



## TRANSATLANTIC LAW FORUM

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CLEMENCEAU had dinner once with two lovely women. At the end of the dinner, the one at his right asked him: “*Monsieur le Président*” (he was at this time President of the French Government, i.e the Prime Minister of France), who do you think is the most pretty of the two of us? CLEMENCEAU did not answer and pulled his face... Later on the woman who was seated at his left told him: “*let’s put it differently; suppose that we are sinking in a river with you and we are about to drown, who would you save?*”? CLEMENCEAU looked at her and said: “*Madam, I have no doubt you know how to swim perfectly!*”

Should we save democracy or economy first, wealth or ethics? Should we save both<sup>1</sup>? Is it because of our democracies deficiencies that we are in such a mess and what to do with our democratic systems in such troubled periods? How does our decision-making process work?

Same questions on both sides on the Ocean...

### **WHERE IS THE PROBLEM?**

To me the problem with modern nations<sup>2</sup> does not rely in the democratic mechanics (formal or substantial democracy): all modern countries are equipped to face such crisis, especially for emergency measures. And the basics of democracy as they were founded by MONTESQUIEU and others have nothing to do with some politics or behaviors which may have caused a part of the crisis like bad government policies, too much bad credit, too much consumption or too much leverage.

The issue is elsewhere and here is my personal, conservative-European and Atlantist view.

In the so called “*people’s democracies*” like USSR or CHINA or in totalitarian systems **faith and belief in the system** are provided by the power and by the law: no choice, no debate, you have to believe. In liberal democracies, faith in the system and measures to be taken are **a matter of public debate**. That public debate goes to political and legitimate decisions made by the two branches of power which have to deal with these issues, which are the executive and the legislative powers. The difference between the two types of democracies is very accurate in a time of crisis, and from that point of view, liberal democracies are

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<sup>1</sup> See the Robert DAHL writings about capitalism and democracy.

<sup>2</sup> Apart the issue of “global governance” which is a big question in itself.

much weaker and vulnerable, precisely because of the debate on purpose and content.

If you add to that situation: globalization, international regulation and European governance, the combination of crisis and real questioning about free economy model, we have three main problems in Europe now regarding democracy:

- 1/ the people miss transparency and legitimacy which are essential to democracy; they need debates and vote on the solutions to crisis;
- 2/ many lost **faith in the free economy system**, because the system **itself is in big shock**<sup>3</sup>; when I hear some people from the dogmatic thinking in Europe<sup>4</sup>, I see that the “*road to serfdom*” is not far again...<sup>5</sup>; have a quick look on the NPA program in France<sup>6</sup>, you will hear about public banks only controlled by the people and employees, public monopolies on education, transportation, health and energy, etc...
- 3/ with the crisis many feel rejected, hurt and unable to perform again in our societies; they feel out of the game, too international, too technical and too far away from themselves...

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<sup>3</sup> the enemies of free economy and free enterprise in Europe immediately shouted at us (“us” i.e the European conservatives): “*Everything is the fault of the Americans and capitalism... communism died in 1989, capitalism collapsed in 2009*”

<sup>4</sup> The idea of capitalism being not compatible with democracy if not liberal is not new, see John RAWLS in the US.

<sup>5</sup> According to these guys Karl MARX died in 1989, Milton FRIEDMAN died in 2009... And what if KEYNES also died in 2010, as much of the classic economic theories? Are old ideas just unable to cure the situation? Here is the core of the crisis now: not really commerce and economy collapsing, but no solution to bring growth and prosperity again. The only way proposed in Europe is rigor and regression, which make people poorer and less happy, and the temptation to get back to collectivism.

<sup>6</sup> NPA is the French New Anti-Capitalist Party, raising more than 3% of the votes and much more among young people,

To quote Frédéric BASTIAT the people feel “*too many over humanity to rule it*”.

What should we do in Europe as crisis is still there?

## **WHAT TO DO ?**

1/ Let's get back to the fundamentals of democracy: **the consent of the governed**. Let's make our decisions, national first (*subsidiarity*), European, if possible when they are international<sup>7</sup>, **as close as possible to the people**; this is a whole debate in itself, but to cut to the chase, crisis or no crisis, we must avoid technocracy and unclear decision-making processes; **let's make clear, predictable and legitimate rules**;

2/ If we do not want to see big government with huge coming back in Europe **let's be careful** with preserving the very essence of democracy, its **generative fact**<sup>8</sup>, which is **the equality of conditions**, which means not only that all men are created equal but that everyone must have a chance to become successful in a free economy;

3/ **Let's proclaim in Europe that free enterprise and free market are the one and only way to growth and prosperity**, the only guarantee to individual freedom and the real safeguard for democracy; there is no possible alternative; Europeans must remember that capitalism was immensely successful: since 1990 the World GNP grew up of 100% and the average way of life of 50%, because free economy works and creates wealth. Our Founding Fathers in the E.U (SCHUMAN, GASPERI, ADENAUER, MONET..) believed in democracy but

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<sup>7</sup> Even this looks difficult; we all know that IMF or ECB do not work as a democracy...

<sup>8</sup> TOCQUEVILLE main view.

first in freedom and free economy. Regulation is a part of the mechanics only, never the cornerstone of the system.

4/ **Let's be pragmatic and efficient with E.U evolution:** we did a wonderful job I think over the past 50 years by building one real and performing market integration for 520 million consumers. Is there a lack of democracy and too much technocracy? Maybe, but things will come in time; and in Europe democracy remains mainly an issue for nation states. We have to be careful with “*big theories*” said TOCQUEVILLE<sup>9</sup>....The simplified Treaty that President SARKOZY promoted was a good solution as an alternative to the “*European Constitution*”. Regarding the crisis we should not concentrate on building a federation that probably a/ will never exist between our nation states, b/ would not bring as a federation any supplementary capacity to solve problems related to the crisis. Nevertheless it is true that we were late and not performing on measures to face crisis<sup>10</sup>. Now we have quite a big project with the EUROGROUPE<sup>11</sup> to manage the crisis on a harmonized framework which will be democratically discussed soon at the European Parliament. And we should have by 2011 a financial supervision in the EU<sup>12</sup>.

5/ **Let's promote the Transatlantic union and cooperation:** as EU and NATO work together –we need both –, those who work for economic freedom on both sides of the pond have to remain together. We will work on that in Lisbon on November 20<sup>th</sup> with the EU-US summit. It is not a small deal: transatlantic economic partnership represents 4.240 billion of USD. Regarding what has to be done (like cooperation among regulators to face the global systemic

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<sup>9</sup> Never forget that the essence of American values and cultured was captured by a Frenchman.

<sup>10</sup> Charles WYLOSZ diagnosis.

<sup>11</sup> Cf. Brussels meeting held in Brussels on September 6 and 7 2010.

<sup>12</sup> Jacques de LAROSIERE Report, 2009.

risk or cooperation between central banks), we must work together, *short term and long term measures* as said Takafumi Sato, the Commissioner of the Japanese FSA<sup>13</sup>.

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**Conclusion:** we must act in the right and proper direction. Democratic politics do not have to rule or to correct capitalism; they must protect it, offer it a safe framework for its development (the “*rules of the game*”), especially when capitalism is changing and they must probably sometimes restore a kind of moral dimension of capitalism<sup>14</sup>.

Finally, crisis or not crisis Governments have to move on, but without forgetting that they do exist first to protect individual freedom.

Here are some conditions for democracy and capitalism to remain a handsome and healthy couple.

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<sup>13</sup> 2009 International Monetary Conference, Kyoto June 8, 2009.

<sup>14</sup> President SARKOZY speech in Davos, January 2010.