

# Lessons from the Other Side of the Atlantic: The European Union as American Phenomenon

Myles B. Kantor  
[MBKantor@aol.com](mailto:MBKantor@aol.com)

Austrian Scholars Conference 7

March 31, 2001

Comments welcome

“Human nature is the same on every side of the Atlantic, and will be alike influenced by the same causes. The time to guard against corruption and tyranny, is before they shall have gotten hold on us. It is better to keep the wolf out of the fold, than to trust to drawing his teeth and talons after he shall have entered.”

-Thomas Jefferson<sup>1</sup>

The European Union is a continental movement with an American pedigree. The phenomena of European “integration” and “harmonization” (innocuous terms for a pernicious enterprise) reenact the evolution of the American Union: the judicial conversion of sovereign states into municipalities and, concomitantly, the homogenization-centralization of political life by a stratified agent turned superior. The commonalities between the American Union and the European Union reflect the

---

<sup>1</sup> Thomas Jefferson, *Notes on the State of Virginia*, in *Thomas Jefferson: Selected Writings*, ed., Harvey C. Mansfield, Jr. (Wheeling: Harlan Davidson, Inc.), p. 31.

recurrent means by which autonomy is undermined—the dynamics of consolidation, so to speak.

## **An Autopsy of American Federalism**

### I. The Constitutional Convention

“This Constitution is said to have beautiful features; but when I come to examine these features, Sir, they appear to me horridly frightful...”

-Patrick Henry at the 1788 Virginia Ratifying Convention<sup>2</sup>

While it is heretical to those who revere the Founding, the Constitutional Convention signifies the commencement of federalism’s decline—an ostensible non sequitur given federalism’s innovation during the Founding. Heresy or not, the Convention’s propellants sought to implement a unitary political order, not a federal one. James Madison pushed for the ultra-nationalist Virginia Plan that “rained blow after blow on the states.”<sup>3</sup> If Madison, Hamilton, and other nationalists had prevailed, the states would have been provinces of a central regime. The Anti-Federalists understood their opponents’ objective and admonished against it plainly and persistently.<sup>4</sup>

The Constitution reflects the ideological competition behind its conception. On one hand, the nationalists gained a number of victories: a uniform military, currency, and

---

<sup>2</sup> Ralph Ketcham, ed., *The Anti-Federalist Papers and the Constitutional Convention Debates* (Mentor: New York, 1986), p. 213.

<sup>3</sup> Garry Wills, *A Necessary Evil: A History of American Distrust of Government* (New York: Simon and Schuster), p. 76. For a discussion of Madison’s unitary vision, see Myles Kantor, “James Madison’s Ambivalent Architecture,” *LewRockwell.com*, March 22, 2001, at <http://www.lewrockwell.com/kantor/kantor36.html>

<sup>4</sup> See Ketcham, generally.

diplomacy, in addition to domestic prohibitions (no Bills of Attainder, ex post facto laws, etc.). The states no longer exercised some standard attributes of sovereignty. A further institutional victory came in the House of Representatives, which is structured nationalistically and whose approval is required for a law's passage.

As Madison recognized, however, the Constitution is federal in foundation.<sup>5</sup> Ratification occurred through the approval of nine state conventions, their approval binding only upon themselves. A nationalist ratification would have occurred through a plebiscitary framework, e.g., a majority vote by the states or the people of the states binding on all. A complementary institution is the amendment process. For a constitutional amendment to pass, three-quarters of the states' legislatures must approve. Population is not a criterion in this scheme; in fact, a constitutional amendment may be defeated by the thirteen least popular states or ratified without the approval of the thirteen most populous states. The amendment process confers a premium not upon majoritarian nationalism but state equality in a federal republic. Another key federal institution is the Senate.<sup>6</sup>

Thus, while the Madisonian-Hamiltonian bid for national supremacy failed and the states retained ultimate autonomy, there existed a manifest drift toward consolidation in the Convention's inception and the organic law it engendered.

### **An Imperial Interlude**

"It must be manifest that the sovereignty of the people was now extinct, and those ruled who had the bayonets on their side."

---

<sup>5</sup> "In its [the Constitution's] foundation, it is federal, not national." Madison, Federalist No. 39, in Clinton Rossiter, ed., *The Federalist Papers*, (New York: Mentor, 1999), p. 214.

<sup>6</sup> This institution is currently under a *sub silentio* siege. See Myles Kantor, "The Senate Abolitionists," LewRockwell.com, January 3, 2001, at <http://www.lewrockwell.com/kantor/kantor20.html>.

The American Federal Union existed for less than one century before it collapsed in 1861. The collapse in question refers not to the withdrawal of the Southern states from the Union but the war levied against those states in their subsequent union, the Confederate States of America. The Tenth Amendment's guarantee of reserved powers notwithstanding, Abraham Lincoln deemed the Confederacy an insurrectionary deviant and prosecuted a bloodbath to cement his unitary ideology. It cannot be overemphasized that the Union's conquest of the Confederacy was grounded not in abolitionist zeal but territorial covetousness. In fact, Lincoln's (il)logic would have required suppression had the North instead of the South seceded to free itself from compliance with the draconian Fugitive Slave Act of 1850.<sup>8</sup>

The upshot of Confederate conquest was nothing less than an inversion of American federalism. Although a constitutional amendment prohibiting secession did not follow the war, the message was clear: Leave and be smashed. Without the fundamental freedom to egress, federalism is a sham. Just as a citizen's preeminent right is voting with one's feet (i.e., emigration), a polity's paramount right is withdrawal. The denial of these rights imposes a state of bondage, be it tacit or explicit.

Reconstruction was the proto-fascist follow-up to the Confederacy's imperial annihilation. While it had been the Union's policy that the Confederate states had never

---

<sup>7</sup> Jefferson Davis, *The Rise and Fall of the Confederate Government*, Volume II (New York: Da Capo Press, 1990), p. 641.

<sup>8</sup> Northern secession was a genuine possibility given the disunionist intensity of prominent abolitionists. William Lloyd Garrison observed at the outset of the war, "All union-saving efforts are simply idiotic." Quoted in Jim Powell, *The Triumph of Liberty* (New York: The Free Press, 2000). See also Myles Kantor, "Union and Bondage," at <http://mises.org/fullstory.asp?control=653&FS=Union+and+Bondage>.

withdrawn (hence insurrectionists), readmission was required postbellum. The senselessness of this position reflects the hegemonic incoherence of Radical Republican legislators. To effectuate dominance over the “conquered provinces” (to use Thaddeus Stevens’s phrase), the Republican Congress passed the First Reconstruction Act over President Andrew Johnson’s veto in 1867. The pertinent language read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said rebel States shall be divided into military districts and made subject to the military authority of the United States as hereinafter prescribed; and for that purpose Virginia shall constitute the first district; North Carolina and South Carolina the second district; Georgia, Alabama, and Florida the third district; Mississippi and Arkansas the fourth district; and Louisiana and Texas the fifth district.<sup>9</sup>

No doubt the delegates to the Constitutional Convention would have scoffed if they were told within three-quarters of a century the states would be invaded and ravaged for withdrawing and then have their statehood eviscerated as federal protectorates. Political vicissitudes can be staggering.

## II. Brutus Vindicated: The Judicialization of American Autonomy

“The judicial power will operate to effect, in the most certain, but yet silent and imperceptible manner...an entire subversion of the legislative, executive, and judicial powers of the individual states.”

---

<sup>9</sup> <http://www.tsl.state.tx.us/ref/abouttx/secession/reconstruction.html> Charles Bracelen Flood describes the effect on Virginia, and, by proxy, every affected state:

Any civil government that did exist in the state was deemed to be purely provisional in nature, existing at the sufferance of Washington. The Congress declared that it had the right to abolish or change any aspect of local government throughout the South, at any time and without previous notice...the South was now formally and unequivocally a zone of military occupation, with no other status in the eyes of the Federal government. The lock was on.

*Lee: The Last Years* (New York: Houghton Mifflin, 1998), p. 148. Emory Thomas similarly observes, “[T]hey were not states, but portions of districts administered by the United States Army.” *Robert E. Lee: A Biography* (New York: W.W. Norton, 1997), p. 385.

-“Brutus,” January 13, 1788<sup>10</sup>

If the ambivalence between an American Nation-State and a union of sovereign states appeared from the start, so did the judicial process whereby the former would be entrenched in the twentieth century. There are copious cases in this vein, but I will focus on three decisions that exemplify the scope and severity of self-government’s displacement by the judiciary.

Reitman v. Mulkey (1967)<sup>11</sup>

California passed a law in the early 1960s prohibiting racial discrimination in housing. By 1964, the people of California had grown sufficiently intolerant of this proprietary infringement to pass the following referendum, Proposition 14, by a vote of 4,526,460 to 2,395,747:

"Neither the State nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly, the right of any person, who is willing or desires to sell, lease or rent any part or all of his real property, to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses."

California’s Supreme Court proceeded to nullify Proposition 14 under the notion that it constituted state encouragement of racial discrimination and therefore violated the 14<sup>th</sup> Amendment’s Equal Protection Clause.<sup>12</sup> The Supreme Court affirmed the California ruling by a 5-4 vote.

Justice Harlan observed in dissent how the Court’s affirmation of California’s encouragement thesis had the effect of “forging a slippery and unfortunate criterion by

---

<sup>10</sup> “Brutus,” Letter XI, in Ketcham, *The Anti-Federalist Papers and Constitutional Convention Debates*, p. 296.

<sup>11</sup> 387 U.S. 369

<sup>12</sup> The Fourteenth Amendment, of course, had a less than pristine ratification process. See Forrest McDonald, *States’ Rights and the Union: Imperium in Imperio, 1776-1876*.

which to measure the constitutionality of a statute simply permissive in purpose and effect, and inoffensive on its face.” Moreover, the Court’s ruling implicitly indicated the perpetuity of the legislation Proposition 14 sought to repealed: “Opponents of state antidiscrimination statutes are now in a position to argue that such legislation should be defeated because, if enacted, it may be unrepealable.”<sup>13</sup>

Coker v. Georgia (1977)<sup>14</sup>

Chief Justice Warren Burger gave a restrained overview of the facts in Coker v. Georgia:

"On December 5, 1971, the petitioner, Ehrlich Anthony Coker, raped and then stabbed to death a young woman. Less than eight months later Coker kidnaped and raped a second young woman. After twice raping this 16-year-old victim, he stripped her, severely beat her with a club, and dragged her into a wooded area where he left her for dead. He was apprehended and pleaded guilty to offenses stemming from these incidents. He was sentenced by three separate courts to three life terms, two 20-year terms, and one 8-year term of imprisonment. Each judgment specified that the sentences it imposed were to run consecutively rather than concurrently. Approximately 1 1/2 years later, on September 2, 1974, petitioner escaped from the state prison where he was serving these sentences. He promptly raped another 16-year-old woman in the presence of her husband, abducted her from her home, and threatened her with death and serious bodily harm. It is this crime for which the [death] sentence now under review was imposed."

Seven of Burger’s brethren deemed Coker’s sentence unconstitutionally cruel and unusual under the Eighth Amendment. Justice White’s majority opinion grounded the nullification in a proportionality standard, Georgia’s penalty being "grossly disproportionate and excessive punishment." Justices Brennan and Marshall reaffirmed their vacuous view that capital punishment is inherently unconstitutional.<sup>15</sup>

---

<sup>13</sup> *Reitman* soon became moot by the Fair Housing Act of 1968, prohibiting discrimination on the basis of race, religion sex, etc. See <http://www.hud.gov/fhe/fheact.html>.

<sup>14</sup> 433 U.S. 584

<sup>15</sup> See Brennan and Marshall’s dissenting opinions in *Gregg v. Georgia*, 428 U.S. 153 (1976). Both the Fifth and Fourteenth Amendments provide for deprivation of “life.” Brennan and Marshall’s attempts to

"[T]he Cruel and Unusual Punishments Clause does not give the Members of this Court license to engraft their conceptions of proper public policy onto the considered legislative judgments of the States," observed Burger in dissent, joined by Justice Rehnquist. While some states may consider rape felonious but not warranting capital punishment, others may decide this atrocity merits the infliction of death. Federalism compels neither policy, recognizing the prerogative of states to work out this matter for themselves. The standardization mandated by the Coker majority defied the American design, snubbed self-government, and supplanted it with the raw judicial power Justice White upbraided in *Roe v. Wade*. Cognizant of this, Burger wrote, "[T]oday's holding forecloses the very exploration we have said federalism was intended to foster."

*Stenberg v. Carhart* (2000)<sup>16</sup>

Like many states, Nebraska enacted a law banning partial birth abortion, an act that may be more appropriately described as infanticide. (Justice Scalia notes, "[T]he most clinical description of it evokes a shudder of revulsion.") Inevitably, pro-choice interests claimed Nebraska's prohibition was unconstitutional. Carhart, an abortionist, sued on this ground.

In a 5-4 decision, the Court nullified the Nebraska statute since it "imposes an 'undue burden' on a woman's ability to choose an abortion." Although *Roe v. Wade* recognized a state interest in prohibiting abortion in the third trimester, *Stenberg* went beyond its already problematic predecessor and conferred a constitutional right to abort an unborn

---

judicially amend the Constitution in this area defied American democracy and exemplify the worst kind of judicial activism.

<sup>16</sup> 000 U.S. 99-830

child well into fetal viability. Andrew Sullivan justifiably derides *Stenberg* as a “ruling that allows the killing of all-but-born babies, if the mother's health is threatened. The definition of 'health' includes ‘all factors—physical, emotional, psychological, familial, and the woman's age.’ Why not just add: and if she damn well feels like it?”<sup>17</sup>

So here is political life in America two hundred and twelve years after the Constitution's implementation: The member states of the federal union (so-called) may not withdraw, may not safeguard their citizens' property rights, may not execute those who perpetrate one of the most savage crimes possible, and may not prohibit infanticide. In other words, an electorally unaccountable coterie in the District of Columbia holds a veto power over the internal affairs of fifty discrete governments bound to a union consensually or not. The caprices of five or more justices now constitute the determinative opinion in American government. In other words, the Madisonian vision reigns.

This shabby state of affairs vindicates the great Anti-Federalist, Brutus. Brutus considered the proposed constitution a unitary blueprint “calculated to abolish entirely the state governments, and to melt down the states into one entire government, for every purpose as well internal and local, as external and national.” He attributed the effectuation of this abolition to the Supreme Court:

“Perhaps nothing could have been better conceived to facilitate the abolition of the state governments than the constitution of the judicial. They will be able to extend the limits of the general government gradually, and by insensible degrees, and to accommodate themselves to the temper of the people.”<sup>18</sup>

---

<sup>17</sup> Andrew Sullivan, “Life after Wartime,” [andrewsullivan.com](http://andrewsullivan.com), March 18, 2001.

<sup>18</sup> Brutus, “Letter XV,” March 20, 1788, in Ketcham, *The Anti-Federalist Papers and the Constitutional Convention Debates*, p. 308.

Reading these words in 2001, what is salient is the precision with which Brutus admonished against Publius's nationalist organic law. Today's federal primacy has indeed been achieved through the sophisticated incrementalism of the judiciary. The prestige of that branch has subtly instilled a sense of supremacy in the populace it controls. While critical comments about the Court are commonplace, Americans are generally inured to its chronic nullification of self-government. The fifty state governments that exist today are Potemkin sovereignties, *de facto* provinces of an agent that has inverted its relationship to the principals from which federal mandate originally derived.<sup>19</sup>

### **Juridical Consolidation in Europe, or the Virginia Plan Abroad**

The EU is not yet the kind of federal institution Jean Monnet and his colleagues foresaw, but it *has* moved closer to a federal structure than any other international organization...

-John McCormick<sup>20</sup>

The philosopher Kierkegaard said the most effective revolutions are the ones that left the buildings standing and the semblance of everything the way it was, but dragged away the real meaning from them so they no longer really existed, but just appeared to do so. *That's* the kind of revolution Britain is undergoing—one where all the buildings are left standing, all the institutions appear still to be there. But their power and significance have just been drained away and they don't really rule the country anymore. We don't have a Parliament, or an English law, or indeed our independence.

-Peter Hitchens<sup>21</sup>

---

<sup>19</sup> The Tenth Amendment to the United States Constitution reads, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The usage of "delegated" reflects the relationship between the states and federal government. (The derivative of "delegate" is the Latin *delegare*, "to depute down.")

<sup>20</sup> John McCormick, *The European Union: Politics and Policies*, 2<sup>nd</sup> ed., (Boulder: Westview Press, 1999), p. 88.

<sup>21</sup> Interview with Geoff Metcalf, WorldNetDaily.com, January 21, 2001, at [http://worldnetdaily.com/news/article.asp?ARTICLE\\_ID=21407](http://worldnetdaily.com/news/article.asp?ARTICLE_ID=21407)

...that monument to the pretensions of technocratic rationality, the European Union.

-Paul Campos<sup>22</sup>

If it took three quarters of a century for the American federal union to collapse, the European Union has outdone the rapidity of its predecessor. It has been slightly over fifty years since the May 9, 1950 Schuman Declaration inaugurated Europeanism, and his vision of “the federation of Europe”<sup>23</sup> has materialized extensively—so extensively that it is now almost erroneous to speak of Europe as a collection of nation-states, rather a collection of Eurocratic municipalities. Indeed, *The Economist* recently proposed “A Constitution for Europe.”<sup>24</sup>

There are several manifestations of the EU’s de-nationalization campaign: the movement toward Qualified Majority Voting in the Council of Ministers, the existence of a European Parliament, the attempts to homogenize Europe’s currency with the Euro, the plans for a European military force. The most potent mechanism by which Europe’s sovereignties have been undermined, however, is EU law and the juridical Leviathan part and parcel of it—specifically the incorporation of human rights law into national policy by the European Court of Human Rights and the European Court of Justice.

I will take an Anglocentric perspective in examining the effect of EU law and its advancement by the ECHR and ECJ. In examining the current condition of British

---

<sup>22</sup> Paul F. Campos, *Jurismania: The Madness of American Law* (New York: Oxford University Press, 1998), p. 182.

<sup>23</sup> See McCormick, *The European Union*, pp. 47.48.

<sup>24</sup> “A Constitution for the European Union,” *The Economist*, October 28<sup>th</sup>-November 3<sup>rd</sup> 2000, at [http://www.economist.com/displayStory.cfm?Story\\_ID=403911](http://www.economist.com/displayStory.cfm?Story_ID=403911)

autonomy under Eurocratic governance, we observe the distinctly American feature of judicial supremacy at work with the attendant establishment of oligarchy.

### The Human Rights Act, Charter of Fundamental Freedoms, and Their Consequences

In October 2000, the Human Rights Act (hereafter the HRA) took effect and incorporated the European Convention on Human Rights into British law. Tony Blair's wife, Cherie Booth, describes the watershed legislation as a modernizing mechanism "to make [Britain] a strong and confident democracy in the 21<sup>st</sup> century"; barrister David Pannick writes that the Act "enhances the maturity of our legal system and offers our courts a greater potential to do justice"; Professor Conor Gearty of King's College, London argues it represents the "most significant formal redistribution of political power in this country since 1911 and perhaps since 1688."<sup>25</sup> December 2000 saw the signing of the Charter of Fundamental Rights in Nice (hereafter the CFR), an ostensibly symbolic action that a number of prominent Eurocrats consider binding.<sup>26</sup>

By definition, incorporation entails standardization, and the HRA and CFR entail massive standardization. Article 3 of the former prohibits "inhuman or degrading

---

<sup>25</sup> Cherie Booth and Rabinder Singh, "Law that will turn dreams of equality into reality," *The Telegraph*, August 7, 2000, at <http://www.telegraph.co.uk/et?ac=004629206805904&rtmo=qxKeMLp9&atmo=rrrrrrq&pg=/et/00/8/7/nhr107.html> David Pannick, "What could be more British?" *The Times*, October 3, 2000, at <http://www.thetimes.co.uk/article/0,,352-27375,00.html> Joshua Rozenberg, "Judges strike the rights balance," *The Telegraph*, December 19, 2000, at <http://www.telegraph.co.uk/et?ac=004633645448908&rtmo=VDfrfJK&atmo=rrrrrrq&pg=/et/00/12/19/nl19.html>

<sup>26</sup> French President of the European Parliament Nicole Fontaine has affirmed, "Everyone should be aware that we will treat this charter as a legal document." "Here's a Nice mess," *The Telegraph*, December 10, 2000, at <http://www.telegraph.co.uk/et?ac=004633645448908&rtmo=VDfrf8MK&atmo=rrrrrrq&pg=/et/00/12/10/wnice110.html> Italian Foreign Minister Lamberto Dini considers the charter an initial step to establishing an EU constitution. Ibid.

treatment or punishment,” and the Sixth Protocol abolishes capital punishment.<sup>27</sup> The CFR is even more expansive, creating European citizenship, rights to education (Article 14), protection against “unjustified dismissal” (Article 29), and working conditions that respect “health, safety, and dignity” (Article 30). Article 23 requires comprehensive equality between men and women all the way down to employment policies (work, pay, etc.). Indeed, the ECJ’s Advocate General has deemed Britain’s failure to guarantee paid holidays violative of the CFR.<sup>28</sup> As for a quaint institution like property rights, Article 17 states that “The use of property may be regulated insofar as is necessary for the general interest.”<sup>29</sup>

What constitutes “inhuman or degrading treatment or punishment”; what is “unjustified dismissal” or “the general interest”? These nebulous promulgations will have to be defined and enforced by a political entity, and the supra-national judiciaries of the ECHR and the ECJ are the entities who will define and enforce these elastic enactments. These conspicuously elitist institutions will enjoy adjudicative supremacy—in this case, the same as discretionary supremacy—over a body of law that affects the internal affairs of EU member states.

British Eurosceptics rightfully consider this subversive of their polity’s parliamentary structure. Journalist Peter Hitchens and philosopher Roger Scruton describe the

---

<sup>27</sup> Peter Hitchens highlights the significance of the Sixth Protocol: “[A]nti-hanging MPs quietly used the Human Rights Bill to make it impossible for the House of Commons to reintroduce capital punishment, ever.” This “cemented the revolution in criminal law begun in 1957 with the Homicide Act.” Peter Hitchens, *The Abolition of Britain: From Winston Churchill to Princess Diana* (San Francisco: Encounter Books, 2000), p. 304.

<sup>28</sup> See Joshua Rozenberg, “Paid leave a right, EU lawyer says,” *The Telegraph*, February 9, 2001, at <http://www.telegraph.co.uk/et?ac=004638034536620&rtmo=psU4lpIe&atmo=rrrrrrr&pg=/et/01/2/9/nleav09.html>

<sup>29</sup> “Draft charter of the fundamental rights of the European Union,” *The Telegraph*, September 21, 2000, at <http://www.telegraph.co.uk/et?ac=004638034536620&rtmo=asxbbwNL&atmo=rrrrrrr&pg=/et/00/9/21/nc har421.html>

ramifications as the abolition of Britain and forbidding of England, respectively.<sup>30</sup> The transfer of ultimate political authority from the legislature to the judiciary (and a non-British judiciary at that) is a radical alteration of British government, hence Gearty's comparison of the HRA to the Parliament Act and Glorious Revolution. Luxembourg and Strasbourg are now the places where policy for Britain and the rest of Europe shall be determined.

This may be described as the Eurocratization of the Virginia Plan. Under the Virginia Plan, the American states then existing under the Articles of Confederation would have had their laws subject to a congressional veto and been without equal suffrage in the proposed Senate. To quote Madison's words, there would exist a "negative in all cases whatsoever on the local legislatures" and "a government which, instead of operating on the states, should operate without their intervention on the individuals composing them."<sup>31</sup>

The EU is emulating Madison's vision. The ECHR and ECJ exercise a *de facto* veto on member states' laws, and the EU operates directly on its "citizens." Thus, the EU is not a mere inter-governmental entity but a discrete and dominant political dynamic, its prestige promoted and reinforced through august judicial agencies. Brutus's admonishment warrants reiteration:

"Perhaps nothing could have been better conceived to facilitate the abolition of the state governments than the constitution of the judicial. They will be able to extend the limits of the general government gradually, and by insensible degrees, and to accommodate themselves to the temper of the people."

---

<sup>30</sup> See Hitchens, *The Abolition of Britain* and Roger Scruton, "Don't let Blair ruin it," *The Spectator*, April 1, 2000.

<sup>31</sup> Quoted in Wills, *A Necessary Evil*, pp. 76-77.

Indeed, it has gotten to the point where advocates of EU primacy openly identify the emasculation of EU member states' sovereignty. UN Secretariat veteran Frederick K.

Lister writes:

“The jurisprudence and judicial machinery of the European and the Benelux Unions constitute a new layer that is positioned between the international and national (municipal) legal systems. It is significant that the European Court of Justice...has had a heavy caseload and performed a role that is comparable to that played by the supreme courts in national governments.”<sup>32</sup>

“But,” as Wittgenstein asks, “what does all that signify?”<sup>33</sup> Let us examine one example of Eurocratic kriticality's human costs.

### The Bulger Case

"The British Government should not allow a European court to dictate how we operate our legal system..."

-Denise Fergus<sup>34</sup>

On February 12, 1993, Robert Thompson and Jon Venables abducted two year-old James Bulger from a shopping center near Liverpool. They dragged him two and a half miles to a railway line and proceed to torture and batter the toddler to death. Cognizant of their barbaric act and apprehensive about capture, they placed James's dead body on the railway line hoping that a train would hit it and make the savagery perpetrated upon him look like an accident. Their plan failed.<sup>35</sup>

---

<sup>32</sup> Frederick K. Lister, *The European Union, the United Nations, and the Revival of Confederal Governance* (Westport, Greenwood Press: 1996), p. 45.

<sup>33</sup> Ludwig Wittgenstein, *Notebooks: 1914-1916*, 2<sup>nd</sup> ed., eds., G.H. von Wright and G.E.M. Anscombe (Chicago: University of Chicago Press, 1979), p. 47.

<sup>34</sup> Philip Johnston, "Bulger's killers had 'unfair trial,'" *The Telegraph*, December 17, 1999, at <http://www.telegraph.co.uk/et?ac=004538786443790&rtmo=0xxeXGsq&atmo=rrrrrrrq&pg=/et/99/12/17/nbulg17.html> Fergus is James Bulger's mother.

<sup>35</sup> See <http://www.JamesBulger.org> and <http://www.guardianunlimited.co.uk/bulger>

Thompson and Venables were tried as adults, convicted of murder in 1993, and sentenced to indefinite detention. The trial judge recommended a sentence of eight years, which was increased by the Lord Chief Justice Taylor to ten years and then again by Home Secretary Michael Howard to fifteen years. The House of Lords nullified Howard's increase in 1997.<sup>36</sup> In March 1999, the European Commission of Human Rights voted that Bulger's murderers had an unfair trial in violation of Article 6 of the European Convention on Human Rights. The European Court of Human Rights affirmed this assessment in December and also ruled that Thompson and Venables deserved 18,000 and 32,000 pounds respectively for legal costs; it further ruled that the Home Secretary's discretion in sentencing Thompson and Venables was unlawful.<sup>37</sup> Home Secretary Jack Straw then referred the matter to Lord Chief Justice Woolf, who amended the murderers' sentence to a term that would summarily expire. Their release is expected soon.<sup>38</sup>

In the Bulger case we see the cultural wreckage caused by judicial interventionism, exacerbated here by the foreign nature of the intervening judiciary. To answer Wittgenstein's question, Eurocratic kritarchy means that domestic matters of the highest delicacy will be resolved not by domestic institutions, but by alien authorities transcendent of popular control. What this means is that English autonomy is at an end

---

<sup>36</sup> See Philip Johnston, "Lords quash 15-year jail minimum for Bulger pair," *The Telegraph*, June 13, 1997, at <http://www.telegraph.co.uk/et?ac=004538786443790&rtmo=qxe9pMM9&atmo=rtrrrrrq&pg=/et/97/6/13/nbulg13.html>

<sup>37</sup> See Terence Shaw, "The judgment: Trial breached killers' human rights," *The Telegraph*, December 17, 1999, at <http://www.telegraph.co.uk/et?ac=004538786443790&rtmo=assewpbL&atmo=rtrrrrrq&pg=/et/99/12/17/nbulg117.html>

<sup>38</sup> See Joshua Rozenberg, "Boys who killed James Bulger may be free by February," *The Telegraph*, October 27, 2000, at <http://www.telegraph.co.uk/et?ac=004652699665297&rtmo=QwkHz9eR&atmo=rtrrrrrq&pg=/et/00/10/27/nbulg27.html>

and centuries of political-cultural tradition are shells. It constitutes nothing less than the liquidation of an historical identity and an ontological fracture upon a people.

### Conclusion

“Beware. Watch out. Be concerned. Courts can be dangerous and evil institutions in the hands of the wrong people.”

-Alan Dershowitz<sup>39</sup>

“Not only did he regard liberty as supremely important; he knew that it needs ceaseless defending.”

-A.J.P. Taylor on Thomas Macaulay<sup>40</sup>

Being a young political power, America is often counseled to learn from the experiences of other nations. When it comes to the course of federal unions, however, America has much to teach the world and England especially. The swift erosion of American federalism into oligarchic rule by judges is being replicated and intensified in Europe. Perhaps there is a karmic nexus between England’s past and present imperial conduct and its growing assimilation into the EU Empire.

Prescriptively speaking, England should pursue a comprehensive campaign of devolution entailing withdrawal from the European Union and recognition of autonomy for those United Kingdom members desiring self-determination. Such a coherent strategy will promote freedom within the UK and undercut the EU’s juridical juggernaut. Continued acquiescence to Eurocratic tyranny only further reduce England and the rest of Europe to a colonial condition by this at once revolutionary and trite ontology.

---

<sup>39</sup> Remarks at New York University School of Law panel discussion.

<sup>40</sup> Quoted in Jim Powell, *The Triumph of Liberty* (New York: The Free Press, 2000), p. 261.