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COMPARATIVE LEGAL STUDIES AND EUROPEAN INTEGRATION. LOOKING AT THE ORIGINS OF THE DEBATE*

Giuseppe MARTINICO**

RESUMEN: El objetivo de este estudio es analizar la influencia de los comparatistas estadounidenses sobre el lenguaje de la integración europea. Como recientes investigaciones han demostrado, los estudios europeos “should pay more attention to the legal discourse that sustains the conceptions of law and legal politics underlying European law” (H. Schepel-R. Wesseling 1997). En la construcción de la Europa, en efecto, un rol muy importante fue jugado por los juristas, especialmente por juristas estadounidenses, que contribuyeron a la creación del lenguaje de la integración europea.

Palabras clave: doctrina jurídica, proceso federativo, derecho comparado, Tribunal de Justicia de las Comunidades Europeas, Movimiento Federalista Europeo.

ABSTRACT: *The goal of this paper is to analyse the influence of the American comparative lawyers' studies on the language of the European integration. As recent research in the legal field has demonstrated, European studies “should pay more attention to the legal discourse that sustains the conceptions of law and legal politics underlying European law” (H. Schepel-R. Wesseling 1997). In the writing of Europe, in fact, a very important role was played by legal scholars, especially by the American ones, who contributed in providing a common vocabulary to the language of the European integration.*

Descriptors: *legal scholarship, federalizing process, comparative law, Court of Justice of the European Communities, European Federalist Movement.*

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SUMARIO: I. *The Beginning of the Story: The American Legal Scholars and their Interest in the European Integration.* II. *The Influence on the Strategies of ECJ.* III. *Friedrich (and Co.) and the European Federalist Movement.* IV. *The Influence on the European Legal Studies.* V. *Final Remarks.*

I. THE BEGINNING OF THE STORY: THE AMERICAN LEGAL SCHOLARS AND THEIR INTEREST IN THE EUROPEAN INTEGRATION

In 1991 Rodolfo Sacco¹ stressed the importance of the “scholarship” as a legal formant and its role for the evolution of law. The goal of this paper is to analyse the influence of the American comparative lawyers’ studies on the language of the European integration.

As recent research in the legal field has demonstrated, European studies “should pay more attention to the legal discourse that sustains the conceptions of law and legal politics underlying European law”.² In the writing of Europe, in fact, a very important role was played by legal scholars, especially by the American ones, who contributed in providing a common vocabulary to the language of the European integration. Sometimes in the paper the formula “legal scholars” will inevitably also include scholars belonging to adjacent disciplines like political scientists: Carl Joachim Friedrich is the best example of such specification.

Despite this terminological premise, the focus will rest upon the “pure” legal scholars.

It ought to be emphasized out that the American comparative lawyers—including Hay—did not doubt that the European integration process could be read in light of “federalism”. Such an interpretative approach is very clear in Peter Hay’s (one of the most important and eclectic legal scholar in the United States) articles or essays:

¹ Sacco, R., “Legal Formants: A Dynamic Approach to Comparative Law (I)” and “Legal Formants... (II)”, *American Journal of Comparative Law*, vol. 39, 1991, pp. 1-34, 343-401, respectively.

² Schepel, H. and Wesseling, R., “The Legal Community: Judges, Lawyers, Officials and Clerks in the Writing of Europe”, *European Law Journal*, no. 3, 1997, pp. 165-188.

How the Court exercises its function in cases pending before national courts (the referral problem) and in what way the supremacy of the substantive, "federal" Community law can be assured in national legal system (the supremacy problem).³

One of the important reason for the success of European integration is the organizational form which it adopted for the three "European Communities". Described as "supranational" (a concept to be explored more fully in Chapter 2), these organizations possess both independence from and power over their constituent states to a degree suggesting the emergence of a federal hierarchy.⁴

That this "federalism" is as yet imperfect (to be discussed) and derives from the limited economic federalism of the organization need not change the characterization, especially since the developing case law may correct imperfections.⁵

Hay writes about certain "federalizing features"⁶ of the Common Market Treaty system, thus participating in the spreading of a "comparative language" shared by several American lawyers.

He is—with Ronald Rotunda—also the author of several pieces about the techniques of integration viewed from national (American) and comparative perspectives.

However, the pioneer of such a comparative approach was undoubtedly Eric Stein: he was born in Czechoslovakia on July 8th 1913 and after the Second World War he became Professor of International Law and Organization and Co-director of International and Comparative Legal Studies at the University of Michigan Law School, beginning a splendid career which sent him around the world (Uppsala, Bruxelles, Florence, London, Stanford), finding academic proselytes on both sides of world and becoming a point of reference for both the European and American legal scholars.

³ Hay, P., "Supremacy of Community Law in National Courts. A Progress Report on Referrals Under the EEC Treaty", *American Journal of Comparative Law*, vol. 16, 1968, pp. 524 ff.

⁴ Hay, P., *Federalism and Supranational Organizations. Patterns for New Legal Structures*, University of Illinois Press, Urbana, 1966, p. 4.

⁵ Hay, P., "Federal Jurisdiction of the Common Market Court", *American Journal of Comparative Law*, vol. 12, 1963, pp. 21-40, 24.

⁶ Hay, P., *op. cit.*, note 3, pp. 524-551.

As Weiler said: “he has used this distance to maintain a constant overall synthetic view of the Community”;⁷ his essays about Europe and America in a comparative perspective have been collected in the book “Thoughts from a Bridge: A Retrospective of Writings on New Europe and American Federalism”. The first part of this great work contained the article “Lawyers, Judges and the Making of a Transnational Constitution”⁸ which became a classic of European Studies with its very famous incipit: “Tucked away in the fairyland Duchy of Luxembourg and blessed, until recently, with the benign neglect by the powers that be and the mass media, the Court of Justice of the European Communities has fashioned a constitutional framework for a federal-type structure in Europe”.⁹

Stein’s studies about the ECJ have been a point of reference for many generations of scholars and students.

In 1982 he and Sandalow edited the multivolume study “Courts and free markets: perspectives from the United States and Europe”¹⁰ which was the first model of the “Integration through law scholarship”. In a few words, as Trevor Hartley¹¹ also recognized in Europe, Stein was the common master in the field of comparative studies between the European Community and the United States.

II. THE INFLUENCE ON THE STRATEGIES OF ECJ

It is very difficult to identify American comparative lawyers’ elements of influence on the Court of Justice of the European Communities (ECJ); as Lasser has pointed out, in fact, the style of the Ecj first judgements was that of the French judges, which are famously “short” and essential, for example the *Cour de Cassation*’s decisions are

⁷ Weiler, J., “Eric Stein: a Tribute”, *Michigan Law Review*, no. 82, 1984, pp. 1160-1162, 1161.

⁸ Stein, E., “Lawyers, Judges and the Making of a Transnational Constitution”, *American Journal of International Law*, vol. 75, 1981, pp. 1-27.

⁹ *Ibidem*, p. 1.

¹⁰ Sandalow, T. and Stein, E. (eds.), *Courts and Free Markets: Perspectives from the United States and Europe*, Oxford, Oxford University Press, 1982.

¹¹ Hartley, T., “Federalism, Courts and Legal Systems: the Emerging Constitution of the European Community”, *American Journal of Comparative Law*, vol. 34, 1986, pp. 229 ff.

less than a single page. Although the ECJ judgments are longer than those of the *Cour de Cassation*, undoubtedly they “are still relatively short, deductive and magisterial judgments rendered in an unsigned and collegial manner without concurrences or dissents”.¹²

This feature must be pointed out because it makes an attempted analysis more difficult. The style of the earliest judgments is “dry” and implies the absence of every reference to the scholarship. Perhaps something more can be found in the conclusions of the General Advocates. These conclusions, in fact, represent, at the same time, a scholarly commentary to the ECJ decision and the presentation of the multiple interpretative choices present in front of the EC judges.¹³

Nevertheless, from a very simple comparison between the *Van Gend Loos*¹⁴ and the *Brasserie du Pêcheur*¹⁵ cases, it is possible to note an evident shift, despite the maintenance of an authoritative tone.

Over the years, in fact, the ECJ has abandoned the pure French model of the single-sentence syllogism, acquiring a more discursive nature, testing its reasons with a more cared motivation and exposing itself to the controversial debate of scholarship. This stylistic “earthquake” was caused by the need to communicate with the national judges (ordinary and Constitutional Courts), through the vehicle of the preliminary ruling offered by art. 234 ECT. This procedural tool has permitted the ECJ to build up the core of the European Union law principles (direct effect, supremacy, fundamental rights, liability of the member states).

¹² Lasser, M., “Anticipating Three Models of Judicial Control, Debate and Legitimacy: The European Court of Justice, the Cour de Cassation and the United States Supreme Court”, Jean Monnet working paper 1/03, 2003, available at: <http://www.jeanmonnetprogram.org/papers/03/030101.html>, p. 8.

¹³ “As can readily be seen, the ECJ resorts, in the end, to a fundamentally similar interpretive and argumentative approach as its AG’s, but in a condensed, axiomatic, deductive, and authoritative style. This public display of methodological convergence thus marks a significant departure from the radical French discursive bifurcation”. *Ibidem*, p. 47.

¹⁴ Case n. 26/62, *Van Gend en Loos* [1963], ECR, 3.

¹⁵ Case n. C-46/93, *Brasserie du Pêcheur* [1996], ECR, I-1029.

Although something has changed, the ECJ collegial decisions continue to be written in a “cryptic, Cartesian style”,¹⁶ they are still unsigned and monolithic (without dissenting or concurring opinions).

Having said this, the possible influences of the American scholars on the ECJ can be seen in two ways: first of all, by investigating the cryptic elements provided by the commentators’ terminology in the first judgments of the ECJ. Secondly by analysing the academic profile of the judges in their capacity as experts of EC law: here one could especially refer to the work of Pierre Pescatore,¹⁷ Andreas M. Donner,¹⁸ Robert Lecourt,¹⁹ Lord Mackenzie Stuart,²⁰ Hans Kutscher.²¹

Classic examples of this linguistic influence are provided by the use of formulas such as “supremacy”, “direct effect”, used by Anglophone commentary in reviews like “Common Market law review”.

¹⁶ Weiler, J., “The Judicial Après Nice”, in Búrca, G. de and Weiler, J. H. H. (eds.), *The European Court*, Oxford, Oxford University Press, 2001, pp. 215-226, 225.

¹⁷ Pescatore, P., *The Law of Integration: Emergence of a New Phenomenon*, Leiden, A. W. Sijhoff, 1974; Pescatore, P., “L’application judiciaire des traités internationaux dans la Communauté européenne et dans ses États membres”, in *Etudes de droit des Communautés européennes: mélanges offerts à Pierre-Henri Teitgen*, Paris, Pedone, 1984, pp. 355-406; Pescatore, P., “La carence du législateur communautaire et le devoir du juge”, in Luke, G. et al. (eds.), *Rechtsvergleichung, Europarecht und Staatenintegration: Gedächtnisschrift für Ldontin-Jean Constantinesco*, Köln-Berlin-Bonn-München, 1983, pp. 559-580; Pescatore, P., *L’ordre juridique des Communautés européennes: étude des sources du droit communautaire*, Liege, Presses Universitaires de Liege, 1975.

¹⁸ Donner, A. M., *The Court of Justice as a Constitutional Court of the Communities*, University of Exeter, Lasok Lecture at the Centre for European Legal Studies, 1977; Donner, A. M., “The Constitutional Powers of the Court of Justice of the European Communities”, *Common Market Law Review*, no. 11, 1974, pp. 127 ff.; Donner, A. M., “Droit National et Droit Communautaire: Points de Rencontre”, in Chevallier, R. M. and Waelbroeck, M. et al. (eds.), *Le juge national et le droit communautaire*, Leyde et Bruxelles, A. W. Sijthoff et Maison Ferdinand Larcier, 1966, pp. 9-15.

¹⁹ Lecourt, R., *L’Europe des juges*, Bruxelles, Bruylant, 1976; Lecourt, R., “Quel eût été le droit des Communautés sans les arrêts de 1963 et 1964”, *Mélanges en hommage à Jean Boulouis*, Paris, Dalloz, 1991, pp. 349-362.

²⁰ Mackenzie Stuart, A. J. Lord, *The European Communities and the Rule of Law*, London, 1977; Mackenzie Stuart, A. J. Lord, “Problems of the European Community”, *The International and Comparative Law Quarterly*, 36, 1987, pp. 183-197.

²¹ Kutscher, H., “Alcune tesi sui metodi di interpretazione del diritto comunitario dal punto di vista d’un giudice (I)”, *Rivista di Diritto Europeo*, 1976, pp. 283-314; *id.*, “Alcune tesi... (II)”, *Rivista di Diritto Europeo*, 1977, pp. 3-24.

What proves more difficult is establishing such an influence in the earliest judgments: in *Costa Enel*,²² for example, the ECJ did not use the term “supremacy” but the words “primacy” or “precedence” with few exceptions represented, for example, by cases like *Walt Wilhelm*²³ and *Leonesio*.²⁴

Despite this terminological absence in the text of the ECJ judgments and in the Treaties, the notion of supremacy has entered the common language of lawmakers and scholars: the best example of this trend is confirmed by the debate about art. I-6 of the Constitutional Treaty that would crystallize the so named “supremacy clause”.

Probably it is possible to “catch” similarities and differences between European and American experiences by looking at two extracts of *Costa/Enel* case and *Gibbons v. Ogden* case:

The integration into the laws of each member state of provisions which derive from the Community and more generally the terms and the spirit of the Treaty, make it impossible for the states, as a corollary, to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on a basis of reciprocity. Such a measure cannot therefore be inconsistent with that legal system. The law stemming from the Treaty, an independent source of law, could not because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without a legal basis of the Community itself being called into question.²⁵

On the other side of the ocean, justice Marshall had in a previous judgement said that:

The nullity of any act, inconsistent with the constitution, is produced by the declaration that the constitution is the supreme law. The appro-

²² Case n. 5/64, *Costa Enel*, [1964] ECR 1141.

²³ Case n. 14/68, *Walt Wilhelm*, [1969] ECR 1.

²⁴ Case 93/71, *Leonesio*, [1972] ECR 287. See Piquani, D., “Supremacy of European Law Revisited: New Developments in the Context of the Treaty Establishing a Constitution for Europe”, available at <http://www.enelsyn.gr/papers/w4/Paper%20by%20Darinka%20Piquani.pdf>.

²⁵ Case n. 5/64, *Costa Enel*, [1964] ECR, 1141.

appropriate application of that part of the clause which confers the same supremacy on laws and treaties, is to such acts of the state legislatures as do not transcend their powers, but, though enacted in the execution of acknowledged state powers, interfere with, or are contrary to the laws of Congress, made in pursuance of the constitution, or some treaty made under the authority of the United States.²⁶

The term “supremacy”, in fact, is borrowed from the terms used by the American Constitution and presumes the existence of a perfect federal model and of a normative “monism”. The secret of the European Communities lies in the “constitutional tolerance”²⁷ and the consequence of such a premise is the impossibility of resolving the antinomies in terms of invalidity, as the Constitutional courts have maintained for many years.

The distinction between supremacy and precedence (in the French version, the ECJ used the term “primauté”) was recently recalled by the Spanish Tribunal Constitucional in its Declaration n. 1/2004 concerning the compatibility of the Spanish Constitution with the Constitutional Treaty:

Primacía y supremacía son categorías que se desenvuelven en órdenes diferenciados. Aquélla, en el de la aplicación de normas válidas; ésta, en el de los procedimientos de normación. La supremacía se sustenta en el carácter jerárquico superior de una norma y, por ello, es fuente de validez de las que le están infraordenadas, con la consecuencia, pues, de la invalidez de éstas si contravienen lo dispuesto imperativamente en aquélla. La primacía, en cambio, no se sustenta necesariamente en la jerarquía, sino en la distinción entre ámbitos de aplicación de diferentes normas, en principio válidas, de las cuales, sin embargo, una o unas de ellas tienen capacidad de desplazar a otras en virtud de su aplicación preferente o prevalente debida a diferentes razones.²⁸

²⁶ US Supreme Court, *Gibbons v. Ogden*.

²⁷ Weiler, J. H. H., *Federalism and Constitutionalism: Europe's Sonderweg*, Harvard Jean Monnet Paper, 2000, available at <http://www.jeanmonnetprogram.org/papers/00/001001.html>, p. 13.

²⁸ Tribunal Constitucional (España) 1, D 1/2004, available at <http://www.tribunalconstitucional.es/jurisprudencia/Stc2004/DTC2004-001.html>.

Overcoming the terminological question, it can be recalled that Weiler and other scholars use such a terminology (direct effect, supremacy, implied powers) in their description of the ECJ activity especially with regard to the judgements of the “foundational period”.²⁹

In their work (“The European Court of Justice as a federator”)³⁰ Donna Star Deelen and Bart Deelen emphasized the analogies between the strategy of the two Courts, starting from the very important writings by Lenaerts³¹ (currently a judge at the ECJ) and Bermann³² about federalism in the United States and European Community.

Obviously many differences also exist: for example, maybe it is not correct to compare the American implied powers doctrine with the expansion of competencies operated in the EC and this was due to the fact that in the EC the instrument to improve EC jurisdiction was the principle of subsidiarity rather than art. 308 ECT. Moreover, it must also be stressed that in the European Treaty a real distinction of jurisdictions is not provided, unlike in the US Constitution.

Concerning the academic profile of the judges in their capacity as experts of EC law, it is not difficult to find express references to American authors in their academic writings. Little evidence, however, can be revealed by the analysis of celebrative or introspective essays written in the capacity as a member or former member of the ECJ.³³ As Rasmussen pointed out, maybe the real aim of such publications was to “exorcise the spectre of government by the Court and its judges”.³⁴

²⁹ Weiler, J., “The Transformation of Europe”, *Yale Law Journal*, no. 100, 1991, 2403 ff., p. 2422.

³⁰ Star-Deelen, D. and Deelen, B., “The European Court of Justice as a Federator”, *Publius*, 1996, pp. 81-97.

³¹ Lenaerts, K., “Constitutionalism and the Many Faces of Federalism”, *The American Journal of Comparative Law*, vol. 38, no. 2, 1990, pp. 205-263.

³² Bermann, G. A., “Taking Subsidiarity Seriously: Federalism in the European Community and the United States”, *Columbia Law Review*, vol. 94, no. 2, 1994, pp. 331-456.

³³ The best example is Lecourt, R., *L'Europe...*, *cit.*, note 19, p. 305: “On s'égarerait cependant à vouloir discerner si le destin de la Communauté doit être plus fédéral que confédéral. Les deux trits coexistent-avec d'autres-dans les traits. Il est donc vain de se laisser guider par un tel préalable”.

³⁴ Rasmussen, H., *The European Court of Justice*, Copenhagen, Gadajura, 1998, p. 353.

From this point of view the frankest judge is undoubtedly Andreas M. Donner, Professor of Public and Administrative law at Amsterdam University. In his works he openly wrote about the ECJ as a Constitutional Court, as a body with constitutional powers, as the guardian of a system which is not federal but which shares some elements with the federal system, as the comparison between EEC law and federal law shows: "L'application de cet (177 EECT) article suscitera sans aucun doute des difficultés et des malentendus. Triepel aurait déjà dit autrefois que les états fédéraux ne connaissent jamais une entière paix juridique, mais au mieux un armistice entre le droit de des états et le droit federal".³⁵

If Donner seems to be the judge most used to the comparison with foreign federal systems (although the reader cannot infer his scholarly sources in his writing due to a poverty of footnotes), few references to the "comparative vision" of the ECJ with other federal Courts can be found in the essay "La Cour de justice de la Communauté européenne du charbon et de l'acier" written by Louis Delvaux. However, in the "Introduction" the Author admitted that: "Cette Cour est tout à la fois la juridiction administrative de la Communauté et, à certain égards, une juridiction internationale... on peut même la considérer comme l'embryon d'une Cour fédérale".³⁶

Going beyond the research of express references to American scholars, one can stress that the constitutional reading of the European integration may be connected to the comparative perspective assumed by the first members of the Court. The link between a comparative perspective and the constitutional mission of the Court was emphasized by one of the strictest critics of the Court-Hjalte Rasmussen-³⁷ and recently Ole Spiermann.³⁸

³⁵ Donner, A. M., "Droit national...", *cit.*, note 18, pp. 9-15, 11.

³⁶ Delvaux, L., *La Cour de justice de la Communauté européenne du charbon et de l'acier*, Paris, Pichon & Durand, 1956, p. 11.

³⁷ Rasmussen, H., *op. cit.*, note 34.

³⁸ Spiermann, O., "The Other Side of the Story: An Unpopular Essay on the Making of the European Community Legal Order", *European Journal of International Law*, no. 10, 1999, pp. 763-789, available also at: <http://www.ejil.org/journal/Vol10/No4/art5.html>.

The latter pointed out that, behind the idea of direct effect (Van Gend en Loos “concept”), there was a “certain idea”³⁹ of European integration which implied a reluctance for the EEC’s existence as an international organization. This issue is very interesting but it has to be recalled that in Pescatore, for example, the awareness of a certain idea of Europe does not correspond to a federal vision of the European Communities. In his works (for example in “Law of integration”),⁴⁰ in fact, Pescatore reasserted the concept that the European Communities were something different either from a State or a Federation.

Moreover, there are some elements in the Treaties (art. 234 and 249 ECT for example) which offered a good ground to overcome the mere international features of the Communities by integrating the non-written “spirit” of the European Communities fundamental documents.

Coming back to the works of judges it can be recalled that in his essays Mackenzie Stuart (President of the Court of Justice from 10 April 1984 to 6 October 1988) explicitly refers to the American scholars, denying a possible comparison between ECJ and US Supreme Court although recognizing the utility of the American experience for the European scholars and operators. Another example of “face to face” confrontation between the American and the EC experiences is that of Pescatore - judge at the ECJ from 1967 to 1985 - who edited (with McWhinney) a very interesting collection of essays about the idea of federalism in European integration⁴¹ as a result of papers presented in a summer seminar of the International University of Comparative Studies in Luxemburg in 1972. Some of the included papers were written by American scholars such as Friedrich.⁴² In this work Pescatore confirmed his opinion about the “peculiarity” of EC experience.

³⁹ Pescatore, P., “The Doctrine of Direct Effect: An Infant Disease of Community Law”, *European Law Review*, no. 8, 1983, pp. 155-177.

⁴⁰ Pescatore, P., *The Law of Integration...*, *cit.*, note 17.

⁴¹ Pescatore, P. and McWhinney, E. (eds.), *Federalism and Supreme Courts and the Integration of Legal Systems*, Heule, UGA, 1973.

⁴² Friedrich, C., “The Political Theory of Federalism”, in *ibidem*, pp. 18 ff.

III. FRIEDRICH (AND CO.) AND THE EUROPEAN FEDERALIST MOVEMENT

The general influence of the American power on the rise of the European Communities was deeply studied by scholars: the well known essay by Lundestad “Empire by integration”,⁴³ for example, demonstrates the great length and breadth of the studies in this field.

Nevertheless these analyses do not exhaustively cover the influence of the “American ideas” on the destiny of integration.

The European Federalist Movement was founded by Altiero Spinelli and a group of antifascists between 27 and 28 august 1943. The aim of the Movement was the creation of a European Federation. The EFM is an independent political organization rather than a political party and represents the Italian section of the European Union of the Federalists (EUF) and the World Federalist Movement.

As can easily be inferred, there were some contacts between the EFM and the American scholars: one can recall —for example— the collaboration for the constitution project of ECD sponsored by Spinelli. The outcome of that project was a large book edited by Friedrich and Bowie.

“The Studies in federalism” were conceived in order to provide material and information to the members of the so called “*Ad hoc* Assembly”, set up on the basis of the EDC Treaty and charged to write the Constitution project of the “Federation or Confederation of Europe”, conceived as the legal basis for a common European army.

This collection of studies was commissioned by the “Mouvement Européen” and consists of several short essays devoted to the constitutional architecture of the main federal countries from a comparative perspective.

The Mouvement Européen itself was translated and published in seven countries with a Foreword by Henri Spaak who presented these contributions to the “*Ad hoc* Assembly”.

Such a volume was the outcome of a cooperation which started in 1951 when Frenay and Kogon —members of the European Federal-

⁴³ Lundestad, G., *Empire by Integration: the United States and European Integration, 1945-1997*, Oxford, Oxford University Press, 1998.

ist Union— built the bases for such a collaboration under the wishes of Henri Spaak and General William Donovan, President of the American Committee on United Europe. In 1952 the European Movement set up the Committee of Lawyers (then named Study Committee for the European Constitution) comprising personalities like Piero Calamandrei, one of the most important Italian constitutional lawyer and Altiero Spinelli.

The contribution required a comparative overview on the many faces of federalism: the work was carried out in July, August and September 1952 thanks to the financial support of the Ford Foundation and to the scientific support granted by Harvard Faculty of Law.

Bowie, after coming back from his experience as a legal advisor to the American High Commissariat in Germany, started to take part in the Committee's meetings together with Friedrich: "This was one the most important (although "indirect") contacts between the American scholars and the EFM in the form of a movement led by Spinelli himself".

Spinelli was mainly a politician (better: a man "of action") but he also kept contacts with the academic world, writing many forewords for scholarly studies and taking courses in several universities:⁴⁴ moreover in his *Diario Europeo (1948-1969)*,⁴⁵ he seems to have a friendly relationship with him.⁴⁶

Unfortunately (for the goal of this work) these writings are dry, essential and without references: these factors do not allow to identify

⁴⁴ Among his works: Spinelli, A., *Come ho tentato di diventare saggio*, Bologna, Il Mulino, 1999; Rossi, E. and Spinelli, A., *Il manifesto di Ventotene*, Bologna, Il Mulino, 1991; Spinelli, A., *Una strategia per gli stati uniti d'Europa*, Bologna, Il Mulino, 1989; Spinelli, A., *The Eurocrats: Conflict and Crisis in the European Community*, Baltimore, John Hopkins Press, 1966; *Diario Europeo: 1976-1986*, Bologna, Il Mulino, 1992; Spinelli, A., *L'avventura europea*, Bologna, Il Mulino, 1972; Spinelli, A., *L'Europa non cadde dal cielo*, Bologna, Il Mulino, 1960; Spinelli, A., *L'Europa fra ovest e est*, Bologna, Il Mulino, 1990; Spinelli, A., *La mia battaglia per un'Europa diversa*, Manduria, Lacaita, 1979. See also the introductions or forewords to many scholarly writings or essays collections (for example Lodge, J. (ed.), *European Union: the European Community in Search of a Future*, New York, St. Martin Press, 1986 or Bieber, R. et al., *L'Europe de demain: une union sans cesse plus étroite: analyse critique du projet de traité instituant l'Union européenne*, Luxembourg, Office des Publications Officielles des Communautés Européennes, 1985.

⁴⁵ Spinelli, A., *Diario Europeo 1948/1969*, Bologna, Il Mulino, 1989, pp. 83, 96, 129, 132, 148, 149, 152, 156, 182, 243, 262, 263, 264, 280, 285, 314, 372, 387, 463.

⁴⁶ *Ibidem*, p. 284.

if, amongst other things, such authors had contributed to Spinelli's thought.

As Albertini pointed out,⁴⁷ Spinelli had studied the British federalists like Robbins⁴⁸ or Beveridge⁴⁹ during his imprisonment and such influences were studied by Pinder;⁵⁰ among the "Americans" the only author mentioned seems to be Carl Friedrich for his work "Europe as an emergent nation?".⁵¹ Anyway, as it has been shown above, Spinelli was in good relationship with Friedrich and in his *Diario Europeo (1948-1969)*⁵² he stated to have written a review of the Federal Studies edited by Friedrich and Bowie:

Apparently this seems normal because the EFM waited for an active support for its struggle but it is remarkable to look at the meaning of the concepts (formally the same) used by such actors; unfortunately, when explaining what federalism is, the EFM (Spinelli as well) usually refers to the American debate of the Convention without mentioning other sources.

Probably if Spinelli had further carried out his project in order to write a book about the theoretical premises of his reasoning, more details would have been established.⁵³

This part of the paper will try to underline the difference between the American scholars' and the federalists' conceptions of federalism:

The notions of State and sovereignty are at the heart of such a vision which Friedrich himself named "static". Thanks to Friedrich a dynamical approach to the federalistic issue has been learnt. According to Friedrich studying federalism did not mean to study the Fed-

⁴⁷ Albertini, M., "L'unificazione europea e il potere costituente", 1988, in molti autori, *Il difficile cammino dell'Europa unita. Convegno Italia-Usa*, Milano, Giuffrè, 1985, pp. 33-48, 45.

⁴⁸ Robbins, L., *Economic Planning and International Order*, London, Macmillan and Company, 1937, and *The Economic Causes of War*, Nueva York, Macmillan Company, 1940.

⁴⁹ Beveridge, W., *The Price of Peace*, London, Pilot Press, 1945.

⁵⁰ Pinder, J. (ed.), *Altiero Spinelli and the British Federalist: Writings by Beveridge, Robbins and Spinelli, 1937-1943*, London, Kogan Page, 1998.

⁵¹ Friedrich, C. J., *Europe as an Emergent Nation?*, New York, Harper & Row, 1969.

⁵² Spinelli, A., *Diario Europeo...*, *cit.*, note 45, p. 372.

⁵³ The possible title was *L'Utopia democratica* as we know thanks to his, *ibidem*, p. 411

eral State as other authors suggest: moreover, the federal process overcomes the distinction between the historical figures of Federal state (*Bundesstaat*) and Confederation (*Staatenbund*), as Friedrich explicitly and strongly stressed in his works.⁵⁴ The classical vision of federalism is founded on a very static approach and based on ideas of State and sovereignty which Friedrich criticized heavily: “No sovereign can exist in a federal system; autonomy and sovereignty exclude each other in such a political order”.⁵⁵

As La Pergola⁵⁶ emphasized, the relationship between federalism and the State in Friedrich’s thought is ambiguous: sometimes it seems that Friedrich substituted the idea of State with the concept of “community”⁵⁷ but-despite his polemical fervour- the state shadow remained in his argumentation.

This criticism to the two pillars of Constitutional law is very relevant today. In the European context, in fact, is very difficult to understand who is the holder of the power, who is the sovereign (The Emperor or the Leviathan?), because the European legal order is characterised by the interlacement of different levels (international, supranational and national). It is principally founded on this pact between the Emperor and the Leviathan, on this constitutional exchange among different levels. A clear difference from the classic approaches to federalism exists here: Friedrich specified that such an opposition was “amplified” by scholars studying Hamilton, Madison and Jay’s theories:

The American concept, at this point, may be called the discovery of the “federal state”, because that was the term which the Germans and

⁵⁴ Friedrich, C. J., “Federal Constitutional Theory and Emergent Proposal”, in *Federalism: Mature and Emergent*, New York, McMahan, 1955, 510 ff.; Friedrich, C. J., *An Introduction to Political Theory: Twelve Lectures at Harvard*, New York, Harper and Row, 1967; Friedrich, C. J., *Man and his Government: an Empirical Theory of Politics*, New York, McGraw-Hill, 1963.

⁵⁵ Friedrich, C. J., *Trends of Federalism in Theory and Practice*, London, Pall Mall, 1968, p. 8.

⁵⁶ La Pergola, A., “L’empirismo nello studio dei sistemi federali: a proposito di una teoria di Carl Friedrich”, in La Pergola, A. (ed.), *Tecniche Costituzionali e Problemi delle Autonomie Garantite. Riflessioni Comparatistiche sul Federalismo e Regionalismo*, Padova, Cedam, 1987, pp. 123-182, 133 ff.

⁵⁷ *Ibidem*, p. 129.

others attached to it when they contrasted it to a confederation of states. Actually, no such dichotomy was ever faced by the master builders of the American system. They were, in fact, the first who realized, at least in part, that federalism is not a fixed and static pattern but a process.⁵⁸

Despite Friedrich's softness and delicacy, an evident "break" between him and the American Founding Fathers exists. The famous contrasts between Hamilton and Madison seem to confirm such an intuition: the institutional dimension of federalism is not a detail in their reasoning (see the papers on the "insufficiency of the Confederation", n. 15-16-17-18-19-20, for example) and the idea of sovereignty is central.

This impression seems to be confirmed by Lucio Levi, who devoted few pages on Friedrich's theory in his *Il pensiero federalista*. In this work, Levi contested Friedrich's approach by arguing that the institutional point of view (which was neglected by Friedrich's federalizing process) is central.⁵⁹

Such a premise is fundamental because Friedrich's concept of federalism is a notion which all American scholars had considered. In his masterpiece "Federalism and supranational organizations", Peter Hay found many analogies between federalism and supranationalism. The latter is defined as "a political quality rather than a power or a right",⁶⁰ identifiable on the basis of six "criteria":⁶¹

- 1) Independence of the organization and of its institutions from the member states.
- 2) ...the ability of an organization to bind its member states by majority or weighted majority vote.
- 3) ...the direct effect of law emanating from the organization on natural and legal persons in the member states, i.e., a binding effect without implementation by national legislative organs.

⁵⁸ Friedrich, C. J., *Trends of Federalism...*, *cit.*, note 55, p. 18.

⁵⁹ Levi, L., *Il pensiero federalista*, Roma-Bari, Laterza, 2002, p. 110.

⁶⁰ Hay, P., *op. cit.*, note 4, p. 30.

⁶¹ *Ibidem*, pp. 31 ff.

4) ...supranationalism, at least in its present European form, involves a transfer of sovereign powers from the member states to the organization.

5) ...supranationalism depends on the extent of functions, powers, and jurisdiction attributed to the organization.

6) Finally, supranationalism has been defined in terms of the institutions with which the European Communities have been equipped. This suggestion does not draw support from an existence of a Council and a Commission because all international organizations which are more than mere treaty arrangements, alliances, or associations, must necessarily have policy-making or administrative organs or both.

According to Hay, supranationalism is connected to the idea of federalism because both concepts are based on a transfer of power from the State to a higher entity. He started from a dynamic notion of federalism without regard to the institutional form and he distinguished “the federal elements from the international elements”:⁶² “‘Federal’ is therefore used in an adjectival sense: it attaches to a particular function exercised by the organization and is used to denote, as to that function, a hierarchical relationship between the Communities and their members”.⁶³

Hay used the notion of “functional federalism” in order to describe the jurisdiction/activity of the ECJ and the relationship between national and supranational law (despite the scant discourse devoted to the national legal orders). Such a formula is clearly oxymoronic for a European scholar who is used to the contraposition federalism/functionality and it apparently represents a sort of heresy.

Nevertheless Hay explained what he meant by this formula when he specified that his notion of federalism does not consider the institutional form of the organization.

It seems evident that such a distinction is similar to Wheare’s⁶⁴ distinction between federal government and federal constitution: here Hay stressed the possible gap between the federal functions of an organization and its possible definition as a federation.

⁶² *Ibidem*, p. 90.

⁶³ *Idem*.

⁶⁴ Wheare, K., *Federal Government*, Oxford, Oxford University Press, 1953, pp. 16-34.

Thanks to the distinction between federation/federal state and federalism Weiler's reasoning can be supported today:

The Community is not destined to become another America or indeed a federal state.

But I am convinced that the relevance of the federal experience to Europe (and the European experience to any novel thinking about federalism in the United States and other federations) will become increasingly recognized.⁶⁵

Another element of distinction between the Federalists and the American scholar lies in the terminology: they use the term "unification" rather than "integration".⁶⁶ This *lapsus* clearly reveals the aims of the movement. From a theoretical point of view, Albertini explained the relationships among integration, construction and unification.⁶⁷ He defined integration firstly as a term related to the idea of a process and secondly as a concept insufficient for explaining the European route alone and unassisted by construction and unification. If Spinelli was a politician, a man of action, Albertini wanted to give a strong theoretical basis to the federalist movement by writing long essays about the notion of federalism. As he pointed out, one can give two possible contents to the notion of federalism: federalism as a theory of the Federal State and federalism as a vision of world strongly connected with the Kantian idea of peace.

He suggested that it was necessary to overcome the first (narrow) point of view without losing the peculiarity of federalism as an original thought, already emancipated from the liberalism thanks to Altiero Spinelli.⁶⁸ In this sense the debate with the scholars of the integral federalism and with Elazar can be appreciated.⁶⁹

Mario Albertini was a very important figure in the European Federalist Movement's history and was able to spread and clarify

⁶⁵ Weiler, J., "Eric Stein...", *cit.*, note 7, pp. 1160-1162, 1161.

⁶⁶ For example, Rossolillo, F., "Il ruolo dei federalisti", 2002, available at: http://www.euraction.org/riv/files/i3_02.pdf.

⁶⁷ Albertini, M., "L'Unificazione...", *cit.*, note 47, pp. 33-48, 34-35.

⁶⁸ As Lucio Levi has pointed out. Levi, L., "Il federalismo dalla comunità al mondo", 2002, available at: http://www.euraction.org/riv/files/i3_02.pdf.

⁶⁹ *Idem.*

Spinelli's thought (although some polemics between them were not missing).⁷⁰ He was a Hamiltonian thinker, not allowing in his works much room for other American writers. Nevertheless it is impossible to think that Albertini did not know Friedrich or the other authors mentioned in our paper: such a bibliographical absence can be explained by looking at Albertini's premises.

From his point of view, federalism is a political project which implies three aspects: a structural element (the Federal State), an axiological element (peace) and a socio-historical element (the overcoming of the division of the society into classes and nations).⁷¹

According to Albertini, the model is clearly that designed by the American Constitution and all that remains does not count. It is a different aim from that of American lawyers engaged in explaining the trends of such a process from a theoretical point of view.

Nevertheless some common points do exist: the idea of the federalism as a project (although conditioned by the absolute goal of the Federal state) and the refusal of nationalism and of the State-centred perspective.⁷²

IV. THE INFLUENCE ON THE EUROPEAN LEGAL STUDIES

In simple terms, it can be said that in Europe the premise of EU studies is the peculiarity of the EU and the impossibility of categorising it by looking at other historical experiences; in the United States, instead, the premise of such comparative lawyers is the comparability between US federal experience and the EU integration process.

Nevertheless such a clear-cut dichotomy would obviously represent a methodological mistake: for example, it is possible to recall that Cappelletti and Dehousse, European authors (although Cappelletti

⁷⁰ Pinder, J., "Mario Albertini e la storia del pensiero federalistico", 2002, available at: http://www.euraction.org/rivfiles/i3_02.pdf.

⁷¹ See Albertini, M., *Lo Stato nazionale*, Giuffrè, 1960; Levi, L., *Il federalismo. Antologia e definizione*, Bologna, Il Mulino, 1979; Albertini, M., *Nazionalismo e federalismo*, Bologna, Il Mulino, 1999; Levi, L., *sub voce* "Federalismo", in Bobbio, N. (eds.), *Dizionario di politica*, Torino, UTET, 1983, pp. 403-414.

⁷² Albertini, M., *Nazionalismo...*, *cit.*, previous note.

taught at Stanford as well), do not share the first methodological strategy.

Stein, Hay, Friedrich and Bowie, *de facto*, operated a process of scholarly “exchange” studying Europe in light of the US experience because the latter was the most well-known experience for them (although many of them were Europeans transplanted in US and became very important scholars there).

As Weiler pointed out: “Eric Stein was able in the early years of the Community, along with colleagues of both sides of the Atlantic, to reject the temptation of synthesising Community legal developments into the mainstream of public international law. In so doing he contributed to the creation of an entirely new discipline”.⁷³

This kind of comparison would have also been pursued by the first pupils of such Masters: the Italian Maurizio Cappelletti —Full Professor of Comparative law and Italian Civil Procedural law— is one example.

In 1985 he was the editor of one of the most important editorial project in EU studies: in the volumes of “Integration through law”, Cappelletti —thanks to his bi-systemic teaching experience— grouped many American and European in order to compare US/European federalisms and the EC integration process.

In the editors’ words this work is “characterised as a highly pluralistic research endeavour... the product of the efforts of close to forty contributors from many countries in three continents, with almost every contribution being, in its turn, the joint product of a team”.⁷⁴

Adopting Friedrich’s notion of federalism as a federalizing process, the authors began to study the strong connection between the notions of federalism and integration as seen as “twin concepts”.⁷⁵

Elazar recognized in his work the importance of such a dynamic approach to the federal issue when he identified several types of fed-

⁷³ Weiler, J., “Eric Stein...”, *cit.*, note 7, pp. 1160-1162, 1161.

⁷⁴ Cappelletti, M. *et al.*, “A General Introduction”, in Cappelletti, M. *et al.* (eds.), *Integration Through Law: Europe and the American Federal Experience*, Berlin-New York, W. de Gruyter, 1985, vol. 1, pp. 3-68, 5 ss.

⁷⁵ *Ibidem*, pp. 3-68, 15.

eralism, going beyond the static contraposition between federation and confederation.⁷⁶

If Smend⁷⁷ had already emphasized the strong relation between the State and the Constitution (“the integration belongs to the content of constitution”) with regard to the national context, Cappelletti, Weiler and Seccombe studied the supranational dimension of integration (conceived as process of integration and as the outcome of such a process).

Their philosophy was based on trust in the comparative approach as conceived as a third way different from the legal positivism and the natural law approach.

According to the authors of “Integration through law”, comparison serves as a laboratory which permits to test and verify the theoretical constructions. This is one of the most important legacies of these scholars and today one can add that there is a structural factor in the EU which supports the necessity to compare: the complexity of the EU legal order. The European Union is a “complex”⁷⁸ (in the original meaning of “interlaced”) legal system which is based on the constitutional exchanges among three (maybe four in the Federal/Regional States) levels (national, supranational, international); moreover, due to the different national legal traditions in the European panorama, the national level is diversified. Following these premises it can be concluded that the comparison is fundamental in order to understand the dynamics of the EU.

Many tools of comparative lawyers, in fact, are useful to give a solution to the EU issues: for example, the debate on legal transplants could be used in order to “rationalize” the migration of constitutional

⁷⁶ Among the many: Elazar, D., “Extending the Covenant: Federalism and Constitutionalism in a Global Era”, 1998, available at <http://www.jcpa.org/dje/articles/fed-const-global.htm>.

⁷⁷ Smend, R., *Costituzione e diritto costituzionale*, Milano, Giuffrè, 1990, p. 286.

⁷⁸ Martinico, G., “Complexity and Cultural Sources of Law in the EU Context: From the Multilevel Constitutionalism to the Constitutional Synallagma”, *German Law Journal*, 2007, available at http://www.germanlawjournal.com/pdf/Vol08No03/PDF_Vol_08_No_03_205-230_Articles_Martinico.pdf. About complexity and law see: Delmas Marty, M., *Le pluralisme ordonné*, Paris, Seuil, 2006; see also Doat, M. *et al.* (dir.), *Droit et complexité*, Rennes, PUR, 2007.

ideas⁷⁹ from the national to supranational level; the notion of a “mixed legal system” (as meant by Özüçü)⁸⁰ could be used in order to classify the coexistence of several legal traditions in the EU.

All these concepts, then, allow us to compare the EU with other legal and political realities without denying EU particularities.

In 1994 Renaud Dehousse⁸¹ wrote about the lack of a comparative approach in the European studies, stressing the benefits and the difficulties (the problem of the level of analysis) of comparison in this field. The refusal to compare implies the “absolutisation” of EU level and the consecutive denial of EU complexity:

In many respects, the situation of Community lawyers is similar to that of a scholar who would have confined himself to the study of his domestic legal system. Comparative research, with its corollary of relativism, may help him to challenge the assumptions rooted in his own legal system and counteract the “tendency of ultrasophisticated analysis and quasi-scholasticism which arises when generations of scholars continue to examine the same fundamental documents within a purely national context”.⁸² In other words, one could argue that comparative research is indispensable if Community law is to move to a more advanced level of scholarship.⁸³

On the contrary, starting from the necessity to build a normative jurisprudence in the EU, Ian Ward stressed the fact that the European peculiarity requires a *sui generis* approach. According to him

⁷⁹ Walker, N., “The Migration of Constitutional Ideas and the Migration of the Constitutional Idea: The Case of EU”, *EUI working paper*, 2005, available at <http://cadmus.iue.it/dspace/bitstream/1814/3324/1/law05-04.pdf>.

⁸⁰ “Mixed legal systems in the classical sense are systems in which elements from more than one legal traditional source co-exist or intermingle... Mixed legal systems come into being as a result of the transmigration of legal ideas, institutions, concepts and structures under various types of pressure, internal or external”, in Özüçü, E., “Public law in mixed legal systems and public law as a ‘mixed system’”, *Electronic Journal of Comparative Law*, 2001, available at <http://www.ejcl.org/52/abs52-2.html>.

⁸¹ Dehousse, R., “Comparing National and EC Law: the Problem of Level of Analysis”, *American Journal of Comparative Law*, 1994, pp. 761-781.

⁸² Witte, B. de, “The European Dimension of Legal Education”, in Birks, P. B. H. (ed.), *Reviewing Legal Education*, 1994, 68 ss, 72-73.

⁸³ Dehousse, R., “Comparing National...”, *cit.*, note 81, pp. 761-778, 764.

comparativism denotes the failure of every attempt to build a EU jurisprudence.

Ward recalls that “comparativism in law is invariably used as an alternative to jurisprudence”⁸⁴ or, in other words, the weak answer to the inadequacy of the tools “inherited from our forefathers”.⁸⁵

On the contrary it can be recalled that comparison is not a static process.⁸⁶ Comparing two elements does not imply that they are the same.

Although a huge difference exists between the Federal State and the EU, a comparison between the two is possible. It is on this premise one finds our support for the comparative approach in EU studies.

Many scholars stress the comparability between the ECJ and US Supreme Court, following Hay’s intuitions.

The latest example in this sense is provided by the studies of Rosenfeld where he remarked that the constitutional adjudicator nature of these two courts despite the formal absence of such a status in the terms of the fundamental norms.⁸⁷

The integration techniques used by the ECJ have been described by Hay and Rotunda in three works: in a book, “The United States Federal system”⁸⁸ and in two essays contained in “Integration through law” (“Instruments for legal integration in the European Community. A review”⁸⁹ and “Conflict of laws as a technique for legal integration”).⁹⁰

⁸⁴ Ward, I., *A Critical Introduction to European Law*, London, Butterworths, 1996, p. 181.

⁸⁵ *Idem.*

⁸⁶ Glenn, P., *Legal Traditions of the World. Sustainable Diversity in Law*, Oxford, Oxford University Press, 2005; see also Glenn, P., “Doin’t the Transsystemic: Legal Systems and Legal Traditions”, *McGill Law Journal*, no. 4, 2005, pp. 863-898.

⁸⁷ Rosenfeld, M., “Comparing Constitutional Review by the European Court of Justice and the U. S. Supreme Court”, in *Cardozo Legal Studies Research Paper*, no. 157, 2006, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=917890.

⁸⁸ Hay, P. and Rotunda, R., *The United States Federal System. Legal Integration in the American Experience*, Milano-London-New York, Giuffrè and Occana, 1982, p. 198.

⁸⁹ Gaja, G. *et al.*, “Instruments for Legal Integration in the European Community”, in Cappelletti, M. *et al.* (eds.), *op. cit.*, note 74, pp. 113-160.

⁹⁰ Hay, P. *et al.*, “Conflict of Laws as a Technique for Legal Integration”, in Cappelletti, M. *et al.* (eds.), *op. cit.*, note 74, pp. 161-258.

The former is an American book written from the European perspective, for an Italian publisher (Giuffrè) and is contained in a collection (*Studies in Comparative Law*) edited by Cappelletti himself. Authors like Weiler⁹¹ or others⁹² use this conceptual and terminological apparatus in their analysis without subscribing to the view that EU is a federation.

Rather, the idea of constitutional tolerance in Weiler's thought permits a distinction of Europe from other similar experience.

The formula "preemption" describes the removal of a government's power to regulate a specific subject matter. When an act of Congress removes a local or state government's power to regulate a specific subject matter, the process is called "federal pre-emption". This technique is based on the supremacy clause of US.

When looking at the debate caused by the Proclamation of the Charter of Fundamental Rights of the European Union, it becomes clear that one of the most important and potential effect of such a document is the centralization of the powers and competencies in the field of fundamental rights. Such an effect is connected to the American experience of the incorporation by the Federation. The "Incorporation" is a doctrine by which portions of the of the U. S. Bill of Rights are applied to the states through the Due Process Clause of the Fourteenth Amendment. Most of those portions of the Bill of Rights were incorporated by a series of United States Supreme Court decisions in the 1940s, 1950s and 1960s, especially in the case of *Gideon v. Wainwright*.⁹³

Another terminological and conceptual borrowing refers to the "implied powers doctrine" by which the American scholars mean the expansion of federal power and the progressive centralization of federal powers;⁹⁴ this formula is used to describe the ECJ activity despite the differences existing in the European and American contexts about the role of subsidiarity in the latter as described above.

⁹¹ See Weiler, J., "The Transformation...", *cit.*, note 29, pp. 2403-2483.

⁹² Star-Deelen, D. and Deelen, B., *op. cit.*, note 30, pp. 81-97; Bermann, G. A., *op. cit.*, note 32, pp. 331-456.

⁹³ U. S. Supreme Court, *Gideon v. Wainwright*. 372 U. S. 335 (1963).

⁹⁴ See Section 8, Article I of the US Constitution.

V. FINAL REMARKS

In conclusion, it can be said without any doubt that the intuitions of the American scholars have had a very important impact on the legal reasoning of the European Court of Justice and on the academic debate in the following years respectively. On the contrary, the impact on the language and activity of the *European Federalist Movement* is less evident.

Concerning the first kind of influence on the legal reasoning of the European Court of Justice, one could say that the features of the initial case-law, more oriented to the French style (short judgements), do not permit to “find” the explicit confirmation of such an influence. In any case, as Weiler and Cappelletti proved later, the technique of integration used by the Court and the “premises” of cases like *Van Gend en Loos* or *Costa/Enel* clearly bring to mind the instruments of American federalism integration: doctrine of implied powers, supremacy, incorporation, expansion of federal jurisdiction. The influence on the language of the European Federalist Movement was not fundamental: in their writings, in fact, Albertini and Levi, instead, adopted a notion of federalism and a language which is quite different from that of the American comparative lawyers. On the contrary, later scholars (both from Europe and US) undoubtedly “applied” their lesson by translating the categories and the techniques of federalism in contexts not centred on the national state (international and supranational organizations).⁹⁵

⁹⁵ See for example Dehousse, R., *Fédéralisme et relations internationales*, Bruxelles, Bruylant, 1991.