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Thank you for your kind introduction, which is more than I deserve. And thank you, everyone, for inviting me to take part. I have many friends here, some of whom are accustomed to hearing me speak in another language, like my friend Prime Minister Chrétien.

But I very much appreciate the fact that you have asked me to speak in Italian – a perfect example of Swiss federalism in action. Before I begin, let me tell you a little story. During one working session of the current European Convention, a Convention member expressed the opinion that Europe could never become a democracy because of the different languages spoken there. A representative of the British parliament then asked permission to speak and said: “Someone had better tell the Swiss, they’ll be very disappointed”. Switzerland demonstrates that a plurality of languages is no obstacle to democracy; on the contrary, the fact of speaking several languages can enhance democracy.

The Convention, and our experience of it, is unusual in a number of ways. It was originally constituted by the European Council for the purpose of reorganising and simplifying the existing treaties. That was its mandate. A few months on and everyone is saying that the task of the Convention is to prepare a European constitution. The mandate has changed, in substance and in terms of people’s expectations. To the point where our Chairman

(former French president Valéry Giscard d'Estaing) defines the future product of the Convention as a *traité constitutionnel*, or constitutional treaty – a seeming contradiction in terms. But history tends to be made up of such contradictions.

The question of a constitution for Europe – and our discussion of the matter – inevitably reminds us of the dual meaning that has always attached to the word constitution. Students of constitutional law and its history tell us that there have always been two contrasting notions of what a constitution is. On the one hand, a constitution is the source of legitimacy for the authority required to change the status quo upon the assumption that civil society in its existing form is unable to achieve the ends that need to be achieved. On the other, there is the idea of a constitution as limiting public powers so that they do not interfere unduly with the rights, freedoms and interests expressed by civil society, which alone make for the desired ends.

Historians tell us that these two basic notions derive from the thinking of two great men who lived 400 years ago, Jean Bodin and Johannes Althusius (Althaus) respectively. Bodin believed in a legitimised central authority whose duty was to eradicate peripheral authorities; Althaus saw the covenant between communities as the constitutional foundation of their coexistence.

This may or may not be so, but the point is that these two concepts have grown up alongside each other, initially in extreme ideological opposition, then managing to rub shoulders in the European constitutions of the twentieth century. On the one hand, such constitutions recognise rights that the public authorities may not infringe; on the other, they call on the same public

authorities to eliminate inequalities and discrimination and ensure equal opportunities and security for all. Federal constitutions, though frequently different from each other, are on the whole an eloquent example of the possible conciliation between the two historical concepts of constitution.

We may have forced Bodin and Althaus to come to an understanding, but we ourselves are not always willing to do so. And, as we contemplate a European constitution, the problem is again whether we can achieve a balance between these two concepts. There is a compelling need in Europe to guarantee the responsibilities and competencies of national communities – and even more of regional and local ones. But there is also a compelling need to make it possible for Europe to achieve the new objectives which Europeans are demanding: to live in a healthier environment, to enjoy greater security, to reduce poverty in the world, to create a world in which fundamental rights are respected, to ensure that the peace we Europeans have achieved among ourselves is the norm for relations among all nations – as Kant said it should be.

We therefore wonder whether, for Europe too, the federal idea may not be the basis from which these two needs can be reconciled. The question is therefore: can Europe be a federation and, as a federation, can it find a balance between the need for guarantees and the need for power to bring about change?

The European Union (EU) already incorporates principles characteristic of federal systems, beginning with the principle of loyal cooperation between states and the supremacy of Community law. This is fundamental. Daniel

Elazar – whom we all regarded as one of the great theorists of federalism of our time – always wrote, and rightly so, that for a federation to function it is essential that its component parts be intent on collaborating with one another and not on working against one another. The purpose of a federation is to work together, recognising common objectives, in the knowledge that no one can achieve these common objectives by acting alone. And in achieving them, the members accept the primacy of the law that expresses them.

At the same time, there is one feature of the EU, which makes it very different from a typical federation: functions are transferred to the federal level, but not sovereignty. I do not know how a Swiss student of constitutional law would answer the question: is the federation sovereign? I would not complain if he said no – because in the history of European political culture sovereignty means exclusive authority. Typically, the term has been used to indicate an authority which brooks no rivals over one and the same territory and population. Organisations inspired by the thinking of Althusser deny exclusivity as a matter of principle. No one in a pluralistic system is the exclusive holder of public authority. Therefore, the fact that sovereignty in the EU has been gradually evaporating as functions have been transferred from the individual states to the European level distances it from seventeenth-century ideologies of statism, which persisted into the twentieth century on the European continent.

And yet, there are significant differences between the EU and a federation. For one thing, a federation is referred to as a state, a federal state, and therefore it must possess some sovereign attributes, like the state envisaged by Bodin. And, at this prospect, many Europeans draw back.

Secondly, up to now Europe has followed a route quite contrary to the route leading to the establishment of a federation. When a number of states, cantons, Länder or regions decide to set up a federation, they begin by transferring military power, the power to make foreign policy, and the power to issue currency to the federation. Europe has taken 50 years to transfer the power to issue currency to the pan-European level, though its starting point was economic integration. And military power and power over foreign policy have for decades remained as clear markers of the enduring sovereignty of the member states.

Now we are beginning to see some changes because the call for Europe to become more of a reality which is one of the foundations of the European Convention in which I am now involved, has arisen from concerns about international policy and defence policy. There is a very widespread conviction among the citizens of our countries that we – each and every one of us – can only play a role in the world if we play it through Europe. But the conviction is also spreading that, in the international field, the sum of our national sovereignties is becoming the sum of our impotence. And the sum of our prime ministers and foreign ministers who run around, one after the other, visiting the White House, meeting with our friend Jean Chrétien, or going to see the Indian prime minister, is a clear sign that none of them counts sufficiently to give Europe an influential voice. We shall see what can be achieved by changing the way we do things.

At the same time, it is clear that in the economic sphere, in which for decades we have been pursuing the process of integration, we can allow ourselves greater diversity than we have done until now. Even in a federation, not all the

regulations governing economic matters need to be harmonised. On the contrary, given a common platform, diversity can be useful.

In practice, what direction is the Convention taking? We are heading towards the unification of our treaties and a merging of the entities we have created. At present, we have a European Community (EC) and also an EU. Sometimes when we enter into negotiations with other countries, we ask them to conclude two treaties: one with the EC and one with the EU. We owe it to the patience of such countries that they are willing to go through with this procedure, which they generally do not understand because the same people are involved. They wonder why, with one hat on, we are the EC and, wearing another hat, we are the EU. So we are unifying the two, creating a single legal entity in international law: the EU.

So you see that we are moving gradually towards something that does not resemble a state, but is in some respects similar to a federation. We may be moving toward a separation of powers resulting in the existing model, which is more typical of high authorities created through an alliance of states than of federal organisations. This will be the case if we ascribe legislative authority to the European Parliament and to a single council for legislative affairs representing the member states (or rather their governments), and if we ascribe executive authority primarily to the European Commission, meanwhile leaving authority in foreign affairs and the guidelines (Richtlinien, as they would say in Germany) for the future of the EU to a European Council made up of prime ministers. This arrangement, too, is more in keeping with the rules governing a federation than those of an alliance.

And yet there will be something about this Europe which makes it distinct from any federal organisation: on the one hand there is the European pillar expressed in the European Parliament and the European Commission, on the other, the pillar deriving directly from the member states which play a direct role in the European organisation through their prime ministers and other ministers. There is no federal organisation in which the member states have such direct involvement in the federal organs – at least, not to this extent.

But a new form could emerge. We do not know. Of course, we have been speculating, with Chairman Giscard, as to when there will be a European government and what its composition will be; which elements will be derived from the competencies currently exercised by the European Commission, and which from the competencies of the European Council and the various councils of ministers.

Our answer is that we are not yet able to say; it will be determined by the events of the next few years. I tried giving this answer to some of my ardently federalist friends, and they were very disappointed. They are looking forward to a D-day when everything will change – and in the very near future.

But this is not the way things work. Those who know the history of the United States know that it decided to adopt a full constitution – and so progress from confederal to federal status – in 1787. But the constitution was not the final step. The transition from the member states being present in the Washington organisation to their electors being represented did not occur until 1913, when it was decided that senators, instead of being elected at one remove by the state legislative assemblies, should be directly elected by the electors of the

member states. This was 120 years after the federal constitution was adopted. So, slow as we Europeans are, we still have a long way to go. And the constitution we shall soon be seeing will simply lay new foundations for further development.