

THE CONFERENCE ON THE FUTURE OF EUROPE BETWEEN FORM OF STATE AND FORM OF GOVERNMENT.

di Alberto Lucarelli**

With regard to the Conference on the Future of Europe (2020-2022), on February 14, Italy presented a document entitled "Italian Non-Paper for the Conference on Europe". The document consists of three paragraphs: 1 Introduction; 2. Bolstering the European democratic space, promoting a better functioning of the EU; 3. Fine tuning policies - Promoting a thorough debate on EU priorities.

Also in order to open a debate, within this newly established observatory, I will try to formulate some "quick" considerations; bearing in mind that from this European political process it will be necessary - hopefully - to finally define what the horizon of the European Union will be; i.e. a union of States (intergovernmental dimension) or rather a supranational entity with a federal projection? This is the basic question, therefore the question of the form of state - the relations between the European institutions and those of the individual Member States - is strongly raised, stressing a classic category of constitutionalism, but equally at the centre of the political debate is the form of government, the relations between the exponential bodies of the governments in Brussels, the bureaucratic administrative apparatus, represented by the Commission, the judicial dimension expressed by the Court of Justice and finally the long-standing question of representation. The role of the European Parliament, its ability to influence the political direction, the relationship between representation and sovereignty of the population and the extent to which these categories in a logic of "State" have been mortified in the process of European integration. In short, almost twenty years ago the corresponding paper magazine was born with the aim of questioning the classic categories of public law in the process of European integration. Today, as never before, the themes then chosen and identified are very topical. The economic-financial steering of the Maastricht Treaty, all declined on competition law,

** Professore ordinario di Diritto costituzionale – Università di Napoli "Federico II".

rigour and austerity, the aborted project of a political Europe in the early 2000s, clumsily and without courage taken up and translated into the Lisbon Treaty, give us in 2020 an uncertain European Union, not confident in itself, unable to play a geo-political role. The Mediterranean basin, and in particular the Middle East, now after the progressive withdrawal of the United States, sees an ever stronger presence of Erdogan's Turkey and Putin's Russia. Europe "moves" in a scattered order, incapable of expressing a unitary political direction, or rather, we could say lacking a political project of its own. So form of state and form of government are, or at least should be, two central themes of the conference on the future of the European Union. In a vision according to Giambattista Vico, these two enormous categories should be approached with a realistic and non-formal approach. To build a "dress" that is able to make Europe play a political role, valuing citizens, their participation, their demands, their needs, also in the consideration that in Europe, from the beginning, the instruments that have most characterized the development of democracies in the 20th century have been absent: political parties. The document presented by Italy has gone almost unnoticed, and this is wrong. Therefore we should take it into consideration, even if aware, of its limitations. But it is necessary to discuss it! The "pro-Europeans", those who believe in a political Europe, in a form of state that tends to be federal, must abandon the functionalist approach, that is to say, a Europe with a thousand layers, which stratifies and proceeds in this way without a goal. This approach has been going on since 1954, when, in a vision we would say today sovereign, the French Parliament rejected the project of a European Defence Community. In contrast to this approach, politically and conceptually weak, incapable of a strong proposal - if we exclude the (shipwrecked) project of the European Constitution - there has been a very political approach, jealous of the prerogatives of individual states and their diplomatic and economic-financial strength. A sort of intergovernmental realism, where the European Union becomes, in substance, an arena of institutionalized interstate cooperation. And this is the orientation that has prevailed in recent years. What is Italy's orientation in the document cited? It is not well understood. On the one hand, it seems to distance itself from the functionalist dimension, but without reacting vigorously to the intergovernmental dimension. In extreme synthesis: confederation or federation?

I believe that from the Conference on the Future of Europe, this doubt must be resolved.

To enhance the political and economic guidelines of the individual States, or to try to unite them through a difficult and complex process of synthesis and a vision that does not divide? It is clear that if we think of a supranational Union, it should not do everything, based on its relations with the individual Member States, on the system of competences, distinguishing the subjects that have European competence from those that have state competence. In this sense, the principle of vertical subsidiarity has shown all its limits. In this part the Italian document seems interesting, in fact it identifies some policies that should be European, such as fiscal harmonization, migration policy, financial solidarity policy, investment policy, Green Deal policy. But a supranational approach, or even an approach that can be improperly defined as federal, needs to be built, not only through the definition of the system of competences, but also with the "constitutional" structure of the form of government and with the determination and allocation of resources. A "frugal" Budget. As expressed today by the countries of Northern Europe, it slips towards a confederate Europe, circumscribing the autonomy of supranational institutions. As well highlighted (S. Fabbrini, *Il Sole 24 Ore*, 23 February 2020, p. 11): "The Italian document distances itself from the confederal logic recognizing (for example) that the Eurozone cannot be the mere aggregate of separate national policies, or fiscal policy cannot be the mere coordination of national fiscal policies. However, it is still too general in defining the indispensable resources that the EU should acquire in order to guarantee its institutional autonomy" and so I add, disengaging from the confederal and intergovernmental dimension. All this is accompanied in this document by the hope that the EU will not only enhance the role of parliament, for example by formalising its role as a legislative initiative and strengthening the instruments of political participation of citizens. In short, in conclusion, the two major issues to be addressed remain the form of state and the form of government, with the awareness of dealing with complex issues, not fearing to go through them in a transparent, participatory and even conflictual way, and not only in a debate within the chancelleries of individual states.