

Of Power and Providence

The old U.S. and the new EU

By DAVID C. HENDRICKSON

THE HISTORIAN OF the early American federal union recognizes an immediate affinity between America's founding and the contemporary European project. Both are instances of an attempt to create a federative system, to ensure and perpetuate a basis for cooperation among independent republics in a political milieu in which multiple loyalties, identities, and interests and the centrifugal forces they produce are the commanding political fact. Such a union must guard against the rival dangers of international anarchy and despotic centralization both within itself and within the larger society of states. This objective constitutes, as it were, its reason of state, the narrow path between Scylla and Charybdis it must follow.

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There are signal differences, of course, between the old U.S. and the new EU. But the comparison I wish to draw does not rest upon any kind of essential identity in institutions — these, of course, have been very different — but rather upon the fundamental similarity in the problem they confronted and the aspirations they entertained. The problem was how to find a basis for common action in a system of states prone to unilateral action, the aspiration to instantiate a mode of resolving disputes among themselves that would bind them into a system of perpetual peace. In their various discourses about power — of the danger of falling into anarchy among themselves or, conversely, of sacrificing state independence to unrepresentative and unaccountable government from afar — we can recognize a set of problem-

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atics that identify the old U.S. and the new EU as experiments of the same type, or rather as different species of the same fundamental genus.

Though this image of America and Europe clasping hands across the centuries may be a pleasing one, suggesting a common civilizational project in which Europe has managed to pick up a baton long held by the United States, this thought occurs against the backdrop of an existential crisis within the West. Having considered itself a friend of the European experiment for most of the post-World War II period, and having advised, really from its infancy, that Europe should emulate America in adopting a federal constitution, the American govern-

ment now looks upon the European project with hostile and suspicious eyes. We are a long way from the time, in 1962, when John Kennedy could proclaim that “the basic objective” of America’s post-World War II foreign policy was to aid the progress of a “strong, united Europe.”

Perhaps the most important reason for this hostility is that the United States has undergone a movement very nearly the opposite of Europe’s. If Europe has ended up where America began, the “world’s only superpower” has by contrast assumed the mantle of the now deceased European monarchies that “felt power and forgot right,” in Jefferson’s phrase. Its role as the world’s most powerful state has dramatically changed its conception of itself and marks an unmistakable advance in the long and bloody route from federal union to universal empire. The militarism that America’s founders once railed against and that was symbolized for them by Europe’s “nations of eternal war” seems ominously familiar to those who witness the warlike tendencies of the contemporary American state. The modern world prides itself on its novelty and is always looking for the “new, new thing”; this issue is very old. Europe objects to American policies in precisely the same terms with which Americans once denounced Europe’s war system, and it embraces what Jefferson called “the opposite system” of “cultivating general friendship, and of bringing collisions of interest to the umpirage of reason

Of Power and Providence

rather than of force.”

America and Europe, then, have “switched places,” undergone a great reversal, with each now standing for what the other once stood. As Robert Kagan has suggested, the foreign policy vision articulated by Europe’s leaders today sounds much like that of America’s eighteenth and nineteenth century statesmen, who extolled “the virtues of commerce as the soothing balm of international strife” and appealed “to international law and international opinion over brute force.” Now that the United States is powerful, Kagan noted, it no longer practices “the strategies of indirection, the strategies of weakness” but rather “behaves as powerful nations do.” But though Kagan trenchantly sketched certain elements of this great reversal, he confined himself to the transformation in external policy, ignoring the equally important comparison between their federal constitutions. Even with respect to foreign policy, he drew back from the implications of his analysis. Though he went very far in explaining Europe’s attitude in terms of the psychology of weakness, he went only part of the way in ascribing America’s attitude to the psychology of strength. His portrait of the contemporary United States stressed that it was a “behemoth with a conscience” and was not comparable to “Louis XIV’s France or George III’s England.” Nor was Kagan willing to concede that the American founders had really believed all those soothing words about the importance of international law and the beneficent effects of commerce. The founders, he insisted, were not utopians but rather “well versed in the realities of international power politics. They could play by European rules when circumstances permitted and often wished they had the power to play the game of power politics more effectively. But they were realistic enough to know that they were weak, and both consciously and unconsciously they used the stratagems of the weak to try to get their way in the world.”¹

Kagan’s intimation that the American statesmen of the late eighteenth and early nineteenth centuries didn’t really believe in what they were saying and made appeal to law and commerce because they were weak, “consciously or unconsciously” anticipating the day of their strength when they could repudiate these once convenient views, tried to solve a significant problem for the neoconservatives. Historicists, realists, relativists, and swarming crowds of postmodernists and deconstructionists might find the disjunction no cause for sleepless nights — so what?, these jaded observers might ask — but this is not so for the neoconservatives. They identify themselves with a set of uni-

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¹Robert Kagan, *Of Paradise and Power: America and Europe in the New World Order* (Vintage, 2004), an earlier version of which appeared in this journal: “Power and Weakness,” *Policy Review* 113 (June–July 2002).

David C. Hendrickson

versal truths that, as Bush said in his second inaugural, “we have uttered from the day of our Founding.” The neoconservative view is wounded, perhaps fatally, by the fact that the United States now takes the opposite side of the ancient argument over the role of force in politics that arose between Europe and America in the eighteenth century. That argument has returned today, like Banquo’s Ghost, to disturb the U.S. claim to legitimacy.

If the nature and aspirations of the early American union are duly registered, the great reversal Kagan heralded is yet more pronounced than he allows. In a fine passage, Kagan notes the European belief that if law and international institutions go down before the inexorable claims of power politics, the European experiment would itself be imperiled. The same connection between internal form and external policy, however, existed in the early United States. In a manner very similar to contemporary Europeans, the founders contrasted their *novus ordo seclorum* with the ways of the old European system. They saw an essential contrast between the federal union that was to be constructed among the states of America and the European system that had doomed free government on the old continent. In one sense, adducing these features of the old American union strengthens Kagan’s argument, because it completes the portrait he draws of the great reversal of position between Europe and America. In another sense, however, it sinks it, because it puts to flight the imputation of insincerity that he makes of early American leaders.

The great reversal between America and Europe sheds a bright light on the present world historical crisis. In the years after 1776, Americans needed, simultaneously, to institute an effective federative system among the heterogeneous American states while confounding the aspirations toward universal empire displayed by Great Britain. Today, Europeans face the twin tasks of ensuring a successful federative system among themselves and balancing against the threat of unbound power from America. Through some strange working out of aspirations deeply embedded within Western civilization, through some mysterious process bearing providential overtones, Europe has ended up where America began.

The old American union

In order to think clearly about the relation between the old U.S. and new EU, we must first recognize how profoundly different is the contemporary system of American government from that which was created at Philadelphia in 1787. In the course of two centuries, it became centralized to a degree virtually unimaginable to America’s founders, with the most important landmarks of transition occurring in 1861–68 and 1933–45. These two eras — the Civil War and Reconstruction and the New Deal and World War II — had an utterly transformative impact. The first era consigned to oblivion the nullification and secession crises that had

Of Power and Providence

dominated the antebellum era and brought a far-reaching consolidation of the powers of the general government. It constituted, as historian James McPherson has emphasized, the real birth of the American nation and brought to an end the old federal union created at Philadelphia. The second era, culminating in the Second World War, brought about what libertarian writers call the "welfare-warfare state," with its enormous national security apparatus and permanent commitment to national spending for a wide variety of domestic objects. America lives today, in theory, under the same yellowed parchment signed at Philadelphia in 1787 but, in practice, has a fundamentally different constitutional order.

Four other differences are especially salient. Early American federalism was states-centered to a very striking degree, making a dramatic contrast with the centralized Leviathan created during and after World War II. Second is the growth to dominance of the "plebiscitary presidency," which came to enjoy a broad range of powers, especially but not only over war and peace, that are far greater than that visualized by America's founders. A third difference is the growth of the administrative state and of independent regulatory bodies, a phenomenon that emerged in response to the challenges of industrialization and that has made for a state apparatus with extensive powers over the national economy. A fourth is the rise of an "imperial judiciary" with far-reaching jurisdiction over broad areas of national life, especially civil rights.² If we are to make out the thesis that Europe has ended up where America began, we need to register these profound transformations in the American system of government and grasp how distant it is from what it once was.

Explicating the American confederation in 1777, Thomas Jefferson noted that Virginia was "but one of thirteen nations, who have agreed to act and speak together. These nations keep a council of wise men always sitting together," he went on, "and each of us separately follow their advice." Americans reflecting on their past have characteristically thought of the United States as a national unit and have seen the development of American institutions in a context essentially domestic. I am impressed, by contrast, with what the Continental Congress called in 1777 "the difficulty of combining in one general system . . . a continent divided into so many sovereign and independent communities." That difficulty was made manifest both in the decade-long conflict that had disrupted the British Empire and in the trying decade that followed the Declaration of Independence in 1776.

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²Henry Paul Monaghan, "Stare Decisis and Constitutional Adjudication," in Jack N. Rakove, ed., *Interpreting the Constitution: The Debate over Original Intent* (Northeastern University Press, 1990), 263-312, esp. 266-73.

David C. Hendrickson

Throughout this period — one marked by two great wars and continuing constitutional upheaval — the problem of securing a basis of cooperation among the colonies and states in North America was at the center of political and constitutional thought in the Atlantic world. From the beginning, the union was seen as a species of international cooperation, its historical significance as a successor to and elaboration on Europe's "peace plan" tradition.³

With independence, the new American states found themselves in what might be called a "federal situation" — that is, of independent states in compact. Though "free and independent states," with "full power to levy war, conclude peace, contract alliances, establish commerce & to do all other acts & things which independent states may of right do," the American states

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knew they must cooperate through a union. Union was the only route through which to escape the opposing dangers of international anarchy and imperial domination. That exigent need led them on to a host of problems — e.g., how to divide the responsibilities between the general and the local governments, how to make institutions representative and legitimate, how to apportion equitably the burden of "the common cause," where to locate sovereignty. They discovered in the course of time that cooperation was far more difficult than had first been thought. With the Articles of Confederation, they had constituted a government whose efficiency would rest on "a disposition of

accommodation in the States to each other, and of Congress to all," but then found themselves ill-disposed to make the necessary accommodations. The resulting breakdown of the confederation and the miseries of "the critical period" ensured that the union would either dissolve or be reconstituted, and it was this perception that led the way to the Philadelphia convention of 1787.

When the framers gathered at Philadelphia in the late spring of 1787, they stood high atop a ridge, on either side of which there lay an imposing and dangerous abyss. On one side was "empire," "consolidation," "despotism," "centralization"; on the other, "anarchy," "dissolution," "chaos," "disintegration." These terms were not mere abstractions but carried historical resonance. The former recalled for them a succession of images: the expansion and corruption of Rome; the mad search for universal monarchy by a line of continental European monarchies; the sinister views of a British court that had attempted to foist on the American provinces, via taxation by a distant Parliament, a condition supposedly akin to absolute slavery. "Anarchy" and "disunion" had a comparable, though opposing, signifi-

³These themes are elaborated in David C. Hendrickson, *Peace Pact: The Lost World of the American Founding* (University Press of Kansas, 2003).

Of Power and Providence

cance. The fatal consequences to which anarchy might lead could be seen in the rise and fall of the unions made by the Greek city-states of antiquity to secure their liberty, in the civil wars and foreign interventions of Italy during the Renaissance, in the endless internal dissensions and wars of the Holy Roman Empire, and perhaps most of all in the experience of the modern European state system. The founders' thought was heavily imbued with equilibrist notions of all sorts, but in the operation of the old European system they saw nothing but danger. "The system of the balance of power," wrote one Federalist, "affected to smother the breath of universal monarchy," but it had "in fact organized the system of universal slavery."

The opposing specters of anarchy and consolidation pushed the Constitutional Convention delegates onto a middle ground. Conscious that the states would have to give up some of their sovereignty if the purposes of "the subsisting federal government" were to be realized, the framers brought forth a new political edifice built on the norms and institutions of constitutional government existing within the American states. The federal government, like most of the state governments, would now enjoy a bicameral regime of separated powers, with standing executive and judicial branches capable of bringing individuals under the cognizance of its laws. This would avoid the direct reliance on the states under the Articles of Confederation, which had proven incapable of generating united effort in the 1780s and had left the union unable to pay its debts or meet its treaty obligations.

The federal government created by the Constitution, however, fell short of being a "consolidated government." Unlike the state governments, which generally claimed complete authority over the liberties of their citizens, the federal government was one of enumerated and limited powers. Advocates for the Constitution conceded that a consolidated government would demand "a system of the most unqualified and unremitted despotism." Supremacy was accorded not to the federal government or the state governments but to the Constitution itself. The enumerated powers of the national government were largely confined to the "federative" or "external" functions of war and peace, diplomacy, and foreign commerce. Everything else was to remain with the states. Advocates said that this would create "federal liberty" and that the states needed a compact to get them out of the state of nature for the same reason that individuals in a state of nature needed a government.

At the conclusion of the Federal Convention in 1787, James Wilson claimed that it had "accomplished, what the great mind of Henry IV of France had in contemplation, a system of government, for large and respectable dominions, united and bound together in peace, under a superin-

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David C. Hendrickson

tending head, by which all their differences may be accommodated, without the destruction of the human race!" It did so with a complex set of bargains over representation, whereby it managed to balance the competing pretensions of large and small states, of southern and northern states, and of old and new states. Its institutions were, as James Madison explained, "partly national, and partly federal."⁴ Americans emerged from the revolutionary war as "neither the same nation nor as different nations" and were disinclined, noted Elbridge Gerry, to pursue either idea "too closely." Their new form of government was *sui generis*, in effect presenting the appearance of both a state and a state system.

Even the formal powers enjoyed by the union were exercised with caution.

This mixed aspect of the early American union did not go away once the new government was launched in 1789. After an initial burst of centralization under the auspices of Alexander Hamilton's fiscal program, decentralizing tendencies came to the fore with the inauguration of Thomas Jefferson as president in 1801. Jefferson, to be sure, sometimes governed in accordance with the Federalist theories he had rejected when in opposition in the 1790s — he brought in Louisiana in 1803, for instance, though he well knew that the purchase could not be squared with the theories of strict construction he had earlier embraced — but the larger tenor of American politics after 1801 did substantially modify the Hamiltonian program of the previous decade. Most important, the union

often found itself in mortal crisis, with predictions of inevitable disunion accompanying its advance through time. It stood in frequent need of great though precarious compromises (as in 1820, 1833, and 1850) that were likened to the treaty settlements of a European Congress. Even the formal powers enjoyed by the union were exercised with caution. "Our constitution is a peace establishment — it is not calculated for war," as Jefferson remarked in 1806. "War would endanger its existence." War did endanger its existence during the War of 1812, when several New England states refused to allow the president to call their state militias into national service. It did so again in the aftermath of the Mexican War of 1846.

With the individual states still commanding loyalty and reflecting "much nationality," the problem of ensuring effective coordination and cooperation among these refractory units, of keeping them in union, often seemed insuperable. "The States in our system," wrote Massachusetts senator Rufus Choate in 1850, "may be compared to the primordial particles of matter,

⁴Madison, it may be useful to recall, employed the terms "federal" and "national" in ways precisely opposite to the meanings they bear in the debate over contemporary Europe. For Madison, "federal" meant those aspects of the constitution that were like a confederation of states, whereas the federal idea in Europe today usually connotes centralization.

Of Power and Providence

indivisible, indestructible, impenetrable, whose natural condition is to repel each other, or, at least, to exist, in their own independent identity — while the Union is an artificial aggregation of such particles; a sort of *forced state*, as some have said, of life . . . a system of bodies advancing slowly through a *resisting medium*.” Whereas the states were “natural” and were “a single and uncompounded substance,” the union was “a totally different community — a community miscellaneous and widely scattered.” It was “more delicate, more artificial, more recent, far more truly a mere production of the reason and the will — standing in far more need of an ever-surrounding care, to preserve and repair it, and urge it along its highway . . . a beautiful, yet fragile creation, which a breath can unmake, as a breath has made it.” All the traits that Choate identified can also be ascribed with justice to the historic development of the European Union.

Neither fish nor fowl

LIKE THE EARLY United States, the European Union has long found itself in “the federal situation.” Convinced of the necessity of transcending Europe’s past, in which anarchy produced despotism; seeing that each of them individually is a nullity; bowing to the reality that in some respects and for some purposes they must act together while being fearful of the loss of individual independence any such bargain might entail, Europeans have long been conducting the same mental experiments that so preoccupied the American founders. As John Kennedy put it 40 years ago, “the debate now raging in Europe echoes on a grand scale the debates which took place among the American states between 1783 and 1789.” One may, indeed, find these echoes across an even broader expanse of time, for with the making of the American constitution the federal problem did not go away, and Americans continued after 1789 the argument broached in the early years of their confederation. The Europeans, as Kennedy’s remarks suggest, have also been at it for a long time.

The basic problem faced by the American founders — how to find a basis for peace and power in a system of states susceptible to war and unilateral action, how to secure autonomy and independence while also establishing a basis for united action — is very nearly identical to that faced by Europe from the 1950s to the present day. Confronting this problem, the Europeans have been forced, almost in the nature of things, to tread the same ground — facing the same dilemmas, reconciling the same contradictions, conducting the same mental experiments — as the founders and trustees of the American union. There are federative systems in world history, some very distinguished, about which something similar could be said, but these two are arguably the grandest and most pregnant with historical significance. They are the most thoroughly versed in the grammar and language of constitutionalism (which formed a close bond, in both cases, with

the aspirations of their diplomacy). Observers were not wrong to see their establishment and growth as phenomena in defiance of “ordinary history,” exceptions to the normal pattern of states in anarchy, where the strong do what they will and the weak suffer what they must.⁵

Many American historians would resist the comparison I am making. The states of America, they say, were never sovereign in the sense that Europe’s nation-states were.⁶ Though this point is well taken, we should not underestimate the forces of parochialism and regionalism in the new America that emerged after 1776. Independence created a situation of multiple loyalties, identities, and interests whose reconciliation was felt to be an indispensable yet nearly hopeless task. If the differences between the states of America

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were not as large in some respects as those between the nations of Europe, they were yet larger in others. There is no difference in contemporary Europe — of language or socioeconomic organization or historic inheritance — that rivals the difference in ways of life between the slaveholding South, where half the population was in bondage, and the free states of the North, where “freedom, independence, industry, equality, and frugality, are natural to the climate and soil.” The gap between Thatcherite Britain and dirigiste France, or between postmodern Germany and post-Soviet Poland, seems modest and almost inconsequential by comparison. One convention delegate in 1787 compared the north-south gap to the

division between Russia and Turkey, by which he meant to say: as wide a barrier and as mortal an antagonism as can be imagined. Another observer, a dour New Englander, believed that the United States had to “remain a collection of Republics, and not become an Empire . . . [because] if America becomes an Empire, the seat of government will be to the southward, and the Northern States will be insignificant provinces. Empire will suit the southern gentry; they are habituated to despotism by being the sovereigns of slaves: and it is only accident and interest that had made the body of them the temporary sons of liberty.”

Most strikingly, the image held now in *memory* by the Europeans — of intensely hostile nation-states, supremely regulated in war, that destroy themselves in an internecine struggle for domination — was held in the *imagination* by the American founders. Being potentially in this world and yet wanting to escape it through constitutional innovation is a fundamental

⁵Daniel Webster, in 1832, called the establishment of a united government over distinct and widely separated communities “a prominent exception to all ordinary history” and noted that “unless we suppose ourselves running into an age of miracles, we may not expect its repetition.” Europe’s defiance of “ordinary history” is probed in Mark Gilbert, *Surpassing Realism: The Politics of European Integration Since 1945* (Rowman and Littlefield, 2003).

⁶See, e.g., Jack Rakove, “Europe’s Floundering Fathers,” *Foreign Policy* (September/October 2003).

Of Power and Providence

bond linking these two federative systems, however different they are from one another in other respects. Though comparisons between the old U.S. and the new EU typically stress the greater homogeneity in the former, the prospect of violence as a means of settling disputes loomed over the American union much more menacingly than it does over contemporary Europe. That the greatest war in Western civilization from 1815 to 1914 was fought in North America gives some idea of the surging forces that subsisted within the constitutional framework of 1789; by contrast, the sense that war is really impossible within the European Union makes it seem much more placid, less like the European state system of old and more like a stable and legitimate political order that has transcended the domestic/international divide.

Perhaps the most dramatic difference between the old U.S. and the new EU concerns the peculiar inversion of the powers respectively given to each. The European Union enjoys powers or “competences” over trade, monetary policy, agriculture, human rights, and various other matters that are well in excess of those enjoyed by the American federal government from 1789 to 1861. Yet it lacks the power to tax, save by unanimous consent, and its powers over security and foreign policy are attenuated and shared by other institutions, such that it forms one piece in a larger mosaic that includes NATO and the UN. The 1787 federal constitution, by contrast, gave to the general government the all-important power of taxation and vested it with plenary authority over war and alliances but otherwise sharply restricted the objects committed to the national government’s care. The EU’s wider range of “competences,” combined with its more limited powers, give it at once more “scope” but less “strength” than the early American union.⁷

The reasons for the EU’s limited development of the classic federal function (constituting a security community) are not mysterious. Europe’s nascent federal communities (the European Coal and Steel Community of 1951 and the Treaty of Rome of 1957) were birthed under the shadow of the Cold War and of American power. NATO, in effect, cleaved off the security problem from the domain of issues with which the European communities had to deal, and each further step toward integration in Europe took shape under its shadow. It has long been a question among analysts whether the insertion of American power into the affairs of the old continent had a galvanizing or inhibiting effect on the development of European unity. Perhaps the most reasonable answer is that it did both. The Anglo-American commitment to NATO created the necessary environment for progress

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⁷On the distinction between “scope” and “strength,” see Francis Fukuyama, *State-Building: Governance and World Order in the 21st Century* (Cornell University Press, 2004).

toward greater European integration, but it also removed the need for Europe to take responsibility for its own defense or to seek a much greater degree of integration in that area.

It is when we turn to the domains of finance and trade that we find the most surprising contrasts between the old U.S. and the new EU. The early American federal union presents nothing comparable to the profound interdependence now existing among European economies, and it lacked a common currency. The federal constitution established what was in effect a customs union, authorizing free trade among the 13 states and a common external tariff while prohibiting export duties. Well into the government's existence, however, there was little trade among the sections. In arguing for

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his "American system" of external tariffs and internal improvements, Kentucky congressman Henry Clay urged that it would be "favorable to the preservation and strength of our confederacy." "Now," he said in 1820, "our connection is merely political. For the sale of the surplus of the produce of our agricultural labor, all eyes are constantly turned upon the markets of Liverpool. There is scarcely any of that beneficial intercourse, the best basis of political connection, which consists in the exchange of the produce of our labor." Commercial interdependence among the sections grew substantially after 1820, in large part due to the protective tariffs enacted under Clay's guidance in the 15 years after the end of the

Napoleonic Wars. With the American system, Clay had hoped not only to limit the dependence of the United States on commerce with Europe, which experience showed had led to war, but also to create a web of interdependent relations within the union whose severance would be unthinkable, thus reinforcing the political ties among the American states and sections. But Clay's emphasis on the benign effects of commercial interdependence, so similar to the architects of the European project, proved in the American case to be far from a straightforward process of ever-increasing harmony. The South considered Clay's American system an oppressive and unjust exaction, increasing the cost of its goods and decreasing the value of its exports (to the tune, it was alleged, of 40 bales of cotton out of a hundred).

The early American union also experienced plenty of monetary instability. The Hamiltonian system was an ingenious plan whereby the funding and assumption of the debts incurred in the war of independence would create a fund of stable value and provide the underpinnings of a circulating medium. This worked marvelously for a time, but for long periods, as Daniel Webster complained in 1830, the currency was "practically and effectually under the control of the several State governments." While the excesses of state banking systems were reined in to a considerable degree under the first and second Banks of the United States (1791-1811, 1817-36), which performed

Of Power and Providence

a modest central banking function, the periods following the collapse of these institutions witnessed a high degree of monetary disorder. Enthusiasts for state currency control believed that "the scheme of sustaining a paper currency of uniform value throughout a country so commercial and extensive as the United States is an absurdity," in the words of Amos Kendall, one of Andrew Jackson's intimate advisors. The monetary system of the union from the 1830s to the 1850s more closely resembled Kendall's ideas than Hamilton's or Webster's, and there were multitudes of notes issued by different state banks that circulated widely and fluctuated wildly — a true Mecca for the sharp-eyed speculator and a misfortune for the unwary.

The lack of sectional interdependence and the plenitude of monetary disorder in the early American union underline its heterogeneous and decentralized character. Europe's commercial interdependence and monetary integration, by contrast, is of an entirely different order from that of the old U.S. Europe is far more interdependent and far more integrated. Europe, too, is much more powerful, in financial terms, in relation to the dominant center across the Atlantic than was the early United States in relation to the financial megalopolis of its day in Great Britain. In matters of trade, Europe stands on an equal footing with America. Though the euro's future remains problematic given continued national control of budgets in the EU, the mere existence of the common currency and a European central bank attests to a much greater degree of financial integration than was typical under the old American union.

Observers have frequently complained about Europe's democratic deficit, and usually contrast it with the abundance of democracy in the United States. But look a little closer and it is evident that the early American federal union had democratic deficits aplenty. Its House of Representatives was apportioned by the "federal ratio" counting African slaves as three-fifths of a person, a virtual necessity if North and South were to reach agreement in 1787. Its senators were chosen by the state legislatures and not directly by the people. Its justices served for life with good behavior. Its president was selected via complicated electoral machinery that was at considerable remove from direct popular pressure. These devices were all forms of "qualified majority voting," nicely balancing demographic weight, corporate identity, and sectional rivalries via a complex mixture of supermajorities. These features of the old American system underline the extent to which it was a union of states and sections rather than the national democratic republic it subsequently became. It was essential to the survival of the union that it guarantee the independence of the states, and the ingenious way the constitution did this, while also incorporating them within the entrails of the new system, gave it much-needed legitimacy. But the constitution could be, and

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increasingly was, scored on the failure to fully reflect the democratic impulse, a pattern not unlike that registered in the development of European institutions.

The tension between widening and deepening was also a subject of frequent comment in the old U.S. We customarily think of "expansionism" as being nearly identical to "nationalism," but in the 70-year period from the Constitution to the Civil War it often occurred that "the expansionists were not nationalists and the nationalists were not expansionists."⁸ Lateral extension, by promoting centrifugal forces, made deeper integration more problematic, and it also disordered the balance of political power within the union. This tension has also figured prominently in the EU, where the least

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avid centralizers have been the most enthusiastic proponents of expansion and vice versa. There is also a third perspective on this question, represented in contemporary Europe by Germany and in 1820s America by John Quincy Adams and Henry Clay, which holds that both widening and deepening are necessary and must be pursued together. Perhaps of both unions it can be said that if they survive the decentralizing forces encouraged by rapid widening, they become stronger as a consequence. Like the conflict over centrifugal and centripetal forces, to which it is closely related, this vexed question concerning the relationship between size and cohesion is a matter of constant attention and speculation in

these federative systems — another key similarity between them.

These contrasts and continuities might be extended to yet further areas, but enough has been said to bear out the main proposition advanced earlier: that these two unions are distinct species of a common genus. They solve, or try to solve, the same problem, though they do it in different ways. They are very different from one another in detail but alike in their peculiar mix of centrifugal and centripetal forces, which are always doing political battle, and alike in their constant struggles over representation, burden-sharing, sovereignty, and subsidiarity. They can, without fear of contradiction, be plausibly described as very weak and very strong, depending upon the dimension of power or authority that is highlighted. Both are classic half-way houses, really neither fish nor fowl, midway between a state and a confederation of states. In one sense they leave the old interstate world of rival and clashing nations behind them, and in a profound sense their core mission is to escape that world; at the same time, they do not fully escape and do not wish to fully escape it, because the purpose of federal union is not to submerge individual states and peoples in a bland homogeneity but to pre-

⁸David Potter, *The Impending Crisis: 1848-1861* (Harper and Row, 1976).

Of Power and Providence

serve them in all their glorious differences while at the same time putting limits on their mutual rivalry. These unions are not founded in brotherly love, but rather from appreciation of the dangers of letting conflicts get out of hand. They are like a certain kind of troubled marriage that hangs together not from sincere affection but from reflection on the awful consequences of a divorce.

Europe's task

JEMPHASIZED EARLIER THAT these federative systems must guard against the rival dangers of anarchy and empire both within themselves and within the larger society of states. This was a central aspect of America's mission at the beginning; it is Europe's mission today. Europe, in some fashion, must seek to make more perfect its own federative system while checking the unbounded power of the United States. Much as this need may place Europe in its own "Madisonian moment," it is by no means clear how these delicate tasks are to be performed. Both objectives, in fact, entail tasks that are problematic in the extreme, for which the past offers little guidance. Historical reflection can tell us something important about the fundamental values which it must be the function of wise governance to pursue — such is the faith of the conservative — but the means of getting there in the here and now must be found in *medias res*. Any mechanical application of past models ought to be viewed with skepticism.

The failure of Europe's Constitutional Treaty to gain popular ratification in France and the Netherlands has induced a glum prospect for the new EU. Anxiety over the EU's future was deepened by the multitude of reasons assigned for failure — here opposition to further enlargement, especially to Turkey's prospective admission; there anxiety over what the rapid absorption of 10 new members, together with competition from China and India, will mean for job prospects. Estrangement from the right over the loss of national independence to unaccountable authorities in Brussels was coupled with alienation on the left over the loss of social welfare protections. There seemed to be a consensus, and there probably remains a consensus, on behalf of most changes the treaty proposed — the enhancement of the European parliament's role in EU decision-making, the establishment of a European foreign minister with greater authority than currently possessed, and the renovation of voting procedures and limitation on rotating heads of state to handle the complications posed by 25 as opposed to 15 members. The popular challenge in two of Europe's founding members, nevertheless, was a shock to European optimism and self-confidence. The treaty was designed to close the gap between Europe and its peoples, but the French "*non*" and the Dutch "*nee*" seemed to make that chasm grow.

Certain commanding facts, however, must be kept in mind. Europe's Constitutional Treaty was not, as was the U.S. federal constitution, a com-

David C. Hendrickson

plete overhaul in the structure of the system. Nor did Europe face a crisis at all comparable to the “imbecility” of Congress in the waning years of the American confederation when debts lay unpaid, requisitions unfulfilled, and treaties disregarded. It is part of the EU’s historical significance that the defects of the confederal form that made change imperative in America have not prevented the EU from governing effectively, whether in the movement to a single market, the introduction of the euro, or the incorporation of new members. Somehow, the EU has suffered from the great and commanding defect of the Articles of Confederation — the principle of legislation for collective bodies, as distinguished from the individuals of which they consist — but has nonetheless functioned relatively well. Suffering from no mortal institutional illness, it had no need of radical surgery, and the Constitutional Treaty offered no such remedy. In that sense, the failure to ratify is far less significant than meets the eye and confirms Europe’s determination to preserve its identity (by restricting new entrants) and to hew to a middle course between the dreaded specter of anarchy and the no less distasteful alternatives of homogeneity and centralization.⁹

More problematic is Europe’s task of dealing with America’s bid for mastery of the states system. Americans, of course, resent the idea that a check upon their power is necessary or desirable, but the need for such follows inexorably from the political science of the American founding. The founders probed deeply into potential derangements of power; saw the “intoxicating effect” it had upon the human mind; understood, with Tocqueville, that unlimited power is a dangerous thing: “Human beings are not competent to exercise it with discretion.” The old truth was illustrated anew when the United States, at the moment of its greatest power, announced that it intended to preserve against all rivals its preeminent status and jettisoned its previous commitment to arms control; it was confirmed when, at the same time, the U.S. declared it would no longer be bound by the laws traditionally governing the use of force, which forbade both preventive war and the violent overthrow of regimes for the purpose of changing their political form. This conduct demonstrated the wisdom of Alexander Hamilton’s axiom that “The spirit of moderation in a state of overbearing power is a phenomenon which has not yet appeared, and which no wise man will expect ever to see.”

These considerations suggest the need for a balancing function that checks American power. Though it is easy to caricature this balancing function and to denounce certain versions of it as “half-baked,”¹⁰ there is nevertheless a basic consensus in Europe that this function must be performed in some fashion. Tony Blair proposes to do it by sidling up to the Americans,

⁹See the discussion in Andrew Moravcsik, “A Too Perfect Union? Why Europe Said ‘No,’” *Current History* (November, 2005).

¹⁰Timothy Garton Ash, *Free World: America, Europe, and the Surprising Future of the West* (Random House, 2004).

Of Power and Providence

Jacques Chirac by refusing to disguise disagreements, but they both want to do it, as indeed do most other Europeans. Euro-Atlanticists, no less than Euro-Gaullists, want consultation, influence, and representation in the decisions that affect their rights and interests, as many American decisions do, and insofar as they achieve this, checks and balances are introduced into "global governance." But there are two further complications: First, the Europeans are not united in how to get influence in Washington, displaying simultaneous tendencies toward defiance and cooperation. The second complication is grimmer. Though Europe wants a constitutional relationship with America, America is loath to have one with her. The request for consultation, influence, representation, is seen in America as a demand for vetoes, and America "doesn't do vetoes."

In dealing with the United States, Europe's predicament is unenviable. Broadly conceived, it has three options — "exit, voice, and loyalty" — each of which has serious drawbacks. It may declare strategic independence and sever its security relationship with the United States; it may remain within the Atlantic Alliance but refuse to support American initiatives it considers wrong-headed or dangerous; finally, it may go along (or "bandwagon") with U.S. initiatives in the hope that acquiescence in some areas will earn it influence in others.¹¹

The Constitutional Treaty, recently cast into limbo, did not embody the aspiration of strategic independence. Its drafting occurred alongside the intense transatlantic storm provoked by the Iraq war, and consequently it is easy, though misleading, to conflate the two distinct processes. Institutionally, it was a dubious vehicle for strategic independence because it provided a liberum veto over foreign and security policy to all 25 members. With respect to this important class of federative functions the EU was to remain a "fleet sailing under convoy," as John Adams described the American union in 1775: "The swiftest sailors must wait for the dumbest and slowest." Though the treaty was characterized by American Euro-skeptics as sounding the death knell of NATO,¹² its text held that the treaty's pledges of common security "shall be consistent with commitments under the North Atlantic Treaty Organization, which, for those States which are members of it, remains the foundation of their collective defense and the forum for its implementation."¹³

The movement toward a European constitution, indeed, is not fully explicable without reference to the Atlantic Alliance. It was the prospect of EU enlargement, more than any other factor, that made indispensable a re-

¹¹For investigation of these conceptual alternatives, see Albert Hirschmann, *Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations and States* (Harvard University Press, 1990). Seymour Brown calls them "balancing, balking, and bandwagoning." See *The Illusion of Control: Force and Foreign Policy in the 21st Century* (Brookings Institution Press, 2003), 750.

¹²Jeffrey L. Cimbalo, "Saving NATO from Europe," *Foreign Affairs* (November/December 2004).

¹³Article 1-4.1.7 of the Treaty establishing a Constitution for Europe.

David C. Hendrickson

articulation of the European constitution and led to the European Convention of 2002–03, but EU and NATO enlargement were achieved together as a sort of joint project of Europe and America to create a new order in the aftermath of the Soviet collapse. The Constitutional Treaty assumed the persistence of this order rather than its dissolution. A far different treaty would have been required had the latter possibility been held seriously in prospect.

Strategic independence, though attractive to many Europeans, remains for several reasons a distant prospect. Such opposition to American imperialism as is open and strident has thus far taken only a verbal form and seems likely to remain in that vein. The sharp critics of America in Europe who favor independence face the predicament that the thing that they most object to — American militarism — is precisely that which they are least able to prevent. Breaking NATO, in all probability, would not do it.

In basic respects, moreover, the internal character of the EU actually forbids it from creating a foreign security policy and defense identity that would enable it to be a world power in the military sense, such that it might balance against the United States as the Soviet Union once did. Apart from the manifest unwillingness of European public opinion to embrace the costs and hazards of such an enterprise, this sort of doing is contrary to its being as an association dedicated to the peaceful settlement of disputes. It could also gravely threaten its internal balance.

Europe's strategic dependence on the United States should not be exaggerated. Were the United States to withdraw from European affairs, it is probable that Europe could successfully maintain its independence and its union. This sharply limits the leverage the United States might gain by threatening a withdrawal of protection. It is also true, however, that the attempt to unite Europe on the basis of antagonism to the United States would instantly divide it. A Franco-German attempt to break Europe from NATO, especially, would inevitably open up far-reaching divisions and split Europe into several ungainly pieces divided east by west and north by south. These factors lend to existing institutions a sort of life-force produced by fear of death. They make probable the continued mutual coexistence of NATO and the EU.

Another consideration pointing to stability in institutional relationships stems from the exigencies produced by the accession into NATO and the EU of entrants from the old Soviet empire — the adopted children, as it were, of America and Europe. This new eastern bloc, with seven members having lived under Soviet domination, gives the United States a potent avenue of influence in the new environment. These states still fear Russia and attribute their recovery of national independence and freedom to the United States. They are also very sensitive, of course, to their dependence on the European Union, and they admit that the Americans are behaving badly, but they still find a basic security in the American connection. Ironically, they understand that they might well become a stake and potential victim of the rivalry between the U.S. and the EU, but it is their fixed conviction — not without

Of Power and Providence

considerable moral appeal — that it would be cruel and unusual for either the U.S. or the EU to make them break their relations with one behemoth as the price of good relations with the other. Partly for this reason, it is unlikely to happen.

The seeming impossibility of independence reduces Europe's options to some mixture of cooperation and defiance, and its objective inexorably becomes not throwing America out of Europe but getting America to return to a better sense of itself. Etienne Davignon's account of European anxieties points to the problem and intimates the remedy: "After World War II, America was all-powerful and created a new world by defining its national interest broadly in a way that made it attractive for other countries. . . . In particular, the United States backed the creation of global institutions, due process, and the rule of law. Now, you are again all-powerful and the world is again in need of fundamental restructuring, but without talking to anyone you appear to be turning your back on things you have championed for half a century and defining your interest narrowly and primarily in terms of military security."¹⁴ Perceiving the violation of certain sacred obligations, Europeans have been since 2002 in a condition similar to many Massachusetts Whigs in 1845, who objected to the unconstitutional annexation of Texas and the injury it inflicted on the federal Constitution but resolved not to withdraw from the union as a result. "They have preferred still to do in the Union, what measure of good they might, although the instrument of union is thus rudely attacked and wounded."¹⁵

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The European reaction to the unbridled use of U.S. power in George W. Bush's first term was thus one of both defiance and cooperation, and it will probably retain a mixed character. It would be churlish for Europe to refuse cooperation in matters where Europe also has an important stake, like common action against terrorism, but this eminently reasonable attitude limits any attempt to impose linkage and, given the enmeshment of America and Europe in many international issues, makes for a form of bandwagoning. Alongside this, however, the European refusal to do the dishes after the Americans made their unilateral meal in Iraq was a form of defiance, and one that had a significant impact. American force planning before the Iraq war was predicated on the assumption of allied reinforcement on the model of the Western interventions of the 1990s; its relative paucity in Iraq has put unexpected strains on the U.S. military. Even when European governments have wanted good relations with America, the sheer unpopularity and felt

¹⁴Quoted in Clyde Prestowitz, *Rogue Nation: American Unilateralism and the Failure of Good Intentions* (Basic Books, 2003), 8.

¹⁵Edward Everett Hale, *How to Conquer Texas, Before Texas Conquers Us* (Redding, 1845), 3.

illegitimacy of the American effort constrained their ability to offer troops. European publics do not warm to the idea of taxation without representation, and their attitude has been registered in the conduct of their governments. Here, at least, Europe's democratic deficit is not so large after all.

These simultaneous tendencies toward both cooperation and defiance, much as they might be derided for weakness, make for a constitutional check on U.S. power that is salutary for America and positive for the West and the world. They help correct the atrophied state of America's own domestic institutions as a restraint on the warmaking power of the executive.¹⁶ One cannot swear to their efficacy, but the constitutionalist must be intrigued by the possibility that he might, like some latter-day George Canning, call the old world into existence to redress the balance of the new.

Keeping the faith

LAMENTING THE SEPARATION between the American colonies and Great Britain, Jefferson wrote in 1776 that "we could have been a great people together." Few would argue today that the disruption of the First British Empire was a monumental tragedy for mankind, but it would undoubtedly be tragic were the West's broken and divided condition to persist and deepen. Europe and America, the joint inheritors of Western civilization, each showing itself to best effect when working in concert with the other, suggest that we could have been a great people together, too. The immediate prospects for the restoration of a common vision seem remote, but we can at least keep the ideal of this cooperation alive in memory and imagination as a standard to which it may one day again be possible to repair.

If the American people consulted the principles that lay at the heart of their own institutions, as these were established for them by the founders, they would welcome the existence of a partnership with Europe and understand the need for checks and balances on their own power. America is not now in a mood to listen, but Europe should and will continue to press its case. However it fares in making the United States more tractable and in teaching that assuming brother, moderation, its own course seems clear. Europeans will continue to stand for a vision of the international system based on cooperation and not on domination, will seek in the world at large approaches that rely on "the umpirage of reason rather than of force," and will likely remain sufficiently cohesive in union as to constitute a good lesson to mankind in the advantages of their distinctive approach to the settlement of conflict. Having ended up where America began, they can do no other.

¹⁶For an eloquent statement of this theme, see David Calleo, "Transatlantic Folly: NATO vs. the EU," *World Policy Journal* 20 (Fall 2003).

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