

WELCOME

Salvatore Cattaneo, Rome

It is a great pleasure for me to welcome you to the second ECLN Conference in Rome. I am very glad to express my satisfaction and thanks to the academic authorities and to the Colleagues who came here from other Universities, that I will call not “foreign” but “European”.

My Department organized this Conference in association with other Institutions (Walter Hallstein-Institute for European Constitutional Law – Humboldt University Berlin; Interdepartmental Research Centre *EuroSapienza* and European Centre of Excellence Jean Monnet-Luigi Einaudi – University of Rome “La Sapienza”) and in the framework of the *European Constitutional Law Network* to debate a problem that deserves intense attention from both professors of law and professors of economics. In fact, the interdisciplinarity between these two fields of study is characteristic of our Faculty and of our Department, as requested by the - always growing - connection between economic and legal rules. This connection is also at the roots of the European Community.

This Community is today flanked by – but also next to become – the European Union. Before the enlargement, foreseen by the Treaty of Nice, the European Governments agreed to set up a special committee – called “Convention” – charged with designing a new institutional pattern for the twenty-five Member States of the EU.

Regarding to this latter point I would like to express my personal opinion. Of course, I welcome this Convention, but I believe it should be more wise – in the interest of the growing of EU - if the Member States, instead of making a “long” very complete and articulated Constitution, born themselves to a substantial increase of the powers of the European Parliament and to fix just a few essential principles.

That opinion, I think, is supported by two reasons. First, the slow but secure growth that the European Community had for many years, notwithstanding the lack of any constitutional text. This is due, especially, to the wonderful experience of the E.C.J., which designed the institutional face of the E.C. better than any constitutional text could do. I would like to remember the influence of the E.C.J. case law in the British experience as that case law was namely declared to be the source of the “governing principles” for competition (Competition Act, 1998).

The second reason is the return, in Europe, in a little but significant part of the population, of some old nationalistic tendencies. We can see that not only in the “xenophobic” attitudes of some people (it is worrying that some political scientists give positive assessment to these attitudes), but also in the renewal (not of national identity but) of the myth of national identity. For this reason I fear that, at the moment, to leave the pragmatic method until now followed, for a too “ideological” debate between political leaders of national government could include the risk of a substantial withdraw from the principle of supranationality.

I worry particularly about the trend to emphasize – as a result of a misunderstanding – the principle of subsidiarity as a shield for the competence of Member States. It needs to be clarified that the competence of these letters is not to be generally presumed. First, that principle does not rule allocation of competences, but it rules the exercise of the powers implied by the competences. Second, it applies only when powers to exercise are totally homogeneous, which often is not the case for the EU. Third, the final assessment about the necessity to intervene belongs to Community.

Last, but not least, I would like express my hope that the Convention will confirm as an essential principle the permanent regulatory system for the market. I share the opinion (Prosser) that regulation is permanent and not transitory. The famous phrase “keep the fort” (Littlechild) does not take account that the “major role” of regulation is “creating the institutional conditions for open markets, and policing competition as a continuing process in those markets”; moreover there are to consider the tasks of “social regulation”.