

Rethinking the role of the federalist ideas in the construction of Europe

(A historical survey)

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Abstract

The idea of a peaceful world federation, based on the personal principle and the principle of autonomy (subsidiarity), has a long history. It developed in opposition to the sovereign states that pursued centralisation and power policy world wide. The European federation was envisaged as regional part of the peaceful world federation. European social organization was characterised by the dichotomy of sovereignty versus autonomy, and the European federalist visions developed in opposition to sovereignty. Thanks to these federalist visions international law and the international legal thinking gradually developed. The construction of Europe belongs to this history.

This historical survey concentrates on the role of the personal principle and of subsidiarity in the federalist visions of Europe and in the development of democratic international law and human rights.

Introduction

Following the classical idea and model of peaceful world federation, social organization starts with the persons and their communities. The different communities (family, local community, province, state, federation of states, federation of federations of states) created by the association policy of persons could be imagined as concentric circles around the persons in the centre of their worlds. Constitutional state law, international law, and human rights create the harmony between the persons and these circles of associations. The idea of a peaceful world federation based on the personal and the autonomy principles is present in the works of all representatives of federalism among whom we find Aristotle, Althusius, Grotius, Suarez, Vattel, Saint-Pierre, Penn, Locke, Montesquieu, Rousseau, Voltaire, Tocqueville, Proudhon, Eötvös, Renner, Coudenhove-Kalergi, Rougemont, Brugmans, Monnet, Spinelli, Hallstein, Tindemans, or Delors.

Recently, the principle of subsidiarity has dominated the discussions on the construction of Europe. The definition of subsidiarity as a legal principle of the EU is very controversial.¹ It is not always clear whether it is an integrationist or anti-

¹ On Subsidiarity: *Subsidiarity: The Challenge of Change. Proceedings of the Jacques Delors Colloquium 1991* (Maastricht: European Institute of Public Administration, 1991); Antonio Estella, *The EU Principle of Subsidiarity and its Critique* (Oxford: Oxford University Press, 2002); Ken Endo, *Subsidiarity & its Enemies. To What Extent is Sovereignty Contested in the Mixed Commonwealth of Europe?* EUI Working Papers, (San Domenico (FI): European University Institute, 2001); Joerg Monar – Werner Ungerer – Wolfgang Wessels (eds.), *The Maastricht Treaty on European Union. Legal Complexity and Political Dynamic* (Bruges: College of Europe, Brussels: European Interuniversity Press, 1993; Chantal Millon-Delsol, *L'État Subsidaire* (Paris: Presses Universitaires de France, 1992); Detlef Merten (Hrsg.), *Die Subsidiarität Europas. Schriften zum Europäischen Recht. Band 16.* (Berlin: Duncker & Humblot, 1993); *Making Sense of Subsidiarity: How Much Centralization for Europe?* (London: The Centre for

integrationist principle of EU policy. The dominating position of the subsidiarity principle completely overshadows the role of the personal principle in European law. This reflects the phenomenon of democratic deficit. It would therefore be useful to rethink how federalism was originally imagined in European social organization and international law, to understand what the role of the personal principle and subsidiarity was in federalist visions.² This is the goal of this historical survey on the development of the classical idea of world federation, of European federation, and of the democratic international law.

The role of the classical idea of world federation in the development of international law

The idea of a peaceful world federation can be traced back to Aristotle. He drew up an organic model in which individuals (persons) belonged to groups and groups formed the larger social body. The autonomy of each persons and group had to be respected. In the mind of Aristotle the personal principle and subsidiarity were strongly connected, and they developed side by side with the concept of federal states based on the rule of law. In fact, the classical idea of world federation started with Aristotle. Aristotle was followed by Althusius in the 17th century when the dichotomy of sovereignty versus autonomy was already present in European social organization. He called for the creation of decentralised federal states and of a federal international policy.³ The conception of Althusius is based on a political organization starting with the persons and ranging from private associations composed of small groups, families, and voluntary corporations to public associations and territorial units such as the local community, the province, the canton, and later the state, and the federation of states. His was an organic notion of society in which the integrity of the component parts was guaranteed by being built up from below starting with the persons.⁴

However, with a few exceptions, it was not the Althusian federalism but rather the Bodinian sovereign monarchical nation state that triumphed in Europe. Most of the national states drew their origins in authoritarian sovereign states. These authoritarian states could not subordinate their sovereignty to the rules of international law that developed gradually and in opposition to centralisation policy. Their behaviour in international policy remained unregulated till the end of the Second World War.

The federalist opposition to the authoritarian and absolute sovereign state model was in favour of decentralised states pursuing peaceful internal and external association policies, and based on international law. The most fruitful period for this international and legal political thinking began in the 17th century and it continued during the Enlightenment of the 18th century.⁵ A conscious fight against feudal privileges, prejudices, and against a monarchical approach to foreign policy and diplomacy was at

Economic Policy Research, 1993).

² Bóka Éva, *Az európai egység gondolat története (The History of the Idea of European Unity)* (Budapest: Napvilág, 2001); Bóka Éva, *Út a nemzetekfelettséghez (The Way to Supranationalism)*, *Európai Szemle*, Budapest, No., 2, 2004; Bóka Éva, *A federalista Európa eszméje a háború után (The Idea of Federalist Europe after the War)*, *Európai Szemle*, Budapest, No. 4, 2004, Bóka Éva, *The Democratic European Idea in Central Europe, 1849-1945 Specimina Nova*, Pécs, 2005. pp. 6-24.

³ Johannes Althusius, *Politica methodice digesta*. An abridged translation of the third edition. Translated, with an introduction by Frederick S. Carney, (London: Eyre & Spottiswoode, 1965), pp. 66-67. 115.

⁴ *Ibid.*, p. 34-35.

the centre of the concerns and activities of political thinkers of this period. Eliminating wars through the establishment of rules and institutions of constitutional states and of international law was the most important challenge. Grotius was one of the firsts to develop a legal framework for making wars impossible. He believed that states should be organized based on common legal principles, and he also proposed to do the same for the community of states. His work was continued by numerous thinkers of European Enlightenment, among them Locke, Willam Penn, Saint-Pierre, Montesquieu, Rousseau, and Vattel. The ideas on the principles of constitutional states, on representative parliamentary government, and on federal union of states based on the principle of unity in diversity developed gradually. All these thinkers had proposals to create common institutions, too, like a European council of rulers, a European assembly of the representatives of the citizens of the member states, or a court of justice.

The most important thinkers of the law of nations (international law), Suarez and Vattel, elaborated on social organizational ideas based on the principle of “unity in diversity”. In Vattel’s worldview, for example, the international or interstate system was composed of single states. A single state constituted one political body, which was sovereign. The sovereign states could create either federations (“république fédérative”) or they could remain autocratic states. In the case of a federal republic the sovereign states unite into a permanent confederation. They agree in common competences and obligations, but they safeguard their autonomy. Vattel emphasised that sovereign states were not able to create peaceful international cooperation based on international law. Only the federal type states with a bottom up organisation could do that, representing the division of powers by the means of the principle of autonomy (subsidiarity).⁶

Federalists in opposition to sovereign nation states and nationalism

The founding fathers (the federalist political elite) of the American (1787) and Swiss (1848) federations successfully summarised all thoughts that had been proposed in the name of personal autonomy and the autonomy of states. They created the classical examples of constitutional federalism. These federations were based on the representation of the interests of the citizens as citizens of the large union, and at the same time as citizens of their own states/cantons, too. The classical constitutional federation was built from below. It was based on the division of power between the federation and the states. Legislation was made in the two chambers of the parliament. The federal government embodied the executive power. The federation was based on the balance of power policy between the federalists and the confederalists. It had an international legal personality. The French nation state (1792), in contrast, was unitary, centralised and built from above. It denied the classical idea of federalism based on the principle of autonomy of the persons and of the historical associations (cantons) of the persons; the state was embodied by the nation.

The constitution of the USA and of Switzerland served as examples for the European constitutional federalists who strongly criticised the French concept of nation state that denied the principle of federation. The whole of the 19th century was hallmarked by this

⁵ Paul Hazard, *La crise de la conscience européenne 1680-1715* (Paris: Fayard, 1961); Paul Hazard, *La pensée européenne au XVIII^e siècle. De Montesquieu à Lessing* (Paris: Fayard, 1963).

⁶ M. De Vattel, *Le droit des gens, ou principes de la loi naturelle. Appliqués à la conduite et aux affaires des nations et des souverains* (Amsterdam: Chez E. Van Harrevelt, 1775), Préliminaires, pp. 1-9.

struggle between federalists and “democratic nationalists” who, like Mazzini, concentrated on the democratisation of nation states as the only legally acceptable units of a European cooperation. While democratic reformers fought for a consistent implementation of democratic reforms within their states, there was no effective internal and external legal harmonisation among states. The conservative Saint-Alliance could not become the coordinator of legal harmonisation. The methods of monarchic diplomacies, of expansion, of the interests of sovereign nation states, and of a strive for a balance of power dominated. Although the aim of the conservative monarchs to restore the old European society proved to be impossible, conservative forces could still hinder and paralyse the development of the necessary democratic reforms. Nevertheless, the fight in the name of a European unity continued. European federalists strongly criticised the competition among nation states and national empires that, in the lack of an international coordination, turned them into enemies. The lack of democracy made this phenomenon especially dangerous. People developed mutually negative images and stereotypes about each other, which led to feelings of animosities and fears. It is on this psychological basis that the phenomenon of nationalism could develop.

For the supporters of the democratic European idea it was clear that democracy and federalism was the only solution to these problems. Proudhon is probably best known as the representative of personalist federalism. His major work on this subject, published in 1863, was “Du principe fédératif”.⁷ In this work he concentrated on the dichotomy of authority and liberty. Proudhon put forward a model of state and society composed of autonomous communities, which federated on basis of contracts freely entered into. His conception of the state-society relationship was an organic view based upon associations and subsidiarity. He believed that power should be divided in order to be as close as possible to the level of the problems to be solved.

Central European federalist thinkers fighting against cultural and political nationalism followed Proudhon’s personalist ideas. Searching the legal means against nationalism after the bloody nationalist fight in 1849, they elaborated important federalist ideas opposing the idea of a sovereign nation state not suitable for multinational states (like the Habsburg Monarchy, for example). Personal principle and subsidiarity played a significant role in this. The most important among these thinkers were Eötvös, Palacky, Naumann, Renner, and Coudenhove-Kalergi. Their contributions to the development of a democratic federal European idea and of human rights are indeed very important, primarily in the area of national minority rights. They elaborated also the model of a democratic multinational and multidimensional personalist federalist state.⁸

The first important result of the democratic international legal thinking was the establishment of the League of Nations in 1918, and the Covenant of the League of Nations. The vision of a world federation was expanded with new democratic international organizational principles: popular sovereignty, self-determination, international organization, and law. However, the development of the democratic international legal thinking was paralysed by the emergence of totalitarian states and by the Second World War. The struggle between nationalists and federalists strengthened

⁷ Pierre-Joseph Proudhon, *Du principe fédératif*, in: *Oeuvres complètes de P. J. Proudhon*, Paris, 1959.

⁸ Bóka Éva, *The Democratic European Idea in Central Europe, 1849-1945 Specimina Nova*, Pécs, 2005. pp. 6-24; Bóka Éva, *From National Toleration to National Liberation (Three initiators of cooperation in Central Europe)*. *East European Politics and Societies*. Vol. 13, No., 3. 1999. pp. 435-473.

between 1918-1945 because authoritarian and totalitarian nation states emerged in Europe. Progressive political thinkers, both from Western and Central Europe, identified two major reasons for the victory of nationalism, and its aggressive and totalitarian consequences. The first was the inconsistent implementation of the democratic reforms within nation states; the second was the lack of a democratic coordination of international policy, and the weakness of international law. There was no coordination between the internal and external policies of sovereign states. Consequently, the system of sovereign nation states could continue with their former expansionist policy. Nevertheless, the oppositional federalist forces were present and continued their fight for an international system based on democratic international law. Ortega y Gasset raised the question: why do people protect nationalism and aggressive nationalism instead of a peaceful federalism in the age of popular sovereignty, self-determination and international organization?

During this period, the Pan European Movement, led by the count Richard Coudenhove-Kalergi, represented constitutional federalism in Europe in opposition to authoritarian nation states and Stalinism. European constitutional federalists opposed the emergence of totalitarian states in Europe by strengthening the world federalist model mentioned above, and based on the personal principle and the autonomy (subsidiarity) principle. Coudenhove-Kalergi's idea on "the Revolution of Brotherhood" is a good example.⁹ Ortega y Gasset, Thomas Mann, Karl Renner, or Madariaga all belonged to the Pan European Movement. They favoured personal federalism and the principle of subsidiarity as the basic principles of international law and of a democratic international community. The members of the Pan European Movement did not believe that Europe could imitate the United States of America; instead, their model was the Swiss example.

Coudenhove-Kalergi, and his intellectual movement, had a great influence on Briand. His movement played a very important role in the establishment of the Council of Europe, and in the emergence of the constitutional, federalist European Parliamentary Movement opposed to the unionist policy of Churchill after the Second World War. For the federal constitutional structure of Europe Coudenhove-Kalergi proposed a two chamber Parliament composed of a House of Peoples and of a House of States. He was in favour of a European federalist constitution.¹⁰ He emphasised the necessity to discredit the idea of sovereignty. As a replacement one should establish supranational institutions, and develop and implement shared democratic external and internal legal organisation principles for every nation state in Europe in harmony with international law, and with human rights as the most important basis.

In parallel with the Pan European Movement the personalist movement – sometimes referred as "personalist or integral federalist" – emerged in France during the 1930s. It was based on the Proudhonian ideas. This philosophy was developed in the two organizations known as "L'Ordre Nouveau" and "Esprit" that also published reviews by the same name. The personalists were led by a small group of highly influential philosophers with Alexander Marc, Robert Aron, Emmanuel Mounier, Daniel Rops, and Denis de Rougemont taking the leading roles. Henri Brugmans joined after the end of the Second World War. His experience in the Resistance Movement converted Brugmans to personalism. The members of the personalist movement organized the New European

⁹ Richard Coudenhove-Kalergi, *Totaler state – totaler Mensch* (Wien: Paneuropa Verlag, 1937), pp. 182-183.

¹⁰ Entwurf einer europäischen Bundesverfassung, 1951, in: Richard Coudenhove-Kalergi, *Die europäische Nation* (Stuttgart: Deutsche Verlag-Anstalt, 1953), pp. 161-164.

Movement of personal or incremental federalists after the Second World War. Jacques Delors also belonged to this group.

The Catholic social theory also presented an idea of subsidiarity. The most important documents were two famous papal encyclicals: *Rerum Novarum*, 1880; *Quadragesimo Anno*, 1931. The principle of subsidiarity acquired its first explicit formula in 1931 when Pope Pius XI made an address entitled *Quadragesimo Anno*.

Members of the Resistance Movements in the Second World War, inspired by pre-war European Union proponents such as Aristide Briand and Richard Coudenhove-Kalergi, blamed extreme nationalism as the primary cause for the misery and chaos of the continent. Altiero Spinelli, one of the most important leaders of the international Resistance Movement, regarded the Federalist papers and the American constitution as examples for a European social organization after the Second World War. He founded the European Federalist Movement that adopted the Ventotene Manifesto as its political program. The manifesto emphasised that the main division is between the supporters of the national sovereignty and the supporters of the creation of a solid international state. The latter uses national power for achieving international unity. International unity could be achieved by establishing single federal state in which “each states will retain the autonomy it needs for a plastic articulation and development of political life according to the particular characteristics of its people”.¹¹ Spinelli’s Constitutional Federalist strategy had a strong institutional component and focused on the immediate establishment of federal political institutions, above all a supranational government directly responsible to the European citizens instead of national governments. The idea was that, once these organs were established, further transfer of authority from the nation-state to the federal state would occur automatically.

In search of a democratic Europe

Social organization based on international law and human rights as a global political process following the vision of world federation started with the establishment of the UNO, and the Universal Declaration of Human Rights. European integration belongs to this process. It started with federalist goals; however, after the defeat of European federalism, Europe’s governance became intergovernmental with supranational elements. After the war the influence of the British unionist policy, and of the British leader, Churchill, became determinant for the European integration policy. The federalist élan gradually diminished as the former nation states and national governments were reconstructed. The struggle between the supporters of the sovereignty of nation states and of a European federation of citizens and of autonomous states dominated European policy.

European federalism continued to be based on the personal autonomy principle and the principle of autonomy (subsidiarity) of the state. The federalist movement had two directions: the constitutional federalist and the integral federalist or personal federalist. The constitutional federalists regarded the Swiss constitution as an example to follow. Coudenhove-Kalergi aimed at the establishment of a European Parliamentary Federation “by at one inaugurating the United States of Europe – with a Supreme Council and a

¹¹ Ventotene Manifesto, in: Walter Lipgens (ed.), *Documents on the History of European Integration. 1. Continental Plans for European Union 1939-1945* (Berlin: Walter de Gruyter, 1985), pp. 471-473.

Supreme Court, a joint police force, equal human rights for all, a European market and a European currency”.¹² Spinelli also favoured a European constitutional federation. Both of them were in favour of the immediate establishment of federal political institutions, above all a supranational government directly responsible to the European citizens.

Another group of federalists, the so-called incremental federalists, also appreciated the Swiss federation but they wanted to build up Europe gradually. The personalist federalist writer Denis de Rougemont was a representative of this new European federalism. As his starting point he took the European person establishing a community in opposition to totalitarian and centralised states. His integral federalist schema denied the negative influences of the classical constitutional federalist and parliamentary structures. He launched a new European renaissance of the autonomous living forces.¹³ Rougemont believed that “federalism like all great ideas is very simple, but not easy to define in a few words or a conscious formula. ... True federalism is not a simple union of cantons, nor their autonomy pure and simple. It consists in a constant readjustment of the balance between regional autonomy and union – a perpetual accommodation between the opposing forces, by which they strengthen each other”.¹⁴ For Rougemont the most important principles of European federalism were: no hegemony of states; unity in diversity; putting together and composing the concrete multiform reality of nations, economic regions and political traditions which must be respected and at the same time articulated into a whole; no problem of minorities; the nations of Europe could come to think of themselves as various organs of a single body; a federation is formed little by little, by combinations of persons and groups, and not from a single centre or by the agency of governments.¹⁵ In Rougemont’s world federalist model different associations developed gradually around a person, like puzzles (not concentric circles) based on the principle “unity in diversity”.

Rougemont was very sceptical regarding the governments’ ability to form a viable union among themselves: “The European federation will not be accomplished by rulers whose task is to defend their country’s interests against the rest of the world. It will be the work of groups and individuals federating on their own initiative, independently of national governments. These are the groups and individuals who will form the government of Europe. No other way is possible or practicable. The USA is not governed by an assembly of the governors of the 48 states, or Switzerland by the delegates of the 22 cantons – it would be quite impracticable. Both these federations are governed, above and outside their component states, by an executive and a legislature appointed by their peoples.”¹⁶ He believed that Europe has a future only as a federation. Therefore to protect federalism is a new European responsibility: “The necessity is evident, the historical opportunity is ripe, and the structures are already outlined. All that is lacking is a federal

¹² Richard Coudenhove-Kalergi, Appeal to all Europeans, 28 April 1947 in: Walter Lippens and Wilfried Loth, *Documents on the History of European Integration 4. Transnational Organizations and Political Parties and Pressure Groups in the Struggle for European Union, 1945-1950* (Berlin – New York: W. de Gruyter, 1991), pp. 123-124.

¹³ Denis de Rougemont, The Federalist Attitude. 26 August 1947, in: W. Lippens and W. Loth, *Documents on the History of European Integration*, pp. 23-27.

¹⁴ Denis de Rougemont: The Federalist Attitude, p. 25.

¹⁵ Ibid., pp. 25-26.

¹⁶ Ibid., p. 27.

charter, representative institutions, and the last upsurge of popular pressure to force the hand of governments”.¹⁷

Hendrik Brugmans, another incremental federalist, followed Proudhon’s ideas in emphasising that the goal of the real personal politic is the “dismemberment of sovereignty”. He believed that the European federation has to be a free association of people: people must unite for their common good.¹⁸ In his vision a united Europe must be organised as an open society.

Unionists, in opposition to federalists, concentrated on the interests of the nation states and continued to subordinate the interests of the persons (citizens) to nation states. Their goal was to establish the European Family of Nations, pursuing a classical intergovernmental confederate policy. The Statute of the Council of Europe is a good example. The Council of Europe followed the classical European confederative model of intergovernmental cooperation among sovereign nation states. Nevertheless, it was based on the principles of the Charter of the United Nations, and it accepted the principles of the Universal Declaration of Human Rights. European federalist could not accept this solution but they remained in minority. The unionists could win in 1949.

Federalist élan in Europe

The construction of a federalist Europe (European integration) started with the Schuman declaration (1950), and the establishment of the supranational High Authority of the European Coal and Steel Community. The ECSC Treaty represented a new legal precedent of institutional development that was based on the functionalist idea of sectoral integration, thereby creating a chain reaction. I.e., European integration started with the Schuman Plan and the establishment of the supranational European Coal and Steel Community (ECSC).¹⁹ The Treaty of Paris equipped the ECSC with a Parliamentary Assembly and a Court of Justice, too. The Council’s function was to coordinate between the governments of the member states and the High Authority (later Commission). In other words, the Treaty establishing the ECSC laid the foundation of the federalist-confederalist community structure that still exists today. It represented two alternatives: federation of states versus union of states. The dichotomy, characterising European policy, of federalist versus intergovernmentalist was born.

Through the ECSC Jean Monnet established the first federalist-functionalist organization, which was to become the core of the European integration process. In his words: “This new method of action developed in Europe aimed to replace the efforts at domination of nation states by a constant process of collective adaptation to new conditions, a chain reaction, a ferment where one change induces another.”²⁰ The Monnet-method was based on the active cooperation of persons in the construction of Europe. He believed that the European federation has to be the result of the everyday work and cooperation of persons (citizens) in all areas of life. The construction of Europe meant for him the emergence of a new civilisation based on personal federalism, and

¹⁷ Ibid., p. 27.

¹⁸ Hendrik Brugmans, Fundamentals of European Federation, 27 August 1947, in: W. Lipgens and W. Loth, *Documents on the History of European Integration*, pp. 28-34.

¹⁹ *Europa. Dokumente zur Frage der Europäischen Einigung*. (Bonn: Verlag Bonner Universitäts Buchdruckerei, 1953), pp. 305-309.

²⁰ J. Monnet, A Ferment of Change, in: *Journal of Common Market Studies*, Vol. 1, No. 1, 1962, pp. 20-21.

characterised by the democratic and international thinking of citizens. This would be a new step on the way of realising the vision of peaceful world federation.

The Monnet-method raised the question again: would people protect democratic federalism or would they instead continue to choose for a strengthening of their own nation states? Would they choose for reinforcing the personal and the autonomy principles and a reorganization of the international community following the new challenges of world economy and globalisation? Or would they continue to subordinate their personal autonomy and rights to their nation states as the basic units of world organization?

Spinelli, for example, strongly criticised Monnet's "wait and see" method.²¹ He emphasised the dangers of the lack of Europe's governance and legal personality: this could strengthen the former intergovernmentalist and the nationalist forces. With the aim to finalise the European federation and to establish a European federalist government he protected the Draft Treaty Embodying the Statute of the European Community (published in Strasbourg, on the 11th March 1953).²² Europe's first constitutional draft (1953) shows the federalist aims of the founding fathers: they favoured a parliamentary solution based on two chambers, representing the interests of the citizens as Europeans as well as citizens of their own states. The first Chamber, called the Peoples' Chamber, shall be composed of deputies representing the peoples united in the Community. The Second Chamber, called the Senate, shall be composed of senators representing the people of each State. Senators shall be elected by the national Parliaments for five years in accordance with the procedure determined by each Member State. The establishment of the European Executive Council shall solve the problem of European governance. It shall undertake the general administration of the Community. The Council of National Ministers shall harmonise the actions of the European Executive Council with the Governments of the Member States. The Council of National Ministers and the European Executive Council shall exchange information and consult each other.

Europe's first constitutional draft was not federal, but it could have been developed in this direction. The new European international legal policy was very different from the former policy of sovereign nation states. However, the governments did not favour such a change. The defeat of the European Defence Community and of the Draft Treaty Embodying the Statute of European Political Community (1953) were setbacks for the federalist movement. Constitutional federalism, represented by framework of a European Parliament with two chambers and based on the personal principle and the principle of autonomy (subsidiarity) of the member states, was defeated in 1954.

The crisis of European integration was only temporary. In 1955, two federalist proposals were drafted simultaneously: a plan by Jean Monnet for a European atomic energy agency and a plan by the Dutch foreign minister Jan Willem Beyen for a common market in Western Europe. In June 1955, in Messina, the foreign ministers decided to embark upon multilateral negotiations on both economic and atomic integration. This led to the signature of the Treaties of Rome (in 1957) and to the creation of the European Economic Community (EEC) and the Euratom in 1958. The EEC's institutional

²¹ Michael Burgess, *Federalism and European Union: the Building of Europe, 1950-2000* (London and New York: Routledge, 2000), pp. 31-36.

²² Draft Treaty embodying the Statute of the European Community. Strasbourg, 11 March 1953, in: Richard T. Griffiths, *Europe's First Constitution. The European Political Community, 1952-1954* (London: Federal Trust for Education and Research, 2000), pp. 189-226.

framework, in fact, was in many respects similar to the ECSC's, although the Council of Ministers was strengthened in its relation to the Commission. The European Parliament was not directly elected and had little authority. The Treaties of Rome did not solve the problem of European government. Nevertheless, a democratic political system with two main fractions gradually emerged in Europe along the line of the dichotomy between federalists and intergovernmentalists. These two parties represented different institutional systems; consequently, they had a different interpretation of the personal, the subsidiarity and the sovereignty principles.

The federalist-intergovernmentalist compromise

The Monnet-method was successful in the field of economic cooperation. Nevertheless, the force of nationalism had been underestimated. The policy of the French president De Gaulle was an obvious example. The federalist interpreted the "De Gaulle phenomenon" as the returning of old spirits in Europe causing unnecessary damages on the way of the development of a democratic European government based on European law. In political practice, after the Luxembourg Compromise, decision-making on the basis of consensus instead of majority voting became the rule. The veto right denied the EEC of an important instrument for enlarging both its authority and its powers. Nevertheless, De Gaulle's attack against the federalists and the supranational institutions, aiming to safeguard the classical intergovernmental policy among the sovereign nation states, left the EEC Treaty unscathed. Thanks to the other member states some kind of a two-level governance (supranational economic – intergovernmental political) emerged gradually inside the European Community. But, with the Luxembourg Compromise, the "golden age" of the federalist construction of Europe ended. De Gaulle's policy successfully broke the federalist élan of institution building and started a new intergovernmental period of European integration. The role of the governments and of the head of states or governments strengthened in European governance. In 1972 the European Council was established.

Jean Monnet and Spinelli acknowledged the strengthening of the national governments in European policy. However, they regarded it as a provisional necessity. Jean Monnet emphasised that the governments had to keep the federalist direction: they had to serve the original federalist goals, and to support the establishment of the European Parliamentary Federation.

After De Gaulle's attack on federalism and the supranational institutions three competing integration theories emerged. The first, conservative confederalism, aimed at safeguarding and strengthening sovereign states, and weaken supranational institutions (Margaret Thatcher). The second placed the emphasis on the intergovernmental policy of nation states in supranational institutions (Andrew Moravcsik). The third favoured the strengthening of supranational institutions and of federalism (Leo Tindemans, Altiero Spinelli, Jacques Delors). The federalists had to face the challenge of the conservative confederalists as well as of the intergovernmentalists. This motivated them to come up with new ideas on a reform policy to keep the balance among the different political forces of the EU.

The most important representative of conservative unionism was Margaret Thatcher. She was a real eurosceptic. In accordance with De Gaulle she favoured the cooperation

among European states, and the establishment of the European Family of Nations. She wanted to achieve this goal by intergovernmental cooperation. She denied any importance of supranational institutions.²³

Andrew Moravcsik represented intergovernmentalism. He supported the principle of intergovernmental institutionalism. This meant the continuation of the national policy in supranational institutions. He believed that European policy could be based on intergovernmental bargaining within the framework of supranational institutions with regard and with respect to the European law and legal harmonization. Thus, European integration should be based on the interests of the states coordinated by supranational institutions.²⁴

The supporters of the supranational institutions belonged to the federalists. They remained active even after the defeat of the federalist European policy. The federalists were consistently opposed to the strengthening of the sovereignty of member states, and to the classical intergovernmental centralism. In opposition to De Gaulle's policy Walter Hallstein, the federalist president of the European Commission, was in favour of realizing the ideas of the Draft Constitution on the European Political Community of 1953 described above. He wanted to strengthen the European supranational institutions. In 1974 Leo Tindemans made an appeal to the European Council to continue on the way of European federalism and not to return to the former system of confederation of sovereign nation states. He emphasised the necessity of the establishment of a European Parliament composed of two chambers, and of the use of the federalist principles of personalism and of subsidiarity instead of sovereignty in European social organization.²⁵

The famous European federalist, Altiero Spinelli was convinced that the citizens (the persons) should be actively involved in European policy: the European Community has to emerge as a personalist federation of European citizens and autonomous states. He wanted to strengthen the basic principles of federalism in the construction of Europe. He emphasised the importance of strengthening the supranational institutions (Parliament, Commission, European Court) and the European law. In his view these institutions worked as a counter balance to intergovernmental policy.

Spinelli accepted the intergovernmentalists as political partners to federalists in European policy. He believed that these two main political directions could establish a new type European parliamentary federation, and solve the democratic deficit and the problem of governance of Europe. To achieve this aim he emphasised the need to continue on the way of the completion of the common market, and he initiated the democratic reform of the European Parliament.

His most important reform ideas were outlined in the Draft Treaty Establishing the European Union²⁶ (Spinelli draft) that was adopted by the European Parliament. In this document he put forward a system of two chambers established by the democratisation of

²³ Margaret Thatcher, The European Family of Nations. The famous Bruges Speech, delivered in September 1988, in: Martin Holmes (Ed.), *Euroceptical Reader* (London: Macmillan Press LTD, 1996), pp. 88-96.

²⁴ Andrew Moravcsik, Negotiating the Single European Act. National Interest and Conventional Statecraft in the European Community, in: *International Organization*, Vol. 45, No. 1, 1991. p. 25, 48, 56.

²⁵ Leo Tindemans, European Union. Report by Mr. Leo Tindemans to the Council, in: *Bulletin of the European Communities*, Supplement, 1/76.

²⁶ Draft Treaty Establishing the European Union, Adopted by the European Parliament on 14 February 1984, Coordinating rapporteur: Mr. A. Spinelli, in: R. Bieber, J-P. Jacqué, J. H.H. Weiler (eds.): *An Ever Closer Union. A Critical Analysis of the Draft Treaty Establishing the European Union* (Luxembourg: Office for Official Publications of the European Communities, 1985), pp. 306-328.

the co-decision procedure between the European Parliament and the Council (Art. 138). He struggled for the equal rights of the European Parliament and of the Council. He also planned the establishment of a Council consisting of ministers for Europe residing in Brussels. In his proposal the unifying federal political force should have also included a supranational institutional system.

Spinelli recognised the lack of the European governance. To find a solution, as a necessary compromise between the federalists and the intergovernmentalists, he accepted the advisory and coordinator role of the European Council. He also proposed to introduce and to include the principle of subsidiarity in the treaty on the European Union as the means of division of competences between the union and the member states.²⁷ The role of subsidiarity was to bind the European Community and its institutions in the lack of European government. He believed that subsidiarity could function as a balance of power between the federalists and the intergovernmentalists. Following these lines the integration process could continue. However, he regarded this solution as provisional. He believed that the European Federation should become a federation of persons and of autonomous member states. In such a federation subsidiarity was the means of placing the autonomous member states into the framework of a larger federation, in harmony with federal constitutional law, international law, and human rights. He believed that subsidiarity could work perfectly only in a federation where there was harmony between the personal principle and the subsidiarity principle within the framework of the European Parliament.

Spinelli believed that the federalists had to continue the political struggle for the democratisation of the EU institutions. He therefore proposed three political strategies:

1. the democratisation of the co-decision procedure between the European Parliament and the Council;
2. the enlargement of the fields of supranational cooperation, to gradually transfer more and more fields from the national level to the supranational level by using the principle of subsidiarity;
3. a clear division of competences between the union and the member states.

Spinelli's policy goal of finding a necessary political compromise with the intergovernmentalists started a new federalist élan in the construction of Europe, with a major role given to subsidiarity and the personal principle.

Jacques Delors, as president of the European Commission, continued the federalist policy of Jean Monnet, Walter Hallstein, and Altiero Spinelli. He defined himself as a personalist federalist belonging to the French personalist school of Mounier. With important changes in world policy Delors stood before the challenge of democratisation of European policy. In his speech (Bruges, 17th October 1989)²⁸ he proposed a new vision of a federation of nation states aiming to unite not only the people, but the nation states, too. His goal was that all Europeans could feel to belong to a Community that they see as a second homeland. His vision on the federation of nation states was based on the basic

²⁷ It was Spinelli who introduced the principle of subsidiarity in the EU's formal legal document when he first led the European Commission to make a contribution to the Tindemans Report in 1975, and then the European Parliament to adopt the Draft Treaty on European Union in 1984. Ken Endo, *Subsidiarity & its Enemies. To What Extent is Sovereignty Contested in the Mixed Commonwealth of Europe?* EUI Working Papers, (San Domenico (FI): European University Institute, 2001), p. 23.

²⁸ Jacques Delors, A Necessary Union. Address by Mr. Jacques Delors, President of the Commission of the European Communities, Bruges, 17 October 1989, in: Brent F. Nelsen – Alexander C-G. Stubb, *The European Union. Readings on the Theory and Practice of European Integration* (London: Lynne Rienner Publishers, Boulder, 1994), pp. 51-75.

principles of federalism, i.e., the personal principle and the principle of autonomy (subsidiarity). He emphasised that, regarding cooperation among nation states, federalism represented two essential rules:

1. the rule of autonomy (subsidiarity), which preserves the identity of each member state and removes any temptation to pursue unification regardless; and
2. the rule of participation, which does not allow one entity to be subordinated to another, but on the contrary, promotes cooperation and synergy, on the basis of the clear and well-defined provisions contained in the Treaty.²⁹

That is, in the explanation of Delors, subsidiarity can be applied in two different situations: “on the one hand, as the dividing line between the private sphere and that of the State, in the broad meaning of the term; on the other hand, as the repartition of tasks between the different levels of political power.”³⁰ He believed that subsidiarity as federal principle comprised two infrangible aspects: “the right of each to exercise his responsibilities there where he can perform them best, and the obligation of the public authorities to give to each the means to reach his full capacity.”³¹ Delors emphasised the importance of letting the citizens know what belongs to which level of authority because, in his view, one aspect of the “democratic deficit” in the Community originated from this lack of visibility. He emphasised that the clear determination of the citizen’s reciprocal responsibilities and of the different levels of power was very important. He mentioned Tocqueville as an example of a thinker who appreciated this solution.³²

Delors emphasised that subsidiarity is an organizational principle of a federal state. He definitely rejected to use it in the name of nation-states.³³ He was convinced that such a policy would cause dead locks with serious consequences in European social organization. He believed that the construction of the European community represents a new kind of federal-confederal union of states directed by multi-level governance in the framework of a single institutional structure. As a federalist political tactic he proposed: to continue the supranational economic policy of the federalist founding fathers; the establishment of the single market; economic and monetary union; to gradually transfer the necessary powers from the nation states’ level to the supranational level; to enlarge the fields of supranational cooperation; to diminish the role of veto; and to realise the union of nation states and peoples based on the principle of unity in diversity.

Delors’s federalist vision was discussed at a colloquium organized by the European Institute of Public Administration.³⁴ The most important result of this discussion was the division between the federalist and the intergovernmentalist interpretations of the principle of subsidiarity: the federalists regarded it as a means of solving the democratic

²⁹ J. Delors, *A Necessary Union*, pp. 60-61.

³⁰ J. Delors, *The Principle of Subsidiarity: Contribution to Debate*, in: *Subsidiarity: The Challenge of Change. Proceedings of the Jacques Delors Colloquium, 1991* (Maastricht: European Institute of Public Administration, 1991), p. 7.

³¹ *Ibid.*, p. 18.

³² *Ibid.*, p. 18.

³³ *Ibid.*, p. 8.

³⁴ *Subsidiarity: The Challenge of Change. Proceedings of the Jacques Delors Colloquium 1991*, (Maastricht: European Institute of Public Administration, 1991).

deficit of the EU, whereas the intergovernmentalists used it to strengthen the role of national governments in EU policy, and to keep things in the hands of national states.³⁵

The new type federalist-confederalist union of states

The Treaty on European Union represented another logical step toward the building of Europe, a process that started in 1950. The federalist influence of Monnet, Schuman, Spinelli, and of Delors is undeniable. The TEU established a European Union based upon the existing EC, together with two new intergovernmental pillars, namely cooperation in foreign and security policies and justice and home affairs. For the federalists remained much to do: the meaning of federalism was questioned; the European Parliament was still not fully integrated into the decision-making process on an equal basis with the Council; important competences – including foreign, security, defence, immigration, and social policies – were left as an intergovernmental responsibility; the “single institutional framework” serving a two-level governance was open to serious doubt. The definition of the principle of subsidiarity remained ambiguous in practical legal terms. However, subsidiarity could work in practice as a balance between the federalist and intergovernmentalist elements of the EU. But the question arose: how long would this balance work?

The federalists regarded the TEU as a provisional solution and continued their struggle for the democratisation of the co-decision procedure between the EP and the Council of Ministers. Their aim was to enlarge the fields of the supranational cooperation and to transfer the necessary powers from the member states’ level to the supranational level. However, the TEU strengthened the nation states and the intergovernmentalist forces.

It was Joschka Fisher who warned European politicians to avoid a collapse of the European Union. He gave a speech “From Confederacy to Federation: Thoughts on the Finality of European Integration”³⁶ at the Humboldt University in Berlin, on the 12th May 2000 in which he emphasised the necessity to finalise the construction of the European Community. He believed that it would be necessary to follow the steps described by Robert Schuman 50 years before toward a transition from a union of states to a full parliamentarisation as a European federation. In his view “it means nothing less than a European Parliament and a European government which really do exercise legislative and executive power within the Federation. This Federation will have to be based on a constituent treaty”.³⁷ Fischer also acknowledged the importance of the division of sovereignty between Europe and the nation states by the means of the principle of subsidiarity. In his view a European Parliament must always represent two aspects of a multicultural and multinational Europe: a Europe of nation-states and a Europe of citizens. This will only be possible if this European Parliament actually brings together the different national political elites and, consequently, the different national publics,

³⁵ Lord Mackenzie-Stuart, Assessment of the Views Expressed and Introduction to the Panel Discussion, in: *Subsidiarity: The Challenge of Change*, pp. 39, 160.

³⁶ Speech by Joschka Fischer at the Humboldt University in Berlin, 12 May 2000, in: Christian Georges, Yves Mény, J. H. H. Weiler (eds.), *What Kind of Constitution for What Kind of Polity?* (Florence: The Robert Schuman Centre for Advanced Studies at the European University Institute, 2000), pp. 19-30.

³⁷ *Ibid.*, p. 25.

too.³⁸ In his opinion this can be achieved if the European Parliament has two chambers. One will be for elected members who are also members of their national parliaments. Thus there will be no clash between national parliaments and the European Parliament, between the nation-state and Europe. For the second chamber a choice must be made between the approach of the US Senate, with directly elected senators from the member states, and a chamber of states along the lines of Germany's Bundesrat. (In the United States, every state elects two senators; in the German Bundesrat, in contrast, there are different numbers of votes.) He proposed to solve Europe's governance by one of two ways: either to develop the European Council into a European government, i.e., the European government is formed from the national governments, or – to take the existing Commission structure as a starting point – one can opt for the direct election of a president with far-reaching executive powers.³⁹

Fischer emphasised that the Monnet-method is not effective any more. Instead, he proposed to create a centre of gravity: “Such a group of states would conclude a new European framework treaty, the nucleus of a constitution of the Federation. On the basis of this treaty, the Federation would develop its own institutions; establish a government, ... a strong parliament and a directly elected president. Such a centre of gravity would have to be the avant-garde, the driving force for the completion of political integration and should, from the start, comprise all the elements of the future federation. ... Such a centre of gravity must have an attractive interest in enlargement and it must be attractive to the other members.”⁴⁰ He believed that “this is the way from closer co-operation towards a European constituent treaty and the completion of Robert Shuman's great idea of a European Federation.”⁴¹ He warned that the only way Europe could participate in the global economic and political competition of the 21st century is if it had a finalised European Federation with a legal personality.⁴²

What the European integration process could achieve is to be found in the Draft Treaty on the European Constitution, 2003.⁴³ It merged the basic treaties into a new constitutional treaty on the European Union. However, it has both a federalist and an intergovernmentalist interpretation. Following the federalist interpretation the draft treaty on constitution outlines the frameworks of a new type federation-confederation of states directed by multilevel governance within the framework of a single institutional system. It is composed of federalist and confederalist elements following the principle of division of competences between the union and the member states. Although the federalist elements dominate, the emphasis is on the member states: the member states – and not the European citizens – constitute the European Union. It is a federation of nation states: the member states are the citizens of the European Union; the state forming constitutional force of citizens is absent. According to the Draft Constitution of 2003 the European Parliament represents the peoples of the European states and not the European people.

³⁸ Ibid., pp. 25-26.

³⁹ Ibid., p. 26.

⁴⁰ Ibid., p. 29.

⁴¹ Ibid., p. 30.

⁴² Ibid., pp. 16-17.

⁴³ Draft Treaty Establishing a Constitution for Europe. Submitted to the President of the European Council in Rome, 18 July 2003. *Official Journal of the European Union*. 2003/C 169/01. In: <http://europa.eu.int/eur-lex/en/treaties/dat/constit.html>

Put it differently, the European Parliament represents many peoples, and not one European people. In the Council each national government represents the interests of its own state. In this system – thanks to the supranational institutions – subsidiarity plays the role of a balance between the federalists and the intergovernmentalists, keeping the integration process alive.

The Draft Constitution of 2003 is an important achievement. It represents the fifth step – the first was the establishment of the Council of Europe, the second of the ECSC, the third of the EEC, and the fourth the EU – on the way of European integration. However, to name this important European legal document a constitution was a mistake. It is an important “summary treaty”, a “treaty of assessment”: a necessary summary, combination, and assessment of the achievements of the construction of the European Community. It keeps the door open for future federalist reforms in a personalist federalist direction: the establishment of the European Parliament of European citizens and of citizens of member states.

In search of future federalist alternatives

The EU represents a new type of federalist-intergovernmentalist union of states directed by multilevel-governance within the framework of a single institutional system. The EU governance is supranational on economic cooperation, and intergovernmental on political cooperation. The European Union can be regarded as a puzzle composed of intergovernmental and supranational elements. However, it is a federation of nation states. The citizens could become European through their own nation states only. There is a lack of European identity. The problem of democratic deficit has not been solved. Therefore, the real challenge for the European federalist policy is to find ways and means to involve the persons as Europeans (representing European interests) in the construction of the democratic European Community. This requires a solution to the problem of democratic deficit, as the European Parliament does not occupy a central role in the Community’s decision-making process. The only way to solve the Community’s democratic deficit would be to invert the roles of the Council and of the European Parliament in the legislative process: the Parliament should occupy the central position overall and the Council should become the equivalent of chambers of territorial representation.⁴⁴

The future of the EU depends on the strength of the two oppositional forces of European history: sovereignty and autonomy (subsidiarity). Subsidiarity as an opposite principle to nation state sovereignty could provide future alternatives to European integration only if the construction of Europe developed in the personalist federalist direction. A Europe of free persons and free states could then emerge, a ‘*European Parliamentary Federation*’. But if the persons (citizens), in the lack of a democratic European identity and of a democratic international legal knowledge, choose to strengthen the interest of sovereign nation states and if they awake national sovereignty again, one has to face a new age of authoritarian states, and a new form of world nationalism. In this case the responsibility of the persons (citizens) and of their governments would be undeniable Europe-wide, while the tragic consequences of such a mentality and vote are already known for everybody.

⁴⁴ Antonio Estella, *The EU Principle of Subsidiarity and its Critique* (Oxford: Oxford University Press, 2002), pp. 70-71.

Rethinking the democratic federalist European visions, ideas, principles, treaties on European Community, and draft constitutions could help to find new peaceful international legal ways to shape a real democratic European Union as regional part of a democratic world federation.