

## SPEECHES

### THE EURO: A CURRENCY IN SEARCH OF A STATE

GF MANCINI\*

#### I.

The decision to enter stage three of Monetary Union (EMU) and the ensuing establishment of the European Central Bank in May-June 1998 have opened a new and exciting phase in the long-running debate on democracy and political unity in Europe. That the Economic Community of old suffered, and today's European Union still suffers, from a serious democratic deficit has been a commonplace in academic writing, the media and, increasingly, the political elites of some Member States for at least two decades. As everyone knows, its most disturbing aspects are usually identified in the fact that the Council of Ministers, Europe's dominant institution, lies beyond the reach of the citizens voting in European elections; in the still limited powers of the European Parliament as a legislative body; in the utter opaqueness of the decision-making machinery; and in the overwhelming role which technocrats, both unaccountable and devoid of popular legitimation, play in the operation of that machinery.

In my inaugural professorial address at UNSW last year, I argued: (a) that these aspects stem from the original nature of the European Union as a *sui generis* international organisation, namely as a polity where governance is by definition based not on democracy, but on diplomacy; (b) that they have undergone a certain attenuation, especially in terms of an improvement of the Parliament's status, which signals a progressive absorption by the Union of doses of federalism and statehood; and (c) that they will further dilute and perhaps waste away only if and when the evolution of the Union into a fully-fledged federation ejects the traces of international law and practice which still

---

\* Judge at the Court of Justice of the European Communities. This speech was delivered as part of the Coudert Bros Lectures for the European Law Centre at the University of New South Wales, November 1998.

linger in its fabric. I shall add, resorting to a formula instigated by the former President of the European Commission, Jacques Delors, to which I entirely subscribe, that such a federation is conceivable only as a unit assembling nation-states and, therefore, not as a nation *itself*. In the European polity, statehood and nationhood are destined not to be concomitant. What OW Holmes wrote about the “begetters” of the American Constitution, namely that: “it was enough for them to realise or to hope that they had created an organism”, is all that can be envisaged for our Continent. The words which follow: “it has taken a century and has cost their successors much sweat and blood to prove that they had created a nation”, have no reasonable chance of being reiterated on our side of the Atlantic. Regardless of how its powers and cohesion increase, the EU is in all likelihood bound to remain an “organism”.

These views have been criticised for a variety of reasons, the most pertinent of which coincide in essence with the arguments of those political scientists who tend to belittle the weightiness and the anomalous nature of the democratic deficit in the EU. In their words, the latter is but “an instance of post-parliamentary governance” epitomising or, at the most, emphasising trends which are clearly detectable in the evolution of all advanced Western societies. Such societies have become too complex and differentiated for policy-making, with its monitoring and deliberative processes, to take place in the *single* setting or forum which a parliament is by definition. The monitoring and deliberative settings are now as numerous as the various policy areas, each of which engages multiple, self-representative interest groups and requires specialised technical expertise. Parliamentary democracy tends as a consequence to be superseded by a *de facto* democracy of organised interests and parliamentary sovereignty makes way for expert sovereignty. Policies and the rules embodying them are not only shaped, but “legitimised ... by expert knowledge, as opposed to [the] popular, common-sensical, everyday knowledge” which is as much as traditional parliaments are able to muster.

Taking issue with these remarks would be pointless. Once stripped of the sometimes irksome complacency of their authors, they reflect an undeniable reality, just as the unflattering comparison drawn by Professor Weiler between the “netherworld” inhabited by the European experts and the elitism of the higher French civil servants, the entrenched secrecy of their British brethren and the rigidity of the German *Beamten*, wittily hits the nail on the head. It is even possible, as Weiler suggests, that the transnational character of that netherworld makes its discourses and negotiations more democratic than those of its national counterparts; although I suspect that by ‘democratic’ he means ‘dialectical’, which is not necessarily the same thing.

This, however, is only part of the picture. The other part, which the believers in the primacy of executive bureaucracies do not see or minimise, is the fact that experts in the national contexts are accountable to the Ministers they serve who, in turn, account for the actions of the former to the national parliamentary majority from which they derive their mandate. In Europe, by contrast, the technocrats debating and preparing the Union’s legislative acts are much freer from the Ministers’ control, were it only for the reason that Ministers flit in and

out of Brussels becoming, in the process, highly dependent on the advice they receive. The experts are, therefore, the *real* co-legislators which, given their greater competence, blunts the effectiveness of the European Parliament's contribution to the law-making process. But the situation is even worse when it comes to the implementation of those same acts. In contrast to what happens at national level, the Parliament is entirely estranged from this all important task which is carried out exclusively by the experts, whether appointed by the Member States or belonging to the European civil service. In both cases they are democratically accountable to no one.

## II.

Of course, further arguments and instances could be found to demonstrate that expert sovereignty in the EU is clearly more absolute than in its Member States. What has been said so far, however, seems to me sufficient to prove that the solace which one may draw from analysing the EU as just another case of post-parliamentary governance is short-lived and in any event scant. The democratic deficit of the Union is to the democratic "imperfections, contradictions and dilemmas" of most advanced Western societies what the beam is to the mote.

Or, rather, it *was*. The accomplishment of Monetary Union and the Stability Pact which was added to it in 1996 oblige the observer to look for analogies even more powerful than those of the Bible. For reasons which I shall not review but which I assume to be entirely justified, the primary function of the Central Bank (ECB) has been conceived by the authors of the Maastricht Treaty as providing an uncompromising guarantee of price stability and therefore requiring a watertight insulation of the new body from the pressures of politics and partisanship. Such insulation and the ensuing depoliticisation of monetary union could of course be achieved only by granting the ECB a status of independence. But while this choice was of itself orthodox, central bank autonomy having evolved into an accepted feature of modern constitutionalism as an expansion of the doctrine of separation of powers, the degree of independence conferred on the ECB is, both in terms of its scope and depth, unprecedented and unparalleled. A simple comparison between the ECB statute and the provisions governing the German *Bundesbank*, which admittedly served as its model and are rightly regarded as the world's most rigorous and effective in shielding a central bank from political influences, will easily prove this point.

I shall not dwell on the significant divergences which the German and the European regimes evince as regards the monitoring of the two Banks' decision-making process by representatives of the legislative and/or executive branches. It will, I believe, suffice to point to the fact that the protocol setting out the statute of the ECB has constitutional dignity – an unheard-of occurrence in the realm of law – and to the rules concerning the overriding of the Bank's policy. Thus, while the German government has a temporary veto (two weeks) on the taking of decisions by the *Bundesbank* and the German Parliament can at any time change the mandate of the latter if it deems that the Bank has failed to

comply with its duties, the mandate of the ECB can only be altered by amending the Treaty, which implies a unanimous vote of the Member States and a cumbersome ratification procedure in their national Parliaments. In addition, since Article 88 of the German Basic Law was amended in 1992 with a view to entrenching the independence and the anti-inflationary function of the ECB, any fundamental alteration of the latter's status and objectives at the European level would in turn require an amendment of the Basic Law.

A system so conceived, it seems to me, consciously sacrifices the idea of reconciling, as many observers had hoped it would, the independence and the democratic accountability of the ECB, despite the Member States' clear awareness of the preponderant role which that body is bound to play in the government of the EU. Nor is it imaginable that such accountability could at least be partly retrieved by informally persuading the Bank's leadership to share responsibility with a political authority or to submit of its own free will to a hail of hearings, reports, inquiries and obligations such as publishing the minutes of its meetings or disclosing how its members voted. I would go further: in addition to being examples of wishful thinking (and in one case – the disclosure of the directors' votes – smacking more of voyeurism than of a keenness on transparency and legitimacy), those mitigations of the Bank's autonomy are not desirable. Whether one shares the philosophy of the framers or one just regards the product of their efforts as final and unchangeable, the only reasonable option is to let the Bank act as they wished: namely, as a body totally devoted to safeguarding the value of the common currency and willing to carry out this task with all the stubbornness, stiffness or even surliness which that might entail. It is for European politicians to take up the challenge posed by such an organ and do their job: ensuring that the might of monetary federalism be balanced by an equally powerful political federalism.

### III.

I am of course aware that a number of European politicians are reluctant to embark on this enterprise. As will be specified at a later stage, the governments of at least two of the 11 Member States which form Euroland rejected the prospect of a democratic counterpoise to the ECB and tended to belittle the scope and the powers of its possible embryo, the semi-formal club of Euroland's Finance Ministers (Euro-11). Even more eloquent is the recent statement of the President of the Commission, Jacques Santer, to the effect that Europe must prove that a federal Bank may function in the absence of a federal government. These views are not without a respectable cultural hinterland. Several economists have indeed maintained that, as evidenced by the success story of the gold standard, the worldwide supranational currency system in force until 1914, the parallel development of a monetary and a political union is not only not indispensable for the effective implementation of the former, but may actually jeopardise its basic premise, namely the immunity of the ECB from the pressures of political actors. In one word, the perfect guarantee for the primacy of

monetary policy over the other areas of economic policy, which still are and will continue to be the domain of partisan politics, is: "a currency without a State".

The intellectual respectability of this argument, however, does not conceal its intrinsic weakness. History, of course, demonstrates that whereas no monetary union unsupplemented by a political union has survived a major crisis among its participants (the outbreak of the First World War in 1914 is a telling example), all monetary unions concomitant with a political union have proven irreversible: but, in the words of Aldous Huxley, "that men do not learn very much from the lessons of history is the most important of all the lessons that history has to teach". Economic logic and constitutional reasons will therefore be more relevant for our purposes.

In this context, let me begin by pointing out that, even if a stateless environment were shown to provide the best background for a stable currency, the latter would only be one among the many economic aims of the EU as a whole. The Maastricht Treaty puts price stability on a par with sustainable growth which respects the environment, the raising of the standard of living and quality of life, economic and social cohesion including solidarity among Member States and – most crucial in a continent plagued by jobless masses – a high level of employment and social protection. Does this list warrant the conclusion that the institutional framework of EMU is inherently lame if not downright contradictory?

I believe it does. Indeed, on the one hand, *monetary policy* has been entirely pooled at the Union level and entrusted to a powerful Central Bank, which is uniquely committed to price stability, with the result that all the other Treaty objectives become subordinate to it in so far as any use of monetary instruments to pursue them at the risk of unleashing inflation is effectively ruled out. On the other hand, the Maastricht Treaty provides that *economic policy* – the only tool still at hand to boost economic growth and promote employment – remains, as I have just said, within the province of national governments and is merely coordinated at the European level. Such coordination is subject to an extremely fragile constraint as the soft wording of Article 103 (which speaks of "common concern" and "broad guidelines") patently proves. The consequence of this state of affairs is evident. Since the size of the Community budget (roughly 1.2 per cent of the Union's GDP) is insufficient to achieve significant macroeconomic results, and Member States are loath to see an increased share of taxpayers' money going to the European Union, the 'policy mix' in the latter will result from a *combination of centralised monetary policy and varying national fiscal policies*: a combination all the more peculiar and risky as the institutions in Brussels, unlike the American federal authorities, have no power to influence spending choices by individual States. This impotence has been forcefully stressed by Professor Cameron. The authors of the Treaty provisions on EMU, he wrote, "ignored a simple and obvious fact of political life – that no central bank, independent or otherwise, has *ever* operated, or *could ever* operate, without a political counterpart that is responsible for shaping the overall contours of economic policy".

#### IV.

The above considerations are worrisome enough; but the picture becomes positively frightening if one reflects that the third stage of EMU will marry a single monetary target for Euroland with large cross-country differences in economic conditions, enhanced by structural disharmony between national business cycles, and thereby provides a sure recipe for region specific – or, as economists say, asymmetric – shocks. To give you an example, a restrictive monetary stance adopted by the ECB, say, to counteract inflationary trends in some overheated Euroland economies may trigger recession and reduce employment in an already stagnating Italian context. Even worse, socio-cultural conditions prevailing in continental Europe (insufficient labour and capital mobility, and relatively rigid labour legislation) may prevent the market from reacting promptly and efficiently to such regional imbalances. In the past, all these factors led a host of economic writers to argue that the EU was far from being an optimal currency area. The authors of the Maastricht Treaty were obviously aware of this warning, but did nothing to endow the monetary union which they created with the institutional instruments required to achieve homogeneity in the pursuit of economic policies. I therefore tend to share the conclusion put forward by one of the leading economists in this field: “if ... we have cause for concern about the life expectancy of ... monetary union, it is not because [of] the objectives or governance of the ECB, but because individual countries may have too much trouble adjusting to its monetary policy”.

This remark seems to carry even more truth since, in the area of economic policy, the Maastricht Treaty only shows teeth when prohibiting excessive deficits of individual Member States. The relevant provisions, strengthened by the aforementioned Stability Pact, empower the Council of Ministers to impose heavy sanctions – fines up to 0.5 per cent of the annual GDP – on those countries which run deficits in excess of 3 per cent of their GDP. This is an extraordinary prerogative if it is true, as claimed by Jean-Claude Trichet, the Governor of the Banque de France, that it exceeds by far the power of the US federal administration to ensure that Texas or California run balanced budgets. However, and this is a big ‘however’, what may well be a necessary precaution against profligate national policies really amounts to imposing an unelected watchdog on budgets voted by democratically elected Parliaments. Those who recall that the House of Commons first laid the foundations of modern constitutionalism by obtaining, as early as the fourteenth century, the right to authorise taxation and control public expenditure, may have some cause for concern.

Nor is that all. The situation I have described warrants even more fundamental concerns about the impact of EMU on democracy in the context of the European Union. Let me try to explain why. As we have seen, the broad guidelines for economic policy adopted by the Council will be of limited help in shaping a homogenous economic background and avoiding asymmetrical shocks. At the same time, the ECB may only use those monetary tools which are consistent with price stability and, since it is bound to implement a single policy

for the Union as a whole, it *cannot* tailor its interventions to suit the specific needs of individual countries. Finally, because of the limits imposed on deficit spending, an individual Member State may prove unable to pursue an expansive fiscal policy in order to counteract a serious recession.

Well, aren't these factors bound to remove such basic issues as the general state of the economy or unemployment from the responsibility of political actors and hence from the electoral arena? In the event of an economic slump national politicians will no doubt try to get out of such a scrape by blaming the central bankers for pursuing a policy unsuited to their own country and question the wisdom of joining EMU in the first place. They will, however, miss the point, the cause of their woes being not the independence of the Bank and its duty to defend price stability across the Union, but the absence of a *European* economic policy to match a *European* monetary policy. It is because of this absence that no political body will be able to influence the economy by its choices, public debates at the national level will become little more than a shadow of democracy, as futile as television talk shows, and voters unhappy with the employment situation, their income taxes or mortgages, will be deprived of their time-honoured right to throw out the 'scoundrels' who have provoked or accentuated these ills.

## V.

The need for an effective political counterweight to the ECB was widely felt and prompted proposals, particularly from the French government, of a Euro Council empowered to pursue an effective European economic policy. Unfortunately, the French bid was perceived as a disguised assault on the independence of the ECB, stirring up fierce opposition from the German and Dutch sides. The inevitable compromise gave birth to a half-baked creature, the aforementioned 'Euro-11', intended as a forum for the Finance Ministers of participating Member States to discuss issues relating to the single currency while excluding the four countries composing the more or less skeptic 'Eurofringe' which do not take part in monetary union.

Such a forum may well be an appropriate response to the bizarre demands of Prime Minister Blair and the other Eurofringe leaders to, as it were, put their mouth where they failed to put their money; nor can one exclude the possibility, especially after Schröder's victory in Germany, that Euro-11 will acquire more power in the future. At this stage, however, it falls far short of providing Euroland with a genuine economic government. And yet, calls for a counterweight to the ECB do not only come from academics and congenitally statist French officials. The need not to leave the new bank in a political vacuum has also been stressed by such a respected central banker as Tommaso Padoa-Schioppa, currently a Member of the ECB Executive Board. Purporting to express the views of his colleagues, he argued with even greater verve than Professor Cameron that:

The ECB's birth evokes, postulates and makes it indispensable to create rapidly a European political counterpart. We want it; we need it as much as the air we breathe. The Bank's independence presupposes a political power to establish a constant relationship of information and exchange of views. Failing that, there would be no independence, but just navel-gazing and solitude.

Furthermore, Padoa-Schioppa aptly observed that while the EU, under the excessive deficit procedure, can prevent participating Member States from doing evil, it is itself prevented from doing good by developing a fiscal policy of its own.

Once again, the incremental or 'spill-over' logic which has so far ensured the institutional progress of Europe obliges further steps to be taken on the path towards integration. If national governments are no longer individually in control of their economies, then the necessary powers must be conferred upon a central political organ. I don't imply by this that large portions of tax-raising and public spending ought to be transferred from the Member States to Europe. What I *do* mean is that the fundamental economic options for Euroland must be taken at the European level; and any notion of democracy, parliamentary or for that matter post-parliamentary, would then require that the body empowered to take such options must be accountable to public opinion. In this respect, even the French proposals for a stronger Euro Council were inherently defective. Had they been accepted, the technocracy of the central bankers would have been adequately balanced; but the balancing force, the technocracy of the national Finance Ministries, would itself have eluded any serious form of democratic control.

To sum up, Europe's democratic deficit as exacerbated by the design of EMU cannot, as I have pointed out, be remedied by subjecting the ECB to disclosure and reporting requirements. For both economic and constitutional reasons, Monetary Union calls for bold steps towards the creation of robust European economic governance. The political debate in economic affairs will have to move significantly from the national to the European level and issues of democracy must be addressed in that context. I submit, furthermore, that these conclusions are confirmed by a brief overview of the external aspects of European integration.

## VI.

Only in one case does the Treaty provide a political organ with sufficient powers to govern the economy. Ironically, that happens in the very area which may cause a serious disturbance to the activities of the ECB in the pursuit of its institutional tasks, namely *external* monetary affairs. One of the most arcane EMU provisions empowers the Council of Ministers, by a qualified majority of participating Member States, to map out general orientations for exchange rate policy in relation to foreign currencies. But, whatever the exact balance of powers between the ECB and the Council may be in this area, one thing is evident, namely that the European Parliament remains shut out. Of course, by



their very nature, monetary arrangements are discussed and concluded behind closed doors and no popular representative body is called on to ratify them. Yet, what makes the case of the EU unparalleled is that whoever, in the future, strikes those arrangements in its name will not be accountable before its own representative body – and ultimately before the Union's electorate – for their impact on *domestic* economies.

And, mind you, this situation is by no means unique. Just consider the external projection of the Community in the realm of commerce. The Amsterdam Treaty reinforced the role of the European Parliament in decision-making. It made, however, some important exceptions, the common trade policy being the most important. Yet, in a globalised market, trade policies are often decisive for the long-term prosperity of undertakings and of the economy in general, so that one can hardly contend that they are best left to the netherworld of experts and should escape any form of democratic supervision.

The Parliament's position is equally marginal in the so-called second pillar of the Treaty, the common foreign and security policy (CFSP). Based on the recognition that individual European States have become unable to play a significant role on the international stage, the CFSP presently amounts to little more than coordination between national diplomacies in the discrete venue of the Council's meeting rooms. Admittedly, unlike the establishment of a European economic government, the reinforcement of CFSP and the transfer to a supranational authority of a number of powers in this context bear no direct link with the creation of the ECB. It has been authoritatively argued, however, that EMU may bring conflict or, in extreme circumstances, even war between the US and the EU. Although such fears are clearly implausible, they show that a single currency will have, to say the least, some bearing on European foreign and security policy. It is therefore highly regrettable that here, too, the authors of the Amsterdam Treaty have done no more than provide for a mere consultation of the European Parliament on the main aspects and the basic choices of that policy. Indeed, if a common foreign policy is needed for Europe to be heard in the international arena, it cannot be designed and decided by national officials out of the public eye, subject to a parliamentary debate, or rather a parody thereof, that could in no way affect their determinations.

In all of the areas I have mentioned, the European Union shows a blatant inconsistency between the extent of competence in international affairs already transferred to Brussels, or soon to be pooled together, and the shortcomings of its democratic structures. It follows from what I said at the outset that this inconsistency is a product of the peculiar nature of the Union, which makes it both so intriguing and prey to the sophisticated mindgames of academics on either side of the Atlantic. But, that peculiar nature is also at the root of another and no less momentous shortcoming, namely the Union's built-in weakness in the international sphere.

In any international organisation or in any major negotiation, those speaking on behalf of the EU must invariably solve preliminary questions concerning the forms of the Union's representation and participation. As we all know, in spite of its growing flexibility, present-day international law bears more than a glaring

reminder of the era when sovereign States were its only legal subjects; it is not surprising, therefore, that it should not really welcome an odd figure such as the European Union, which variously appears as one, 11 or 15 and works under different rules according to the specific topic under discussion. Thus, even where the indisputable importance of the Union finally leads its negotiating partners to accept a deal allowing for its participation, this is generally perceived as a concession worthy of compensation from the European side. During the last century, the Ottoman Porte was probably confronted with similar problems when fighting for a place at the table where the self-styled civilised Christian powers deliberated about the fate and fortunes of the world.

No less importantly, even in those areas where the EU is the sole negotiator, any agreement must be subsequently ratified: often by a unanimous vote of the Member States. This means that Member State representatives are not only present (and seated in the second if not in the first row of the bargaining chamber), but are also able and willing to pursue an autonomous policy. I might perhaps add that our American friends are masters in the art of provoking and exploiting any internal divergence which they perceive among the Member States' positions with a view to prevailing over the Union's stance.

## VII.

Here, again, we are faced with an issue of democracy – not just European democracy, but global democracy. As everyone knows, nowadays more and more political decisions are only effective if taken at a world-wide level. In the same way that economic integration caused a progressive shift in decision-making from the national to the European level, today's trends towards globalisation imply that many crucial choices affecting everyday life must be made in such fora as the WTO, the IMF or, at the very least, the OECD. For the reasons I have just exposed, in its present shape the EU is unable to play a role commensurate to its weight in the global economy. As a result, its citizens are not afforded adequate representation when major choices are taken which may affect the world as a whole.

But there is more at stake than *Europe's* interests. This point has been recently made by André Fontaine, *Le Monde's* former editor and a most respected French political writer. "The real *raison d'être* of the European Union," he wrote "is to be distinct from the American colossus and able to weigh against it. And the Atlantic-liberal globalised world of the turn of the century is in great need of those 'checks and balances' which the founding fathers deemed indispensable for the United States". Of course, one might object that a stronger Europe would essentially favour Europeans with the Union becoming another dominant player alongside the US. But such an objection would ignore the fact that, not unlike economic markets, political systems are likely to function better when they are not kept under the thumb of a single actor. Might I suggest further, hoping to attract some sympathy from an Australian audience, that the

perspective of a Euro-American condominium seems more reassuring than a Sino-American duopoly?

I believe in conclusion that a more incisive and uniform EU foreign policy would not only be in Europe's best interest but would greatly benefit international relations at large. By creating the euro, we have managed to endow Europe with a currency able to rival, in due course, the US dollar. After the *jus monetae*, there is a compelling case for fully transferring to the Union the *jus tractatus* and its bedmate, the *jus belli*. Since these prerogatives – currency, foreign policy, defence – traditionally define the minimal requirements of a statal body politic, the perspective of a European state shall emerge from the twilight where it has been lingering nervously for years. At that stage discussion of federalism, until recently discredited as retrograde or even ridiculed as outlandish, will become topical once again.