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***Farewell to the European Community:  
The Lisbon Treaty and the conceptual shifts  
of a sui generis public law experience***

**Abstract:** *After a quick look at some of the new provisions introduced by the Lisbon Treaty, the article aims to bring to light some of the legal and ideological implications related to the decision of erasing all references to the term “Community” from the Lisbon Treaty. Starting from an etymological analysis of the term “Community”, the research explores how the decision to give such a name to the first successful experiments of European integration in 1951 and in 1957 was, on the one hand, a cultural legacy of the Thirties and Forties and, on the other hand, necessary in order to achieve some political goals. In line with this, it will be possible to understand how the term «Community», quite unusual in the context of international organizations, allowed for more opportunities than the term “Union”, which seems, prima facie, to embody the old federalist dream of the United States of Europe.*

**Keywords** European Community; European Union; Lisbon Treaty.

1. *From European Community to European Union. An inconsequential shift?*

On 29 October 2004, the Treaty establishing a Constitution for Europe was signed in Rome. It was considered by all the observers as the most important step towards the accomplishment of the European integration. Issued after an original constituent process, the new European Constitution contained a lot of new measures, like the juridical personality of the European Union and the introduction of identity symbols, like the European flag and anthem.<sup>1</sup> Among a wide set of institutional changes, in the new

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<sup>1</sup> On this point see, *ex multis*, C.H. CHURCH – D. PHINEMORE, *Understanding the European Constitution: An Introduction to the EU Constitutional Treaty*, London,

Constitution for the first time in over fifty years didn't appear the term "Community", substituted with the term European Union.

It was a considerable novelty that was unanimously evaluated as a great stride forward in the process that had begun in Maastricht in 1992. Unfortunately, we know that the Constitution for the Europe was overruled by the French and Dutch *referenda*, blocking the European integration process in a subsidiary track.<sup>2</sup> It was only three years after, the 13<sup>th</sup> of December 2007, that in Lisbon was signed a new Treaty, less advanced in regard to the previous one, but the best result that was possible to obtain after the *Euroshock* of the Constitution failure.<sup>3</sup>

However, the Lisbon Treaty, that among other things contains a lot of concessions in favour of the so-called Eurosceptical opinions, conserved the decision to abandon the term "Community" in favour of "European Union", maybe because everybody considered that the term Union allows more significant advantages.<sup>4</sup> For a first, it eliminated the double expression "European Community/European Union", with the result of more cohesion and intelligibility of the institutional architecture of the European building, that before was possible to explain only addressing to quite bizarre images, i.e. the Greek temple.<sup>5</sup> Second, the term "Union" is apparently closer to the old federalist dream aiming to create the United States of Europe, following

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Routledge, 2006; J. ZILLER, *The European Constitution*, The Hague, Kluwer Law International, 2005.

<sup>2</sup> The rough path that eventually led to the failed ratification of the European Constitution is reproduced by A. DUFF, *The Struggle for Europe's Constitution*, London, The Federal Trust for Education and Research, 2006 and by D. CURTIN – ALFRED E. KELLERMANN – S. BLOCKMANS, eds., *The EU Constitution: The Best Way Forward?*, The Hague, TMC Asser Press, 2005.

<sup>3</sup> The main novelties of the new European Treaty are examined by S. GRILLER – J. ZILLER, eds., *The Lisbon Treaty: EU Constitutionalism without a Constitutional Treaty*, Wien, Springer-Verlag, 2008.

<sup>4</sup> As a matter of fact, there is only one point in the preamble of the Treaty where is possible to find the term "community", with the new European constituents pay tribute to the European integration started by the Communities in the Fifties of the Twentieth century.

<sup>5</sup> On the Maastricht Treaty see, among the others, R. CORBETT, *The Treaty of Maastricht: From Conception to Ratification*, London, Longman, 1995; A. DUFF – J. PINDER – R. PRICE, *Maastricht and Beyond: Building the European Union*, London, Routledge, 1994.

the example of the United States of America, where is used the term “Union” as synonym to define themselves.<sup>6</sup>

So, it seems that the term “Union” is more adapt to our times, while the term “Community” represents an old world, that was characterised both by an international imprinting of the Treaty and by a cryptic functioning of the European institutions, considered remote by the citizens.<sup>7</sup> In this line, we would thank the High Contracting Parties for this decision, because with the term “Union” they are also going to solve the «democratic deficit» of Europe.<sup>8</sup>

Notwithstanding, an apparent neutral linguistic operation, conceived in order to achieve a greater attractiveness of the European integration process, in our opinion hides a more important meaning. In the next paragraphs, we’ll search for explaining the etymological origin of the term “Community”, and then we’ll see as the decision to erase this term from the Lisbon Treaty represents, in a certain way, a regress in the integration process.<sup>9</sup>

## 2. Communitas

In the last century, the studies around the “Community” as political and sociological concept have been very successful. Since the seminal Max Weber’s masterpiece *Economy and Society*, with a part precisely entitled *Community*, the political science has meditated for long on this simultaneously old and modern way to organize human societies.<sup>10</sup>

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<sup>6</sup> On the federalist ideology about Europe, see W. LIPGENS, ed., *A History of European Integration*, vol. I, *The Formation of the European Unity Movement*, Oxford, Clarendon Press, 1982, and S. PISTONE, ed., *I movimenti per l’Unità europea 1945-1954*, Milano, Jaca Book, 1992.

<sup>7</sup> On this point see, among others, M.T. BITSCH – W. LOTH – R. POIDEVIN, eds., *Institutions européennes et identités européennes*, Brussels, Bruylant, 1998.

<sup>8</sup> On the main features emerged during the European constituent process, see M. KRZYŻANOWSKI – F. OBERHUBER, *(Un)Doing Europe: Discourses and Practices of Negotiating the EU Constitution*, Brussels, Peter Lang, 2007.

<sup>9</sup> On the meaning of symbols – like flags and anthems – in the construction of a European identity, see the book edited by L. PASSERINI, *Figures of Europe: Images and Myths of Europe*, Brussels, Peter Lang, 2003.

<sup>10</sup> The reference is to the famous works by M. WEBER, *Wirtschaft und Gesellschaft: die Wirtschaft und die gesellschaftlichen Ordnungen und die Mächte. Nachlaß*, t. 1, *Gemeinschaften*, Tübingen, J.C.B. Mohr (Paul Siebeck), 2001, and F. TÖNNIES,

Obviously, in this occasion we won't dwell long on this point, while our attention will be devoted to the semantic meaning of the term "Community". As often happens, also this term has a Latin root: in fact, from the term "*Communitas*" derive the English "community", the French "*communauté*", the Italian "*comunità*", the Spanish "*comunidad*", while from the common Indo-European root of the Greek "*koinos*" derives the German adjective "*gemein*" and the substantive "*Gemeinschaft*".<sup>11</sup>

In this line, we can immediately appreciate that the term "Community" and its adjective "common" and "communitarian" refers to an important cleavage in the human society, i.e. mine/ours, public/private; common/individual and so on. So, we can say that "common" is everything that it's not owned by anybody or, better, is owned by everybody.

Nonetheless, in our hypothesis it's not really important the semantic root of "Community", but we should be very interested in the etymological analysis of the Latin "*Communitas*". According to the mainstream of thought, we can say that "*Communitas*" is a complex term originated from the union of two other terms, i.e. "*cum*" and "*munus*". While we know that "*cum*" means "with", it's very difficult to try to give a meaning to the term "*munus*", that had a strong social characterization, and which pushes towards an idea of "must", as it's demonstrated by three terms strictly related to it, like "*onus*", "*officium*" and "*donum*".<sup>12</sup> For the first two terms it's quite clear the meaning of "must", while it's very strange that this meaning is related to the last one. Why a "gift" should be a "duty"?

According to the magisterial studies of Marcel Mauss on the concept of "gift", it's implicit that every gift needs to be repaid: once somebody has accepted a gift (a *munus*) is obliged (*onus*) to *reciprocate* with some good or service (*officium*), in an uninterrupted chain, as indicate very well the English form of the verb "*to take to*".<sup>13</sup> In other terms, it's a matter of a gift that you must give and that you can't refuse to give. In this line, the gift is

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*Gemeinschaft und Gesellschaft*, Darmstadt, Wissenschaftliche Buchgesellschaft, 2005.

<sup>11</sup> On this point, see E. BENVENISTE, *Le vocabulaire des institutions indo-européenne*, Paris, Minuit, 1969, vol. I, pp. 47-90.

<sup>12</sup> See N. ZAGAGI, *A Note on 'Munus', 'Munus Fungi' in Early Latin*, in «Glotta», LX, 3-4, 1982, pp. 280-281.

<sup>13</sup> On the double meaning of the term "gift", see M. MAUSS, *Essai sur le don. Forme et raison de l'échange dans les sociétés archaïques*, in «Année sociologique», 1, 1923-1924, pp. 30-186 and, most recently, J. STAROBINSKI, *Largesse*, Paris, Réunion des Musées Nationaux, 1994.

only the gift that you give, and not the one that you receive. Interrupting this biuniqueness, the *munus* don't imply the stability of the ownership, but, on the contrary, is a loss, a pledge, or a tribute that we are obliged to pay.

So, people that live together in a community have in common a duty, not an advantage; they are united not by a property, but by a duty or, better, a debt. In other words, the members of a community live in absence of something, in a way that we can calmly say that the *void* is the element that characterizes the essence of the community itself, obliging all subjects to search outside themselves for their identity.<sup>14</sup> Because of this bond short-circuit, that forbids the repayment of the debt, is created a communitarian tie that unite people. In this way, the community would create an indissoluble link among States, or – why not? –, people going beyond the same federal (lat. *foedus*, agreement) scale of a pact.

### 3. *The cultural and political roots of the concept of “European Community”*

After this short etymological analysis, apparently irrelevant to our common interest in the European history of the second half of the Twentieth century, a natural question comes to our mind: why, in 1951, was adopted the term “Community” to indicate the first successful experience in the European integration process?

Actually, the analysis of the term “Community” has been often considered as something of not very important, while studies on European history have concentrated on the diplomatic relationships among States, on the institutional structure of the Community and on the economic and juridical integration.<sup>15</sup> Seldom there has been a deep reflection on the origin of the term “Community” and, above all, on the persons who decided to adopt this denomination for the coal and steel pool. We could have the impression that is a pointless question, but we are strongly convinced that the oblivion in which has fallen the origin of the term “Community” has

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<sup>14</sup> On the philosophical meaning of the term “*communitas*”, see the reflection of R. ESPOSITO, *Communitas: The Origin and Destiny of Community*, Stanford, Stanford University Press, 2010.

<sup>15</sup> In order to have a complete state of the art about European integration history, see the work edited by W. KAISER - A. VARSORI, *European Union History. Themes and Debates*, Basingstoke, Palgrave Macmillan, 2010.

political and cultural reasons, and derives from the will to hide some unavowable original sin of the European integration process.<sup>16</sup> In this line, we can ask for why people who participate to the Paris Conference didn't adopt the term "Organization" or "Union", frequently utilised in the international law jargon.

To give an answer to these questions we must go back to the reflections on the search of a "third way", that widespread along Europe and United States of America during the Thirties and the Forties of the Twentieth century.<sup>17</sup> In particular, the most important conceptual elaborations took place in France, where there was a paroxysmal research of an answer to the problems issued from the Great Depression.<sup>18</sup> It would be only a matter of an expression issued from that nebula of intellectuals and experts that, in a famous book of 1969, J.-L. Loubet Del Bayle defined as the "*non-conformistes groupes*", engaged during the years immediately before and during the Second World War in a painstaking research of a middle path between bolshevism and capitalism, in order to lead to unity and harmony the European societies, torn apart by conflicts between capital and labour.<sup>19</sup> In this sense, the concept of "*communauté de travail*" became very important, like a French declination of the Italian Fascist corporatism, with a market ruled by the State through planning measures.<sup>20</sup>

One of the most important exponents of this variegated movement was François Perroux, whose intellectual route is perfect to explain the destiny of a lot of people that, for different reasons, devoted themselves to this

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<sup>16</sup> On this point, see M. MAZOWER, *Dark Continent: Europe's Twentieth Century*, London, Allen Lane, 1998.

<sup>17</sup> See R. FRANK, ed., *Les identités européennes au xxe siècle*, Paris, Publications de la Sorbonne, 2004.

<sup>18</sup> On this point, see A. SALSANO, *Ingegneri e politici. Dalla razionalizzazione alla «rivoluzione manageriale»*, Torino, Einaudi, 1987.

<sup>19</sup> See J.-L. LOUBET DEL BAYLE, *Les non-conformistes des années '30*, Paris, Editions du Seuil, 1969, and P.H. BAUCHARD, *Les technocrates et le pouvoir*, Paris, Arthaud, 1966.

<sup>20</sup> There is a large bibliography about corporativism in Italy during the Fascist regime. On this point see, among others, A. GAGLIARDI, *Il corporativismo fascista*, Roma-Bari, Laterza, 2010, and L. FRANCK, *Il corporativismo e l'economia dell'Italia fascista*, Torino, Bollati Boringhieri, 1990. The close relationships between France and Italy in experiencing corporativism are demonstrated by the works by A. SALSANO, *L'altro corporativismo. Tecnorazia e managerialismo tra le due guerre*, Torino, Il Segnalibro, 2003.

search. In 1938, Perroux wrote a first book, *Capitalisme et communauté de travail*, and, during the Vichy regime, another work entitled *Communauté*, where he made an innovative synthesis of German and Austrian corporatist ideas and Mounier's personalism. In his opinion, the main goal of the community should be the collaboration between capital and labour, by means of the community itself, that he defined as a public or semi public group where are equally represented employers and workers, and with conflicts solved by the State intervention, which has also the power to fix goods and services prices instead of the free market. In this line, the State, or the Community would change its relationships with the economy, becoming an arbiter of the economic life, through the creation of a regime of "organized market".<sup>21</sup>

These reflections were at their height during the Vichy regime, when "Community" became a password, a concept able to mobilize people in order to realize the "National Revolution" wished by Petain. Some of the places chosen for developing these reflections were the *Ecole des cadres d'Uriage* and the Mont-Dore Days.<sup>22</sup> In particular, at Uriage were developed many reflections on the term "Community", analyzing the subject under manifold points of view, as demonstrates the title of lessons held there. One of these seminars was held by another exponent of the "communitarian" movement, Paul Reuter, who afterwards should be one of the hidden inspirers of the Schuman plan. Reuter, like Perroux, thought that State were not able to afford the challenges of modern economy, characterized by the presence of transnational trusts and oligopolies. In this context, the only prescription for winning economic depression was to equip States with new tools, like a modern bureaucratic apparatus and a greater territorial dimension.<sup>23</sup>

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<sup>21</sup> On the influence of these reflections in the postwar Europe, see the book edited by O. DARD – E. DESCHAMPS, *Les relèves en Europe d'un après-guerre à l'autre. Racines, réseaux, projets et postérité*, Brussels, Peter Lang, 2008.

<sup>22</sup> On this point, see A. DELESTRE, *Uriage, une communauté et une école dans la tourmente (1940-1945)*, Nancy, Presses Universitaires de Nancy, 1989, and R. JOSSE, *L'École des cadres d'Uriage (1940-1942)*, in «Revue d'histoire de la deuxième guerre mondiale», LXI, 1, 1966, pp. 49-74. On the Mont-Dore Days, see P. NICOLLE, *Cinquante mois d'armistice. Vichy, 2 juillet 1940-26 août 1944; journal d'un témoin*, 2 vols., Paris, André Bonne, 1947, vol. 1, pp. 148-149.

<sup>23</sup> On this point, see A. ISONI, *Planisme and "Third Way" Ideologies in the ECSC High Authority*, in D. PREDA – D. PASQUINUCCI, eds., *The Road Europe Travelled*

In this line, the reflections on the economic problems resulted in an integration conception, where each State were almost obliged to cooperate with other States, giving place to a new institutional structure, that were composed by the multiplicity of the national communities. The final goal of this communitarian and third way conceptions was the creation of a “European community”, with its federal institutions and its mutual obligations, with a delegation of some fields of sovereignty and the ultimate goal of peace among European nations. We can perfectly see how this vision, quoted by one of the report presented during the Mont-Dore Days, are the same of the Schuman plan and of the ECSC Treaty.<sup>24</sup>

In fact, the irenic factor is always present in this description of the new “communitarian order”, conceived as a way to solve two terrible cleavages in the European societies: on one hand, the international conflicts, from which derived three wars between France and Germany in less than seventy years and, on the other hand, the class struggle, with strives between capital and labour as disruptive elements in national communities.<sup>25</sup> In this line, the Second World War represented the synthesis of these two cleavages, leading the European civilisation to destruction.

In 1945, these reflections, issued from milieus more or less compromised with Fascism, were reverted by the Christian-Democrat political parties all over the Europe, thanks to the Mounier personalist imprinting, very close to the Church social doctrine.<sup>26</sup> Moreover, this switch

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along: *The Evolution of the EEC/EU Institutions and Policies*, Brussels, Peter Lang, 2010, pp. 267-279.

<sup>24</sup> See A. COHEN, *Le Plan Schuman de Paul Reuter entre Communauté nationale et Fédération européenne*, in «Revue française de science politique», XLVIII, 5, 1998, pp. 645-663.

<sup>25</sup> The long-lasting fight in order to solve the problem of European crisis in the Twentieth century is well described by CH.S. MAIER, *In Search of Stability: Explorations in Historical Political Economy*, Cambridge, Cambridge University Press, 1987.

<sup>26</sup> On the other hand, Emmanuel Mounier had participated to the Italian-French Workshop on Corporativism held in Rome in 1935, how is demonstrated by the work of G. PARLATO, *Il convegno italo-francese di studi corporativi (Roma 1935). Con il testo integrale degli atti*, Roma, Fondazione Ugo Spirito, 1990. At the end of the Second World War, many of the ideas developed by Mounier were used to conceive a new organic social order. On the influence of the Christian doctrines in the European integration see, among others, PH. CHENEAUX, *Une Europe Vaticane? Entre le Plan Marshall et les Traités de Rome*, Bruxelles, Ciaco, 1990 and E.

of corporatist themes in democratic was favoured by the spread of Keynesianism, an economic theory which was inclined to the creation of public organisation in order to expedite industrial rebuilding. Brought in Europe by the American technocrats of the Marshall plan, Keynesianism allowed both Perroux and Reuter to work without problems in the new French Fourth Republic, and Reuter managed to find the way to collaborate with Monnet before on the project of the *Commissariat au Plan* and, then, on the Schuman plan.<sup>27</sup>

#### 4. From supranationality to subsidiarity: the end of an era?

In 1951, when was signed the Paris Treaty, six years were passed away since the end of the war. In this short time, we have seen as many of the ideas conceived and developed in France during the German occupation, and all oriented to find out a third way in order to eliminate the Bolshevik threat and the ghost of an economic crisis, become the pillars on which was built the new Western Europe. At the moment of the launch of the Schuman plan, a new concept comes out, so to explain the new dimension of the future European organisation: supranationality.<sup>28</sup>

Supranationality, like community, in our opinion seems to own a particular and more advanced *ethos* with respect to federal, a term that was utilised as password by all the European movements. Issued from the reflections developed before and during the war in the Fascist prisons, and strictly linked to the American history, the term “federal” refers anyway to a

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LAMBERTS, ed., *Christian Democracy in the European Union (1945-1995)*, Proceedings of the Leuven Colloquium, 15-18 November 1995, Leuven, Leuven University Press, 1997.

<sup>27</sup> On the close relationships between America and Europe in the postwar period, see M.J. HOGAN, *The Marshall Plan: America, Britain and the Reconstruction of Western Europe, 1947-1952*, Cambridge, Cambridge University Press, 1987.

<sup>28</sup> On this point, see E.B. HAAS, *Beyond the Nation State*, Stanford, Stanford University Press, 1964; N. HEATHCOTE, *The Crisis of European Supranationality*, in «Journal of Common Market Studies», V, 2, 1966, pp. 140-171; and J.H.H. WEILER, *The Community System: The Dual Character of Supranationalism*, in «Yearbook of European Law», 1, 1981, pp. 267-306. For an historical interpretation, see the book edited by W. KAISER – B. LEUCHT – M. RASMUSSEN, *The History of the European Union: Origins of a Trans- and Supranational Polity 1950-1972*, London, Routledge, 2009.

pact (a *foedus*) among States, always keeping the real power to States; on the contrary, supranational is an innovative and quite peculiar way to indicate a new phenomenon in the international relations.<sup>29</sup> Coming back to the previous pages, in our opinion “supranational” simply seems indicate the right and only territorial dimension to face the new challenges issued by the modern capitalism, founded on oligopolies and transnational groups.<sup>30</sup>

In other words, “supranational” is an original word to indicate a new model of integration, where the States have lost their leadership and, on the contrary, have become the real beneficiary of the international or, better, *sui generis* organisation, thanks overall to the irenic and supranational dimension of the Community.<sup>31</sup> In this line, we can say that “supranational” and “community” are two Siamese twins, since, even if unconsciously, in the meaning of “supranational” there would be the original meaning of *communitas*, where all the European States are debtors with each other and, at a rate of these mutual debts, are obliged to find out a dimension able to fill a “sovereignty void” through the creation of a “Community”. The “European Community”, a new *constitutional* space (*cum-sto*, i.e. I live with), where to test a new *modus vivendi* in the international relations, characterized by economic cooperation and peace.<sup>32</sup> A concept of peace that, according to the Catholic Church organicistic visions, should avoid struggles, both between capital and labour and among States, just as during the Thirties had postulated people who searched for a third way.

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<sup>29</sup> On the supremacy of the States in the European integration process, see the works of A.S. MILWARD, *The Reconstruction of Western Europe, 1945-51*, London, Routledge, 1984, and ID., *The European Rescue of the Nation-State*, London, Routledge, 1992.

<sup>30</sup> See P. LINDSETH, *Democratic Legitimacy and the Administrative Character of Supranationalism: The Example of European Community*, in «Columbia Law Review», IC, 3, 1999, pp. 628-738 and P. CRAIG, *The Nature of the Community: Integration, Democracy and Legitimacy*, in P. CRAIG – G. DE BURCA, eds., *The Evolution of EU Law*, Oxford, Oxford University Press, 1999, pp. 27-50.

<sup>31</sup> On the novelty represented by this concept, see the reflections developed by G. THIEMEYER, *Supranationalität als Novum in der Geschichte der internationalen Politik der fünfziger Jahre*, in «Journal of European Integration History», IV, 2, 1998, pp. 5-21.

<sup>32</sup> An European constitutional space is imagined by P. HÄBERLE, *Per una dottrina della Costituzione come scienza della cultura*, Roma, Carocci, 2001, specifically pp. 113-150.

If we consider right the previous reflections on the term “Community”, we can also see how are misleading all the conceptual reconstruction of the European Communities issued by international law scholars, who say that the Community is a kind of “quality” added to States, which remain the real subjects of the international law, on the philosophical basis that a Community is a “property” of Member States or is a “substance” produced by their union.<sup>33</sup> But, as a matter of fact, this is a Union.<sup>34</sup>

A Community, on the contrary, is based on the idea that we need a new representation of the reality, filling the political-institutional void created by the Second World War, when was impossible to come back to old political conception based on the predominance of States. Maybe, this was the only positive heritage of the war, with States and nationalism brought back to the right dimension.<sup>35</sup>

As often happens, the philosophical figure of the paradox is useful to understand this strange phenomenon. “Common” is used to be identified with its contrary: it’s common everything group together the properties of everyone. People have in common their things, they are the owner of their common. Passing to the international law, we listen very often that States are the masters of the Treaties: but in this case we are out of the concept of Community issued in the Thirties and Forties. It was the direct opposite:

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<sup>33</sup> Theorists of intergovernmentalism affirm that States continue to be the centre of the European integration. For a wide range of these theories, see A. MORAVCSIK, *Preference and Power in the European Community: A Liberal Intergovernmentalist Approach*, in S. BULMER – A. SCOTT, eds., *Economic and Political Integration in Europe: Internal Dynamics and Global Context*, Cambridge, MA, Blackwell, 1994 and, of the same author, *Why the European Community Strengthens the State: Domestic Politics and International Cooperation*, in «Harvard University CES Working Paper Series», 52, 1994.

<sup>34</sup> For a critical approach to the Maastricht Treaty, see J.H.H. WEILER, *The Constitution of Europe: “Do the New Clothes Have an Emperor?” and Other Essays on European Integration*, Cambridge, Cambridge University Press, 1999, pp. 238-263.

<sup>35</sup> Jean Monnet was one of the first persons to understand the end of nationalism and the necessity to proceed to integration among States. On the pivotal role played by Monnet in the European integration, see F. DUCHÈNE, *Jean Monnet: The First International Statesman of Interdependence*, New York–London, W. W. Norton and Company, 1994, and, for his relationships with US Administrations, see J. GILLINGHAM, *American Monnetism and the European Coal-Steel Community in the Fifties*, in «Journal of European Integration History», I, 1, 1995, pp. 21-36.

States, at the end of Second World War, didn't own anything, having lost war and demonstrated that they were a real menace for civilisation.<sup>36</sup>

In this line, we can say that States themselves shouldn't exist without the new European Communities, which produced inside them a lot of changes – political, economical, juridical and so on – so much as to change them out of all recognition after their membership in the Communities.<sup>37</sup>

What is left of this? With the shift from the term “Community” to the term “Union” we can say that a world came to an end. But, what has been the reason of this shift? In our opinion, it's very important to analyse when this shift has taken place. The first time that we have ever heard the term “Union” has been in 1992, when was signed the Maastricht Treaty.<sup>38</sup> This was no coincidence that the Maastricht Treaty was signed only three years after the Berlin Wall fall, ushering in a restless constituent process that has seen five Treaties signed in only fifteen years, at the average of a Treaty every three years.<sup>39</sup>

The main reason of this unaccomplished constitutional revision is the end of the Cold War, which has fooled European States to have regained a new centrality in the world. The political defeat of the Soviet Union and the German reunification have been two signals that convinced States to start a deep power transfer from supranational to national level, with the introduction of a set of measures all referred to strengthen the role of States to Community's disadvantage.<sup>40</sup> The introduction of the term “Union”, together with the subsidiarity principle and the narrow enumeration of Union competences, have ended an half-century experience that have been

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<sup>36</sup> On the reconstruction of National identities after the Second World War, see the work edited by B. STRÄTH, *Myth and Memory in the Construction of Community: Historical Patterns in Europe and Beyond*, Brussels, Peter Lang, 2000.

<sup>37</sup> The main issues related to this theme are studied by J.H.H. WEILER, *The External Legal Relations of Non-Unitary Actors: Mixity and the Federal Principle*, in H.G. SCHERMERS – D. O'KEEFFE, eds., *Mixed Agreements*, Deventer, Kluwer, 1983, pp. 35-83.

<sup>38</sup> Oppositely, the same year is utilized as a milestone by A.S. MILWARD - V. SØRENSEN, eds., *The Frontier of National Sovereignty: History and Theory 1945-1992*, London, Routledge, 1993.

<sup>39</sup> About the European integration process from a juridical point of view, see J.H.H. WEILER, *The Transformation of Europe*, in ID., *The Constitution of Europe*, cit., pp. 10-101.

<sup>40</sup> In this line, see A. MORAVCSIK, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, Ithaca, NY, Cornell University Press, 1998.

centred on two fundamental pillars: the Implied Powers theory and the functional way of integration, with its most important corollary, the spill-over effect.<sup>41</sup>

The new European Union come out from the Lisbon Treaty is inspired by the opposite concepts: the Union powers and competences are strictly listed, while has been strongly weakened the European Court of Justice's powers to implement Implicit Powers, if these are not yet contained in the Treaty.<sup>42</sup>

We can another time go back to the paradox figure: a Treaty born in order to rationalize the European institutional and legal structure, to deepen the European integration, also thanks to a change of name, actually "freeze" forever the integration process, unless the Member States decide to change the Treaties, with all problems that we managed to see in the last years.<sup>43</sup>

Finally, we can calmly say that, if it is true that things correspond to names, then the shift from European Community to European Union is the most important signal that teaches us how a glorious chapter of the European integration history has ended forever. Our last consideration is that we don't know if future will be better than past.

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<sup>41</sup> On the principle of "implied powers" see, *ex multis*, the essays by A. TIZZANO, *Les compétences de la Communauté*, in EUROPEAN COMMISSION, *Trente ans de droit communautaire*, in «Perspective Européennes», I, 45, 1982, pp. 49-52; CH. SASSE – H. CH. YUROW, *The Growth of Legislative Power of the European Communities*, in T. SANDALOW – E. STEIN, eds., *Courts and Free Markets: Perspectives from the United States and Europe*, vol. II, Oxford, Oxford University Press, 1982 and, lastly, J.A. USHER, *The Gradual Widening of European Community Policy on the Basis of Article 100 and 235 of the EEC Treaty*, in J. SCHWARZE – H.G. SCHERMERS, eds., *Structure and Dimensions of European Community Policy*, Baden Baden, Nomos, 1988, pp. 25-36.

<sup>42</sup> See P.D. MARQUARDT, *Subsidiarity and Sovereignty in the European Union*, in «Fordham International Law Journal», XVIII, 2, 1994, pp. 616-640 and F. RONGE, *Legitimität durch Subsidiarität*, Baden-Baden, Nomos, 1998.

<sup>43</sup> To draw a balance of the European constitutional experience, see J.H.H. WEILER, *Federalism without Constitutionalism: Europe's Sonderweg*, in K. NICOLAIDIS – R. HOWSE, eds., *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union*, Oxford, Oxford University Press, 2001, Ch. 2.



