the nature of the ‘destiny henceforward shared’ – to cite those notable words of the Schuman Declaration – has in recent years blunted federalist logic. Equivocation by a defensive EU establishment in the face of hostility from nationalists has clouded the *raison d’être* of the Union. Pro-Europeans have too easily accepted the context established by the mantra of the eurosceptics: ‘national where possible, Europe only where necessary’.

The federalist thesis, on the contrary, does not accept that there is a bipolar choice between ‘national’ and ‘European’, but that both levels are legitimate and coordinate. The famous federalist principle of subsidiarity does not mean that everything can or must be done at the lower level, but that effective action is appropriate at the level that affords the greater added value. Much of the electorate knows instinctively that many contemporary problems transcend the capacity of the old nation state to resolve. Doing things at the level of the European Union has never made more sense than it does today across a wide spectrum of policy. Federalists must articulate that instinct boldly, and exploit that logic clearly and patiently, following the example of John Pinder.

Faced with Brexit, some say General de Gaulle was right to veto British membership of the EEC. But the irony is that there is no more Gaullist party in Europe than the British Tories. In the face of Mr Cameron’s provocation, therefore, the rest of us need to spell out once again the moral and constitutional argument for European unity. And we must be clear about the political consequences of this argument in terms of constitutional change. Our mantra must be: ‘Federal makes sense’.

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<sup>4</sup> See for example, The Spinelli Group, *A Fundamental Law of the European Union*, Bertelsmann Stiftung, 2015.

<sup>5</sup> Speaking to the New Pact for Europe conference, Brussels, 17 June 2015.